

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

R.P., Appellant	)	
	)	
and	)	<b>Docket No. 24-0002</b>
	)	<b>Issued: January 24, 2024</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
U.S. SECRET SERVICE, Washington, DC,	)	
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 2, 2023 appellant filed a timely appeal from a September 28, 2023 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 her burden of proof to establish a diagnosed medical condition in connection with the accepted July 12, 2023 employment incident.

---

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

<sup>2</sup> The Board notes that following the September 28, 2023 decision, OWCP received additional evidence. 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 July 19, 2023 appellant, then a 34-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2023 she sustained injuries to her head, neck, back, left shoulder, and left knee when she was involved in a motor vehicle accident (MVA) while in the performance of duty. She stopped work on the date of injury and returned to full-duty work on August 14, 2023.

In support of her claim, appellant submitted a July 12, 2023 MVA crash report and a July 19, 2023 statement, which indicated that her vehicle was struck from behind on the driver's side rear door and that she was transported to the hospital.

In a work slip dated July 12, 2023, Peter Mingione, a physician assistant, held appellant off from work through July 19, 2023.

In a July 19, 2023 note, Dr. Yakub Abrakhimov, a pain management physician, recommended that appellant remain out of work until August 2, 2023.

In a July 24, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

OWCP thereafter received a July 12, 2023 emergency department report by Dr. Neal J. Cohen, a Board-certified emergency medicine physician, who noted that appellant related complaints of pain in her neck and back and pain and paralysis in her left leg that she attributed to an MVA. He performed a physical examination, which revealed cervical and lumbar spinal tenderness, and diminished motor strength in the left lower extremity compared to the right. Dr. Cohen diagnosed neck pain and ordered diagnostic testing.

Reports of computerized tomography (CT) scans of the head, cervical spine, abdomen, and pelvis and x-rays of the left knee, chest, and pelvis of even date were negative for acute injury.

In a consultation note dated July 12, 2023, Dr. Marudeen Aivaz, a medical resident specializing in primary care, noted that appellant had been a restrained driver in an MVA. He performed a physical examination, which revealed a five-millimeter (mm) lip laceration and decreased sensation and motor strength in the left lower extremity.

In an August 1, 2023 note, Dr. Abrakhimov recommended that appellant remain out of work until August 8, 2023. In a note dated August 8, 2023, he released her to return to full-duty work, effective August 14, 2023.

In an attending physician's report (Form CA-20) dated August 11, 2023, Dr. Abrakhimov diagnosed low back pain and cervicgia. He checked a box marked "Yes" indicating that the diagnoses were caused or aggravated by an employment activity. In a separate form report of even date, Dr. Abrakhimov diagnosed cervicgia, low back pain, and bilateral knee pain, and estimated that appellant would reach maximum medical improvement (MMI) in six to eight weeks.

In a note dated August 14, 2023, Dr. Abrakhimov noted that he had released appellant to return to full-duty work and recommended that she undergo physical therapy for six weeks.

By decision dated September 28, 2023, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted July 12, 2023 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by 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>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 the employment incident identified by the employee.<sup>9</sup>

---

<sup>3</sup> *Id.*

<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).

<sup>7</sup> *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).

<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).

## ANALYSIS

The Board finds that appellant has met her burden of proof to establish a lip laceration causally related to the accepted July 12, 2023 employment incident.

On July 12, 2023 Dr. Aivaz noted appellant's history of an MVA that day. On physical examination, he observed a five-mm lip laceration. OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.<sup>10</sup> As the evidence of record establishes a visible injury, the Board finds that appellant has met her burden of proof to establish a lip laceration causally related to the accepted July 12, 2023 employment incident.<sup>11</sup> Appellant, therefore, has established an injury in the performance of duty. The case will, therefore, be remanded for payment of medical expenses and any attendant disability.

The Board further finds, however, that appellant has not met her burden of proof to establish additional diagnosed medical conditions in connection with the accepted July 12, 2023 employment injury.

Dr. Neal, in his July 12, 2023 report, noted that appellant was involved in an MVA where she was struck on the rear driver's side. He diagnosed neck pain. Dr. Abrakhimov, in his August 11, 2023 reports, diagnosed cervicgia, low back pain, and bilateral knee pain. The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.<sup>12</sup> As such, these reports are insufficient to meet appellant's burden of proof.

In support of his claim, appellant also submitted a July 12, 2023 work excuse by Mr. Mingione, a physician assistant. The Board has long held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.<sup>13</sup> Their medical findings, reports and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>14</sup> Consequently, this note is also insufficient to establish the claim.

---

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6a (June 2011); *id.* at Chapter 2.805.3c (January 2013). See also *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

<sup>11</sup> See *R.H.*, *id.*; *A.J.*, *id.*; see also *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

<sup>12</sup> *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

<sup>13</sup> Section 8101(2) of FECA provides that 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) (January 2013); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA); *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).

<sup>14</sup> *Id.*

The remaining evidence of record consists of reports of diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.<sup>15</sup> Therefore, these reports are also insufficient to meet appellant's burden of proof.

As the record lacks medical evidence establishing any additional diagnosed medical conditions in connection with the accepted July 12, 2023 employment incident, the Board finds that appellant has not met her 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 her burden of proof to establish a lip laceration causally related to the accepted July 12, 2023 employment incident. The Board further finds, however, that she has not met her burden of proof to establish additional diagnosed medical conditions in connection with the accepted July 12, 2023 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2023 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 24, 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

---

<sup>15</sup> *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).