United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 22-0973**
	)	**Issued: December 5, 2022**
U.S. POSTAL SERVICE, POST OFFICE, MINNEAPOLIS, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 3, 2022 appellant filed a timely appeal from a December 21, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical diagnosis in connection with the accepted July 12, 2021 employment incident.

[1] The Board notes that, following the December 21, 2021 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*.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On July 15, 2021 appellant then a 55-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging on July 12, 2021 she tripped over a threshold and fell injuring her mouth, teeth, eyebrow, chin, knees, hands, wrist, toes, and neck while in the performance of duty. On the reverse side of the claim form L.R., an employing establishment supervisor, acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

Appellant provided a July 12, 2021 narrative statement asserting that she tripped over a threshold and fell, hitting her face, bruising her hands and knees, and injuring her teeth. She also noted cuts and swelling on her eyebrow and chin.

In an October 20, 2021 note, Kathryn L. Roggow, a physician assistant, assessed right knee osteoarthritis, right knee degenerative medial meniscus and lateral meniscus tear, left knee osteoarthritis, left knee degenerative lateral meniscus tear, and bilateral shoulder rotator cuff tendinitis/subacromial bursitis.

In an October 29, 2021 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant provided a series of notes dated September 29 through October 29, 2021 from Daniel R. Hassett, a physical therapist, addressing temporomandibular joint pain, cervical pain, and headache resulting from a fall at work on July 12, 2021 in which she sustained trauma to her right lateral face, jaw, and neck.

By decision dated December 21, 2021, OWCP accepted that appellant tripped over a threshold and fell in the performance of duty on July 12, 2021 as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis from a qualified physician in connection with the accepted July 12, 2021 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including 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, 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. 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.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.

The evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical diagnosis in connection with the accepted July 12, 2021 employment incident.

Appellant provided notes from Ms. Roggow, a physician assistant, and Mr. Hassett, a physical therapist. The Board has long held that certain healthcare providers such as physician assistants and physical therapists are not considered qualified "physician[s]" as defined under FECA and, thus, their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[3]

As the medical evidence of record is insufficient to establish a medical diagnosis in connection with the accepted July 12, 2021 employment incident, the Board finds that appellant has not met her burden of proof.[4]

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 medical diagnosis in connection with the accepted July 12, 2021 employment injury.

[3] Section 8101(2) of FECA provides that physician includes 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physician assistant is not considered a physician as defined under FECA); *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).

[4] *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *J.M.*, Docket No. 21-0077 (issued June 27, 2022).

ORDER

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

Issued: December 5, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board