

FACTUAL HISTORY

On May 29, 2014 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim alleging that on January 13, 2014 she sustained a head injury in an automobile accident while in the performance of duty.

In support of her claim, appellant submitted a January 13, 2014 return to work note from Anderson Hospital stating that she had been seen in the emergency room that day and was released to return to work in two days.³

Additionally, a January 14, 2014 note from Abby Breedy, PAC, indicated that appellant was under her medical care and could return to work on January 16, 2014.

By correspondence dated June 11, 2014, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim including the definition of a physician under FECA. She was given 30 days to provide this information.

In response to OWCP's request appellant submitted a January 13, 2014 report from Lee H. Young, PAC, who reported seeing appellant in the emergency room for evaluation of a head injury sustained following a motor vehicle collision sustained that day. Physical examination findings were provided with a diagnosis of minor head trauma.

In a January 15, 2014 report, Ms. Breedy indicated that appellant was seen for complaints of dizziness following a January 13, 2014 employment-related automobile accident. Appellant stated that she had been rear-ended while delivering mail. Ms. Breedy provided a medical history and physical examination findings.

By decision dated July 16, 2014, OWCP denied appellant's claim on the grounds that the record contained no diagnosis of a medical condition due to the January 13, 2014 employment incident from a physician as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment

³ It is unclear from the signature whether that person was a physician.

⁴ 5 U.S.C. § 8101 *et seq.*

injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁷ To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁸ 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.⁹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

ANALYSIS

OWCP has accepted that the employment incident of January 13, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained an injury as a result of the January 13, 2014 employment incident. The Board finds that appellant did not submit sufficient medical evidence from a physician to establish that a medical condition was diagnosed in connection with this incident.

Appellant submitted several reports from Ms. Breedy and from Mr. Young both certified physician assistants. However, these reports have no weight or probative value as medical evidence as they have not been signed or approved by a physician and physician's assistants are not considered physicians under FECA.¹¹ Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law.¹² The reports from Ms. Breedy and Mr. Young do not constitute probative medical evidence as they are not considered physicians under FECA. Appellant did not establish a firm medical condition in connection with the work-related incident.

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁸ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁹ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

¹¹ See *J.M.*, 58 ECAB 303 (2007); *Lyle E. Dayberry*, 49 ECAB 369 (1998) (the reports of a physician's assistant are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA).

¹² 5 U.S.C. § 8101(2). See also *Paul Foster*, 56 ECAB 208 (2004); *Thomas O. Bouis*, 57 ECAB 602 (2006).

The Board finds that appellant did not submit sufficient medical evidence providing a diagnosis from a qualified physician. Appellant failed to establish that she had a head injury condition resulting from the January 13, 2014 employment incident.

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 that she sustained an injury in the performance of duty on January 13, 2015 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2014 is affirmed.

Issued: February 9, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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