

**United States Department of Labor  
Employees' Compensation Appeals Board**

\_\_\_\_\_ )  
**D.F., Appellant** )

**and** )

**U.S. POSTAL SERVICE, NEW ORLEANS** )  
**POST OFFICE, New Orleans, LA, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-1143**  
**Issued: March 24, 2023**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 28, 2022 appellant filed a timely appeal from a May 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted February 23, 2022 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 11, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On March 4, 2022 appellant, then a 58-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on February 23, 2022 he sustained a right knee injury when he tripped and fell over a strap while in the performance of duty. He stopped work on February 24, 2022.

In an emergency department discharge note dated February 23, 2022, Samantha Junius-Arcemont, a nurse practitioner, diagnosed a patella fracture and dispensed a knee immobilizer and crutches. Appellant was discharged home in stable condition and he was returned to work without restrictions. In a return-to-work form of even date, Junius-Arcemont noted that appellant was totally disabled from February 23 through March 3, 2022.

In an undated statement, appellant indicated that on February 23, 2022 he was walking toward the time clock and tripped over a strap attached to a pallet, which caused him to fall and strike his right knee. He immediately reported the accident to his supervisor and was transported to the emergency room.

In a March 28, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It explained the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No evidence was received.

By decision dated May 11, 2022, OWCP accepted that the February 23, 2022 employment incident occurred as alleged, but denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>7</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted February 23, 2022 employment incident.

Appellant submitted an emergency department discharge note from Ms. Junius-Arcemont, a nurse practitioner, dated February 23, 2022, who diagnosed a patella fracture. Also submitted was a return-to-work form of even date, Ms. Junius-Arcemont noting that he was totally disabled. The Board has held that medical reports signed by a nurse practitioner<sup>10</sup> are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.<sup>11</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>12</sup>

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<sup>7</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *J.D.*, Docket No. 16-1752 (issued March 1, 2017) (where the Board found that, a nurse practitioner is not considered a physician under FECA, thus, her opinion is of no relevance to the issue of causal relationship).

<sup>11</sup> Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *B.D.*, Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

<sup>12</sup> *Id.*

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted February 23, 2022 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has met not his burden of proof to establish a diagnosed medical condition in connection with the accepted February 23, 2022 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board