United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 23-0884**
	)	**Issued: January 22, 2024**
U.S. POSTAL SERVICE, JOHNSTON POST OFFICE, Johnston, RI, 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 June 8, 2023 appellant filed a timely appeal from a December 12, 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 medical condition causally related to the accepted October 19, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the December 12, 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 October 24, 2022 appellant, then a 48-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 19, 2022 he injured his back, head, neck, left arm, and left elbow and experienced a headache and lethargy when the motor vehicle he was operating was rearended while in the performance of duty. He stopped work on that date.

In an October 26, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted an October 19, 2022 visit note from Cassandra Aubin, a nurse practitioner, noting that appellant was struck from behind while delivering mail and that his arm was outside the truck when he got hit, causing neck pain, brain fog, and left elbow pain. She assessed a contusion of the left elbow, motor vehicle accident, motor vehicle accident injuring a restrained driver, acute cervical strain, and brain fog.

In visit notes dated October 21, 25, and November 4, 2022, Mladen Kolovrat, a physician assistant, performed a physical examination and diagnosed an acute cervical strain, left elbow contusion, brain fog, and motor vehicle accident.

In physical therapy notes dated October 21 through November 10, 2022, Yoshimitsu Denison, a physical therapist, treated appellant and noted a diagnosis of an acute cervical strain and a contusion of the left elbow.

In duty status reports (Form CA-17) dated November 9 and 10, 2022, healthcare providers, whose signatures are illegible, indicated that appellant injured his elbow and back in an October 19, 2022 accident, diagnosed a cervical strain, and returned him to work on November 10, 2022.

In a November 10, 2022 visit note, Dr. Steven Ritucci, Jr., an osteopath specializing in physiatry, treated appellant and assessed a cervical strain. In a work status report of even date, he diagnosed a cervical strain and returned appellant to work on that date with restrictions.

By decision dated November 28, 2022, OWCP accepted that the October 19, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted October 19, 2022 employment incident.

OWCP continued to receive evidence, including a November 17, 2022 visit note from Dr. Ritucci noting a diagnosis of cervical strain.

On December 6, 2022 appellant requested reconsideration of the November 28, 2022 decision and submitted additional evidence.

In an undated note, Dr. Ritucci related that appellant was involved in an October 19, 2022 accident in which his mail truck was rear-ended while his arm was outside the vehicle, resulting in left-sided neck pain that had persisted for 43 days. He noted that appellant's condition had improved with physical therapy, but he continued to have issues with neck mobility, which may

impair his driving. Dr. Ritucci opined that appellant's symptoms were "certainly from the accident and that all [medical] orders … given pertinent to his care should be considered a direct result of the accident."

In a November 23, 2022 visit note, Dr. Ritucci performed a physical examination and diagnosed a cervical strain and motor vehicle accident. He returned appellant to work on that date with physical restrictions of no driving and lifting a maximum of 35 pounds.

In a November 28, 2022 response to OWCP's developmental questionnaire, appellant noted that he was placing mail into a mailbox located on a pole when he was rear-ended by a vehicle that impacted him so forcefully that he was unable to remember what he struck his arm on. He related that he experienced neck, back, and elbow pain and sought medical treatment after the incident.

By decision dated December 12, 2022, OWCP denied modification of its November 28, 2022 decision.

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 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 an injury and can be established only by medical evidence.[7]

[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).

[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).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 the specific employment incident identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a contusion of the left elbow causally related to the accepted October 19, 2022 employment incident.

OWCP found that the October 19, 2022 employment incident occurred as alleged. In an October 19, 2022 visit note, Ms. Aubin, a nurse practitioner, observed a contusion of the left elbow from the accepted employment incident. As the evidence of record establishes that appellant's employment incident resulted in a visible injury, the Board finds that he met his burden of proof to establish a contusion of the left elbow causally related to the accepted October 19, 2022 employment incident.[10] The case will, therefore, be remanded for payment of medical expenses for appellant's contusion of the left elbow, to be followed by a *de novo* decision regarding any attendant disability.

The Board further finds, however, that appellant has not met his burden of proof to establish additional medical conditions causally related to the accepted October 19, 2022 employment injury.

Appellant submitted an undated note from Dr. Ritucci noting that he was involved in an October 19, 2022 accident in which his mail truck was rear-ended while his arm was outside the vehicle, resulting in left-sided neck pain. Dr. Ritucci opined that his symptoms were "certainly from the accident and that all [medical] orders … given pertinent to his care should be considered a direct result of the accident." The Board has held that medical evidence that merely states a conclusion but does not offer a medically sound and rationalized explanation by the physician of how the accepted employment incident physiologically caused or aggravated the diagnosed conditions, is of limited probative value on the issue of causal relationship.[11] Dr. Ritucci's report did not provide sufficient medical rationale explaining the basis of his conclusory opinion that

[8] *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] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, Initial *Development of Claims*, Chapter 2.800.6a (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3c (January 2013). *See also A.W.*, Docket No. 22-1196 (issued November 23, 2022); *J.S.*, Docket No. 21-0376 (issued September 16, 2022); *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

[11] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

appellant's medical conditions were caused by the accepted employment incident.[12] The Board has also held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition.[13] Dr. Ritucci did not diagnose a medical condition in this report. As such, this evidence is insufficient to establish appellant's claim.[14]

Appellant also submitted a November 10, 2022 work status note, and visit notes dated November 10, 17, and 23, 2022, in which Dr. Ritucci treated appellant and diagnosed an acute cervical strain and motor vehicle accident. However, Dr. Ritucci did not provide an opinion on causal relationship in these notes. The Board has consistently held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. As such, these reports are insufficient to meet appellant's burden of proof.[15]

OWCP also received an October 19, 2022 visit note from Ms. Aubin, a nurse practitioner, and visit notes dated October 21, 25, and November 4, 2022 from Mr. Kolovrat, a physician assistant. Additionally, OWCP received physical therapy notes dated October 21 through November 10, 2022 from Mr. Denison, a physical therapist. However, the Board has long held that certain healthcare providers such as nurse practitioners, physician assistants, and physical therapists are not considered qualified "physician[s]" as defined under FECA and their findings, reports and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16] Accordingly, these reports are insufficient to satisfy appellant's burden of proof.[17]

The remaining medical evidence of record consists of CA-17 forms dated November 9 and 10, 2022 from healthcare providers, whose signatures are illegible, diagnosing a cervical strain. However, the Board has long held that reports that bear an illegible signature lack proper

[12] *R.T.*, Docket No. 17-1230 (issued May 3, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[13] *A.R.*, Docket No. 19-1560 (issued March 2, 2020); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[14] *Id*.

[15] *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] 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. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (September 2020); *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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

[17] *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[18]

As appellant has not submitted rationalized medical opinion evidence establishing additional medical conditions causally related to the accepted October 19, 2022 employment injury, 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 met his burden of proof to establish a contusion of the left elbow causally related to the accepted October 19, 2022 employment incident. The Board further finds, however, that appellant has not met his burden of proof to establish additional medical conditions causally related to the accepted October 19, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: January 22, 2024
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

[18] *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).