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

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| **K.C., Appellant** | ) | |
| **and** | ) | **Docket No. 23-0062** |
| | ) | **Issued: March 27, 2023** |
| **U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On October 17, 2022 appellant filed a timely appeal from a September 26, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### *ISSUE*

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted August 6, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the September 26, 2022 decision, OWCP received additional evidence. 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 August 10, 2022 appellant, then a 56-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2022 he developed headaches, severe soreness, and stiffness in his upper neck after he struck his head when entering his postal vehicle while in the performance of duty. He stopped work on August 6, 2022.

Along with his claim, appellant submitted an August 12, 2022 excuse note from Dr. Debbie Goldring, a chiropractor, holding him off work beginning August 6, 2022. Dr. Goldring noted that he experienced "subluxation and injury" due to hitting his head on the side of a truck.

In a letter dated August 8, 2022, appellant related that he sustained an injury on August 6, 2022 when he struck his head on the upper entranceway of his parked vehicle, causing pain in his upper neck.

In an August 15, 2022 letter, appellant asserted that a qualified medical examiner had determined that he experienced a severe subluxation while at work and further noted that he had incurred out-of-pocket medical expenses.

In an August 23, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information. Appellant did not respond within the afforded period.

An August 24, 2022 report of work status (Form CA-3) noted that appellant stopped work on August 6, 2022 and returned to full-duty work with no restrictions the following day.

By decision dated September 26, 2022, OWCP accepted that the August 6, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted August 6, 2022 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] 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,[4] 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

[3] *Supra* note 1.

[4] *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).

employment injury.[5] 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.[6]

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. There are two components involved in establishing fact of injury. The first component is whether he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[8] 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 factors identified by the employee.[9]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted August 6, 2022 employment incident.

In her August 12, 2022 note, Dr. Goldring noted that appellant had sustained a "subluxation and injury" due to hitting his head on the side of a truck. Chiropractors, however, are only considered physicians for purposes of FECA if they diagnose spinal subluxation based upon x-ray evidence.[10] Dr. Goldring did not indicate in her report that she obtained or reviewed x-rays in support of a diagnosis of spinal subluxation. As Dr. Goldring has not diagnosed subluxation based upon x-ray evidence, she is not considered a physician as defined under FECA and her note,

[5] *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).

[6] *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).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *C.H.*, Docket No. 22-0219 (issued February 28, 2023); *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).

[9] *C.H., id.*; *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020).

[10] Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. 5 U.S.C. § 8101(2); *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *George E. Williams*, 44 ECAB 530 (1993).

therefore, does not constitute competent medical evidence and is insufficient to meet appellant's burden of proof.[11]

As appellant has not submitted medical evidence from a qualified physician establishing a diagnosed medical condition in connection with the accepted August 6, 2022 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 not met his burden of proof to establish a diagnosed medical condition in connection with the accepted August 6, 2022 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[11] *M.O.*, Docket No. 21-1068 (issued March 1, 2022); *S.L.*, Docket No. 21-0760 (issued January 6, 2022); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).