United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 23-0405**
	)	**Issued: August 11, 2023**
U.S. POSTAL SERVICE, SEATTLE NETWORK DISTRIBUTION CENTER, Federal Way, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On January 27, 2023 appellant filed a timely appeal from a December 5, 2022 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the December 5, 2022 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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish neck and/or right hip conditions causally related to the accepted October 21, 2022 employment incident.

FACTUAL HISTORY

On October 27, 2022 appellant, then a 23-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 2022 she sustained neck pain, strain of neck muscle, contusion of the hips, and pain to both shoulders and thighs after a motor vehicle accident while in the performance of duty. She indicated that the motor vehicle accident was due to rain, fog, and slick roadway conditions resulting in her vehicle hydroplaning into a guardrail and trees. On the reverse side of the claim form, appellant's supervisor indicated that appellant stopped work on October 21, 2022.

On October 23, 2022 appellant was seen by Henry W. Session, a physician assistant. Nerve pain and a right hip condition was indicated. Mr. Session placed her off work from October 23 to 25, 2022 and given work restrictions.

In a development letter dated November 1, 2022, OWCP advised appellant of the deficiencies in her claim. It informed her that additional factual and medical evidence was necessary to establish her claim. OWCP afforded appellant 30 days to respond.

On November 15, 2022 appellant was seen by Dr. Derek Meyer, a Board-certified family medicine physician. Dr. Meyer reviewed an x-ray report of the cervical spine dated October 23, 2022 and noted no fractures were shown. He released appellant to return to modified duty with restrictions from November 15 through 22, 2022, and to full duty on November 23, 2022.

By decision dated December 5, 2022, OWCP denied appellant's traumatic injury claim, finding that she had not established that her diagnosed medical conditions were causally related to the accepted October 21, 2022 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 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

[3] *Supra* note 1.

employment injury.[4] 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.[5]

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.[8] 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 employment injury.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish neck and/or right hip conditions causally related to the accepted October 21, 2022 employment incident.

On November 15, 2022 appellant was seen by Dr. Meyer. Dr. Meyer reviewed an x-ray report of the cervical spine dated October 23, 2022 and noted no fractures were shown. Additionally, he addressed appellant's work capacity. Dr. Meyer did not provide a history of injury, a firm medical diagnosis, or a rationalized opinion as to whether the October 21, 2022

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id.*

[10] *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

employment incident caused a diagnosed medical condition.[11] As the Board has held medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] Thus, the Board finds that Dr. Meyer's report is of no probative value and is, therefore, insufficient to establish appellant's claim.

On October 23, 2022 appellant was seen by Mr. Session, a physician assistant, who indicated that she had nerve pain and a right hip condition. However, this report has no probative value because physician assistants are not considered physicians as defined under FECA.[13]

As appellant has not submitted rationalized medical evidence to establish neck and/or right hip conditions causally related to the accepted October 21, 2022 employment incident, the Board finds that she has not met her burden of proof.

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 neck and/or right hip conditions causally related to the accepted October 21, 2022 employment incident.

[11] *See S.D.*, Docket No. 22-0405 (issued October 5, 2022); *A.D.*, Docket No. 22-0319 (issued September 6, 2022); *V.T.*, Docket No. 19-0910 (issued September 25, 2020).

[12] *See C.R.*, Docket No. 23-0330 (issued July 28, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] 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); *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); *see also S.C.*, Docket No. 21-0929 (issued April 28, 2023) (physician assistants are not considered physicians as defined by FECA and, therefore, are not competent to provide a medical opinion).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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