United States Department of Labor
Employees' Compensation Appeals Board

K.A., Appellant	)	
and	)	**Docket No. 18-0999**
	)	**Issued: October 4, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Peshtigo, WI, 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 April 16, 2018 appellant filed a timely appeal from a March 9, 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 her burden of proof to establish an injury causally related to the accepted January 27, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the March 9, 2018 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 evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On January 29, 2018 appellant, then a 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2018 she sprained her left wrist when she slipped on ice and fell in the employing establishment parking lot while in the performance of duty. She stopped work on January 29, 2018 and returned to work on January 30, 2018. On the reverse side of the Form CA-1 the employing establishment indicated that appellant was not in the performance of duty when injured. It noted that appellant had just punched out for the day and was walking to her car in the parking lot when she slipped and fell on ice.

On January 27, 2018 appellant was treated at an emergency department by a health care provider whose signature was illegible. Her diagnosis was left wrist sprain. The provider noted appellant's condition was work related and instructed her to see her primary care physician as needed. Appellant was given Ibuprofen and a splint, which she was to wear for two to three weeks.

In a February 6, 2018 claim development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion to substantiate the factual elements of her claim. In a separate letter of even date, it also requested the employing establishment address whether they concurred with appellant's statement that she was injured in the employing establishment parking lot and whether the parking facilities were owned, controlled, or managed by the employing establishing. OWCP afforded appellant 30 days to submit the requested information.

Appellant submitted a completed questionnaire, signed February 16, 2018, noting that she had previously broken her wrist eight years prior. She indicated that when she fell on January 27, 2018, she had finished work and was walking through the parking lot to leave. Appellant noted that the parking lot where she was injured was owned by the employing establishment, she was required to park there, and she was not required to pay for parking.

In response to OWCP's request for information the employing establishment concurred with appellant's statement that she was injured while in the employing establishment parking lot. It advised that the parking facilities were controlled and monitored by the employing establishment and the public could not use the lot. The employing establishment indicated that parking spaces were not assigned and appellant was not required to park in the lot and noted other parking was available.

OWCP subsequently received additional emergency department treatment records. On January 27, 2018 Dr. Richard S. Stein, Board-certified in emergency medicine, treated appellant for left wrist pain. Appellant reported that, after leaving work, she fell on ice and used her left hand to break her fall. She did not strike her head or lose consciousness. Appellant also reported having previously broken her wrist. Dr. Stein noted findings on examination of decreased range of motion of the left wrist secondary to pain, no snuffbox tenderness, a small lump on the medial aspect of the wrist, and full range of motion of the left shoulder and left elbow. An x-ray of the left wrist was negative for fracture or acute abnormality. Dr. Stein diagnosed strain of the left wrist and recommended Ibuprofen and a thumb spica splint.

By decision dated March 9, 2018, OWCP accepted that the January 27, 2018 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted any evidence "containing a medical diagnosis in connection with the claimed injury and/or event(s)."

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing 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 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 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] 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] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a

[3] *Id*.

[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).

[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] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[11] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.[12] 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 factor(s).[13]

ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant claimed to have sprained her left wrist on January 27, 2018 when she slipped and fell in the parking lot at work. OWCP accepted that the January 27, 2018 employment incident occurred as alleged, but denied appellant's claim based on her purported failure to establish a medical diagnosis in connection with the accepted employment incident. It found that the medical evidence provided had not been countersigned by a qualified physician and, therefore, was insufficient to satisfy appellant's burden of proof.

Although the January 27, 2018 emergency department treatment records were initially authored by a physician assistant, later on February 4, 2018 Dr. Stein electronically cosigned these treatment records. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15] However, a report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.[16] As Dr. Stein endorsed the January 27, 2018 diagnosis of left wrist sprain, the Board finds that appellant established a medical diagnosis in connection with the accepted employment incident and, therefore, established both components of fact of injury. Accordingly, the case shall be remanded for a determination of whether appellant established her claim under FECA.

CONCLUSION

The Board finds that the case is not in posture for decision.

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] *Id*.

[14] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[15] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: October 4, 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