United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 23-0035**
	)	**Issued: May 18, 2023**
U.S. POSTAL SERVICE, KILMER POST OFFICE, Edison, NJ, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 12, 2022 appellant filed a timely appeal from a September 6, 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 July 19, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the September 6, 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 July 26, 2022 appellant, then a 54-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 19, 2022 he sustained a low back strain when his postal vehicle hit a pothole on his mail delivery route while in the performance of duty. He stopped work on July 19, 2022 and returned to work on July 25, 2022.

In an August 2, 2022 development letter, OWCP notified appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence needed. It afforded him 30 days to respond.

Appellant submitted a July 19, 2022 discharge work note in which Happiness A. Diru, a physician assistant, indicated that he was excused from work for three days.

By decision dated September 6, 2020, OWCP accepted that appellant had established the occurrence of the July 19, 2022 employment incident, as alleged. However, it denied his traumatic injury claim, finding that he had not submitted sufficient medical evidence to establish a diagnosed medical condition in connection with the accepted July 19, 2022 employment incident. OWCP 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 has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA and that the claim was filed within the applicable time limitation period of FECA,[3] 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.[4] 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.[5]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly

[3] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

occurred at the time and place, and in the manner alleged.[6] The second component is whether the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[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 July 19, 2022 employment incident.

Appellant submitted a July 19, 2022 discharge work note in which Ms. Diru, a physician assistant, indicated that he was excused from work for three days. The Board has held, however, that health care providers such as physician assistants, nurses, physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[10] Therefore, Ms. Diru's report is of no probative value, and is insufficient to meet appellant's burden of proof to establish a work-related traumatic injury.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted July 19, 2022 employment incident,[11] the Board finds that appellant has not met his burden of proof.

[6] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[9] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[10] 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 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); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[11] *See supra* notes 7 and 8 regarding the requirement, in a traumatic injury claim, to establish both the factual and medical components of fact of injury.

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 July 19, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 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