United States Department of Labor
Employees' Compensation Appeals Board

D.N., Appellant	)	
and	)	**Docket No. 19-0070**
	)	**Issued: May 10, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Bethesda, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 11, 2018 appellant filed a timely appeal from a September 25, 2018 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 causally related to the accepted August 14, 2018 employment incident.

[1] 5 U.S.C. § 8101 et seq.

[2] The Board notes that appellant submitted additional evidence on appeal. 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 August 16, 2018 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on August 14, 2018, something bit his left foot while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that his injury occurred in the performance of duty and that he stopped work on the date of injury and returned to work on August 17, 2018.

In a work release form dated August 14, 2018, Badruz Zaman, a physician assistant, indicated that appellant was seen on August 14, 2018 and was able to return to work without restrictions on August 17, 2018.

Appellant provided a supplemental statement dated August 15, 2018, wherein he noted that after delivering a package along his route, he felt a bite on his left leg. He related that he did not see what bit him. Appellant indicated that he developed symptoms of left leg and chest pain, neck swelling and itching, and he lost his voice.

In a return to work form (Form CA-3) dated August 23, 2018, the employing establishment indicated that appellant returned to work without restrictions on August 17, 2018.

In a development letter dated August 24, 2018, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional medical evidence to substantiate his claim. OWCP afforded appellant 30 days to submit the requested evidence. No response was received.

By decision dated September 25, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosis in connection with the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 period of FECA,[4] and 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.[5] These are the essential elements of each and every

[3] *Supra* note 1.

[4] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[7] Generally, 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 occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[11] 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 appellant's specific employment incident.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 14, 2018 employment incident.

Appellant submitted a work-release form dated August 14, 2018 from Mr. Zaman, a physician assistant. The Board has held that medical reports signed solely by a physician assistant are of no probative value as physician assistants are not considered physicians as defined under FECA and are therefore not competent to render a medical opinion.[13]

Appellant also submitted a statement dated August 15, 2018 in which he described that, while in the performance of duty, something bit him and caused his alleged conditions. His own

[6] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[9] *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward,* 52 ECAB 140 (2000).

[12] *Id.*

[13] *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (health care providers such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection 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).

lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.[14] Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[15]

Appellant has the burden of proof to submit rationalized medical evidence establishing that a diagnosed medical condition was causally related to the accepted August 14, 2018 employment incident.[16] He has not submitted such evidence and thus the Board finds that he has not met his burden of proof.[17]

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 and 20 C.F.R. §§ 10.605 through 10.607.[18]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 14, 2018 employment incident.

[14] *See G.C.*, Docket No. 18-0506 (issued August 15, 2018).

[15] *T.H., supra* note 5; *D.D.*, 57 ECAB 734 (2006).

[16] *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *see D.T.*, Docket No. 17-1734 (issued January 18, 2018).

[17] *R.B., id.; see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

[18] The Board notes that the record includes an Authorization for Examination and/or Treatment (Form CA-16). A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, the August 14, 2018 Form CA-16 was incomplete as it did authorize medical treatment at any specific medical facility. The Form CA-16 of record therefore did not create a contractual obligation to pay for the cost of the examination or treatment. *See* 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018), *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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