

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

C.H., Appellant)	
)	
and)	Docket No. 20-1212
)	Issued: February 12, 2021
U.S. POSTAL SERVICE, ROSELAND POST)	
OFFICE, Chicago, IL, 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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 26, 2020 appellant filed a timely appeal from a February 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof to establish a diagnosed medical condition causally related to the accepted January 10, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 21, 2020 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 January 11, 2020 appellant, then a 30-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 10, 2020 she sustained fractures and other injuries to her right hip and buttocks when involved in a motor vehicle collision while in the performance of duty. She stopped work on the date of injury. On the reverse side of the claim form A.B., an employing establishment supervisor, checked a box “Yes” to indicate that appellant was injured in the performance of duty and his agreement with appellant’s account of events.

In a development letter dated January 16, 2020, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP emphasized the importance of submitting a narrative report from her attending physician containing a history of injury, diagnosis, and opinion supported by medical rationale as to how the alleged employment incident caused or aggravated the diagnosed conditions. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant provided a January 13, 2020 statement, explaining that on January 10, 2020 at approximately 6:20 p.m., while making a left turn at an intersection, a semi-truck ran a red light and struck the passenger side of her vehicle. She was then transported to a hospital emergency department.

Appellant submitted a January 10, 2020 hospital emergency department discharge report authored by a registered nurse whose name is illegible. She had been diagnosed with an acute fracture of the distal sacrum.

In a January 16, 2020 disability certificate, Rachel Cheeks, an advanced practice registered nurse and certified family nurse practitioner, held appellant off work due to acute fracture of the distal sacrum, cervical whiplash injury with facetogenic pain, lumbar whiplash injury with facetogenic pain, bilateral arm strains, right hip contusion, and bilateral knee injuries.

By decision dated February 21, 2020, OWCP accepted that the January 10, 2020 employment incident occurred as alleged. However, it denied appellant’s traumatic injury claim, finding that she had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ that an injury was sustained in the performance of duty, as alleged, and

³ *Supra* note 1.

⁴ *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).

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 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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted January 10, 2020 employment incident.

In support of her claim, appellant provided a January 10, 2020 hospital discharge report authored by a nurse. Appellant also submitted a January 16, 2020 disability certificate signed by Ms. Cheeks, a nurse practitioner. However, certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.¹⁰ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. As such, this evidence is of no probative value and insufficient to meet appellant's burden of proof.

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

⁶ *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).

⁷ *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).

⁸ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *see B.W.*, Docket No. 20-1027 (issued November 18, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

As appellant has not submitted rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted January 10, 2020 employment incident, she has not met her burden of proof to establish her claim.¹¹

On appeal appellant contends that she submitted medical evidence to OWCP signed by her attending physician. As explained above, 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. The evidence of record is insufficient to establish her claim. The Board is precluded from considering additional evidence for the first time on appeal.¹²

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 January 10, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ C.W., Docket No. 20-1027 (issued November 18, 2020); J.T., Docket No. 18-1755 (issued April 4, 2019).

¹² *Supra* note 2.