United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 23-0102**
	)	**Issued: May 3, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Louisville, KY, 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 24, 2022 appellant filed a timely appeal from a September 21, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted July 5, 2022 employment incident.

FACTUAL HISTORY

On July 22, 2022 appellant, then a 57-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 5, 2022 he sustained a lower back strain with right-sided radiculopathy and sciatica when exiting his postal vehicle while in the performance of

[1] 5 U.S.C. § 8101 *et seq*.

duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. He stopped work on July 7, 2022.

On July 8, 2022 appellant was seen by Julie L. Heuser, a nurse practitioner. An unsigned medical note indicated a diagnosis of radiculopathy and sciatica of right side. A work status note of even date signed by Ms. Heuser allowed appellant to return to work on July 11, 2022 with no restrictions.

In a development letter dated August 3, 2022, OWCP informed appellant of the deficiencies of his claim. It noted that medical evidence must be submitted by a qualified physician. OWCP advised appellant of the type of additional factual and medical evidence needed to establish his claim and afforded him 30 days to respond. No response was received.

By decision dated September 21, 2022, OWCP found that the July 5, 2022 incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted 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[2] 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, 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.[3] 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.[4]

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can generally be established only by medical evidence.[5]

[2] *Id*.

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

[4] *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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).

[5] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[6] 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.[7]

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 5, 2022 employment incident.

In support of his claim, appellant submitted a medical note dated July 8, 2022 from Ms. Heuser who diagnosed radiculopathy and sciatica of right side. OWCP also received a work status note of even date that allowed appellant to return to work on July 11, 2022 with no restrictions. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.[8] These notes are thus of no probative value and insufficient to establish appellant's claim.

As the medical evidence of record does not contain a medical diagnosis in connection with the accepted July 5, 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 not met his burden of proof to establish a diagnosed medical condition in connection with the accepted July 5, 2022 employment incident.

[6] *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).

[7] *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).

[8] 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); *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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 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