United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 24-0771**
	)	**Issued: August 21, 2024**
DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE, MASTHEAD ANNEX, Albuquerque, NM, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 17, 2024 appellant filed a timely appeal from a January 19, 2024 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted September 20, 2023 employment incident.

FACTUAL HISTORY

On September 29, 2023 appellant, then an 18-year-old biological science technician, filed a traumatic injury claim (Form CA-1) alleging that he sustained neck and back injuries on

[1] 5 U.S.C. § 8101 *et seq*.

September 20, 2023 as a result of his vehicle rolling over when he attempted to avoid hitting a deer while in the performance of duty. Appellant did not stop work.

OWCP received a September 20, 2023 report signed by Lyndell Lee, a family nurse practitioner, who recounted a history of appellant's claimed employment-related motor vehicle accident that day where his vehicle rolled downhill. Appellant reported head and neck pain.

In a September 20, 2023 report, Dr. Charlotte Bourdillon, a Board-certified family practitioner, recounted a history of appellant's MVA approximately 40 minutes prior. She reported that he was restrained, and the airbags deployed. Appellant complained of mild neck pain. On examination, Dr. Bourdillon noted fever and malaise indicative of a viral illness. She provided an assessment of motor vehicle accident, restrained driver. Dr. Bourdillon opined that while there could be potential polytrauma due to the mechanism of the rollover accident, appellant had "no pain or complaints other than mild ache without significant point tenderness."

OWCP also received September 20, 2023 notes signed by Elizabeth M. Stanton, a registered nurse, and September 20, 2023 computerized tomography (CT) scans of the head and cervical spine, which were reported within normal limits.

In a development letter dated November 15, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In a follow-up development letter dated December 4, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the November 15, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated January 19, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical condition in connection with the accepted September 20, 2023 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[3] 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

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[2] *Id*.

[3] *See Y.S.,* Docket No. 22-1142 (issued May 11, 2023); *F.H.,* Docket No. 18-0869 (issued January 29, 2020); *J.P.,* Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron,* 41 ECAB 153 (1989).

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 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[6]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[7] 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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted September 20, 2023 employment incident.

OWCP received a September 20, 2023 report by Dr. Bourdillon, who recounted a history of the accepted employment incident. She opined that appellant had no complaints other than mild ache without significant point tenderness. The Board has held, however, that pain is a symptom and not a compensable medical diagnosis.[9] The Board finds that Dr. Bourdillon's report is therefore insufficient to establish appellant's claim.

The record also contains reports from a family nurse practitioner and a registered nurse. However, certain healthcare providers such as nurses and nurse practitioners are not considered

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[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] *P.A.,* Docket No. 18-0559 (issued January 29, 2020); *K.M.,* Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett,* 41 ECAB 992 (1990).

[6] *T.J.,* Docket No. 19-0461 (issued August 11, 2020); *K.L.,* Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone,* 41 ECAB 354 (1989).

[7] *S.S.,* Docket No. 19-0688 (issued January 24, 2020); *A.M.,* Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris,* 48 ECAB 238 (1996).

[8] *D.B.*, Docket No. 24-0237 (issued May 7, 2024); *T.L.,* Docket No. 18-0778 (issued January 22, 2020); *Y.S.,* Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams,* 41 ECAB 345, 352 (1989).

[9] *D.B.*, *id.*; *see S.L.,* Docket No. 19-1536 (issued June 26, 2020); *D.Y.,* Docket No. 20-0112 (issued June 25, 2020).

physicians as defined under FECA.[10] Consequently, the Board finds that these reports are insufficient to establish entitlement to FECA benefits.

OWCP also received September 20, 2023 CT scans of the head and cervical spine which were read as within normal limits. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[11] Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted September 20, 2023 employment incident, the Board finds that appellant has not met his 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 his burden of proof to establish a diagnosed medical condition in connection with the accepted September 20, 2023 employment incident.

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[10] 5 U.S.C. § 8101(2) 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, 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *M.M.,* Docket No. 23-0651 (issued October 18, 2023) (a registered nurse is not considered a physician as defined under FECA); *M.F.,* Docket No. 19-1573 (issued March 16, 2020) (physician assistants and nurse practitioners are not considered physicians as defined by 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).

[11] *W.L.,* Docket No. 20-1589 (issued August 26, 2021); *A.P.,* Docket No. 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2024
Washington, DC

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

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

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