

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

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N.J., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
New York, NY, Employer )  
\_\_\_\_\_ )

**Docket No. 21-0551  
Issued: December 1, 2021**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 22, 2021 appellant filed a timely appeal from a January 21, 2021 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 causally related to the accepted December 3, 2020 employment incident.

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

<sup>2</sup> The Board notes that, following the January 21, 2021 decision, appellant submitted 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 December 10, 2020 appellant, then a 29-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2020 she injured her neck, back, and shoulder when her parked vehicle was struck by a school bus while in the performance of duty. She stopped work on December 3, 2020 and returned on December 10, 2020.

In a development letter of even date, OWCP informed appellant that it had received no evidence in support of her traumatic injury claim. It informed her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and a diagnosis, explaining how the claimed employment incident caused, contributed to, or aggravated her medical conditions. It provided 30 days for a response.

In a December 3, 2020 statement, appellant explained that at approximately 7:25 a.m. a school bus struck the passenger side of her vehicle. She indicated that she was holding the steering wheel to prevent herself from falling. Appellant was left shocked and traumatized, and also experienced shoulder pain and light headache.

On December 3, 2020 the employing establishment issued an authorization for examination and/or treatment (Form CA-16). S.F., the authorizing official, described appellant's injury as neck, back and shoulder pain. On the reverse side of the Form CA-16, Part B attending physician's report, Maryna Denysova, a physician assistant, observed that appellant was involved in a motor vehicle accident. She diagnosed a motor vehicle collision and whiplash and checked a box marked "Yes" to indicate her opinion that appellant's condition was caused or aggravated by the employment incident.

In a medical report of even date, Ms. Denysova noted that appellant was involved in a motor vehicle accident and provided treatment instructions relating to a motor vehicle accident and a cervical sprain. She advised that appellant would need to remain off work until December 7, 2020.

In a December 8, 2020 medical note, Dr. Louis Rose, a Board-certified orthopedic surgeon, advised that appellant would be unable to work until after her next evaluation in two weeks.

In a December 16, 2020 medical note, Dr. Thomas Kolb, a Board-certified radiologist, explained that he performed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine and left shoulder and referenced her date of injury as December 3, 2020.

In a December 21, 2020 attending physician's report (Form CA-20), Dr. Ronald J. Lambert, a chiropractor, observed that appellant was involved in a motor vehicle accident on December 3, 2020 when a school bus struck her parked car. He diagnosed a cervical disc injury, a lumbar disc injury and a shoulder injury and checked a box marked "Yes" to indicate his opinion that appellant's injury was caused or aggravated by her federal employment activity. In a duty status report (Form CA-17) of even date, Dr. Lambert diagnosed a cervical and lumbar disc injury and advised that appellant was unable to return to work.

Appellant submitted a December 21, 2020 disability form letter wherein Dr. Lambert diagnosed a cervical disc injury and a lumbar disc injury and advised that she was totally disabled from work.

In a December 22, 2020 medical note, Dr. Rose referred appellant to physical therapy and requested that she be excused from work that day.

By decision dated January 21, 2021, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence signed by a qualified physician containing a diagnosis in connection with her claimed injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under 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 the fact 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 the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.<sup>9</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q).

<sup>8</sup> *T.H.*, 59 ECAB 388, 393-94 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 3, 2020 employment incident.

Dr. Lambert, in a Form CA-17, Form CA-20, and disability form letter dated December 21, 2020, diagnosed cervical and lumbar disc and a shoulder injury due to the accepted December 3, 2020 employment incident. Chiropractors, however, are only considered physicians for purposes of FECA if they diagnose spinal subluxation based upon x-ray evidence.<sup>11</sup> Dr. Lambert did not indicate that he obtained or reviewed x-rays to diagnose a subluxation of the cervical spine. Therefore, his report is of no probative value and is insufficient to meet appellant's burden of proof.

Appellant submitted a December 16, 2020 medical note from Dr. Kolb wherein he explained that he performed MRI scans of her lumbar spine and left shoulder. She also submitted medical notes dated December 8 and 22, 2020 wherein Dr. Rose recommended work restrictions for her to follow. A medical report which does not provide a firm diagnosis and render an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.<sup>12</sup>

The remaining medical evidence consists of a December 3, 2020 Form CA-16, Part B attending physician's report, from a physician assistant. The Board has held, however, that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.<sup>13</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>14</sup>

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<sup>10</sup> *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> 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).

<sup>12</sup> *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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); *M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *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 *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (physician assistants are not considered physicians as defined under FECA); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

<sup>14</sup> See *O.R.*, Docket No. 20-0743 (issued January 28, 2021).

As the medical evidence of record is insufficient to establish a valid medical diagnosis from a qualified physician in connection with the accepted December 3, 2020 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 not met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 3, 2020 employment incident.<sup>15</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *C.B.*, Docket No. 19-1882 (issued April 1, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).