United States Department of Labor
Employees' Compensation Appeals Board

E.L., Appellant	)	
and	)	**Docket No. 24-0924**
	)	**Issued: November 14, 2024**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE NATIONAL OFFICE, Brookhaven, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 15, 2024 appellant, through counsel, filed a timely appeal from an April 8, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the April 8, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 a medical condition causally related to the accepted January 17, 2024 employment incident.

FACTUAL HISTORY

On January 18, 2024 appellant, then a 26-year-old tax examiner, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2024 she sustained a back, shoulder, neck, hip, leg, and knee injury when she was crossing from the parking lot into the building and was struck by a car while in the performance of duty. She stopped work on January 17, 2024. On the reverse side of the form, the employing establishment controverted the claim stating that appellant was not in the performance of duty when the injury occurred.

In a January 19, 2024 note, Dr. Sohaib Majeed, a Board-certified internist, reported evaluating appellant on that date and restricted her from returning to work through January 29, 2024. The record also contained a position description for a tax examining technician.

In a February 1, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 60 days to respond. In a separate letter of even date, it also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding appellant's claim. OWCP afforded the employing establishment 30 days to respond.

In a January 29, 2024 note, Dr. David Martin Levi, a chiropractor, documented treatment for injuries sustained from a January 17, 2024 motor vehicle accident (MVA) and determined that appellant was totally disabled from work.

On February 7, 2024 the employing establishment responded to OWCP's development letter, indicating that appellant was a new employee who got struck by a moving vehicle in the parking lot on January 17, 2024 while walking to the entrance to start her tour of duty. It explained that she was on the ground, and an ambulance was called which transported her to a local hospital for evaluation and treatment.

In a follow-up letter dated February 26, 2024, OWCP advised appellant that it conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the February 1, 2024 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.

Following the development letter, appellant submitted additional evidence and diagnostic studies in support of her claim, including a January 17, 2024 x-ray of the right shoulder, a January 30, 2024 magnetic resonance imaging (MRI) scan of the right shoulder, a January 30, 2024 MRI scan of the brain, February 5, 2024 MRI scans of the lumbar, thoracic, and cervical spine, February 6, 2024 MRI scans of the left and right knee, and February 8, 2024 MRI scans of the left and right hip.

Appellant submitted a February 7, 2024 report wherein Minerva Sanchez-Maharaj, a nurse practitioner, recounted a history of injury and treatment. Ms. Sanchez-Maharaj diagnosed tension-type headache, not intractable of unspecified chronicity pattern.

In a February 12, 2024 off work note, Dr. Levi opined that appellant was totally disabled and restricted from returning to work through March 11, 2024.

In a March 1, 2024 report, Ms. Sanchez-Maharaj, recounted a history of injury and treatment for headaches and neck pain. She diagnosed tension-type headache, not intractable of unspecified chronicity pattern.

Appellant submitted a March 7, 2024 electromyogram and nerve conduction velocity (EMG/NCV) study, wherein Dr. Anthony S. DeSano, a treating chiropractor, reported that all nerve conduction studies were within normal limits and the examined muscles showed no evidence of electrical instability. Dr. DeSano further reported that the electrodiagnostic study revealed evidence of right C5-C6 root disorder.

Appellant also submitted a March 21, 2024 report, wherein Dr. Glenn Scibilia, a Board-certified ophthalmologist, reported a history of injury and treatment. Dr. Scibilia diagnosed allergic conjunctivitis, bilateral ocular pain, and migraine with aura.

On March 27, 2024 appellant responded to OWCP's questionnaire explaining that she parked in the parking lot around 6:45 a.m. on January 17, 2024 in order to attend her 7:00 a.m. training that morning. She reported that as she was crossing the street to get into the building for her 7:00 a.m. training she was hit by a car. In support of her claim, appellant provided a January 17, 2024 accident report, a map of the parking lot, and her after-visit summary from the hospital documenting her evaluation and treatment on January 17 and 19, 2024.

By decision dated April 2, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted January 17, 2024 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 4, 2024 appellant, through counsel, requested reconsideration and asserted that she had established fact of injury. In support thereof, appellant submitted a January 22, 2024 report, wherein Dr. Musarrat Iqbal, a pain medicine specialist, evaluated appellant for a January 17, 2024 incident when she was crossing the street and was hit by a car. She reported that she initially did not lose consciousness until the ambulance was transporting her to the hospital. Dr. Iqbal reported that appellant complained of a headache, pain in her neck, mid back, lower back, bilateral knees, shoulders, hips, and thighs. He discussed her examination findings, noting that she was limping, ambulating with on-person assistance, and also had notable skin lesions on both knees. Dr. Iqbal diagnosed bilateral knee lacerations, noting a gap in the right knee. He recommended she avoid physical therapy for the knees due to the lacerations and difficulty bending the knees. Dr. Iqbal also diagnosed post-traumatic headache, not intractable, cervical spine sprain, thoracic spine sprain, lumbar spine sprain, bilateral shoulder strain, bilateral hip strain, and bilateral knee sprain. He discussed appellant's medication management, ordered further diagnostic testing, recommended physical therapy, and determined that appellant was totally disabled as a result of her injuries.

In a February 12, 2024 report, Dr. Iqbal discussed appellant's history of injury and provided findings on physical examination. He diagnosed post-traumatic headache, not intractable, cervical spine sprain, thoracic spine sprain, lumbar spine disc displacement, right shoulder derangement, left shoulder sprain, bilateral hip strain, and bilateral knee derangement. Dr. Iqbal discussed medication management and reported that appellant was totally disabled as a result of her injuries.

Counsel further noted submission of Dr. Iqbal's reports in support of appellant's causal relationship claim.

By decision dated April 8, 2024, OWCP modified its April 2, 2024 decision to find that the medical evidence of record was sufficient to establish a diagnosis in connection with the claim. However, the claim remained denied as the medical evidence of record was insufficient to establish a medical condition causally related to the accepted January 17, 2024 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it 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 medical evidence to establish that the employment incident caused an injury.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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

[4] *Supra* note 2.

[5] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

[6] *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

[7] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

[8] *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *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).

[9] *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.[10]

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one, which can be identified on visual inspection by a lay person (e.g., burn, laceration, insect sting, or animal bite).[11] No medical report is required to establish a minor condition such as a contusion.[12]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish bilateral knee lacerations causally related the accepted January 17, 2024 employment incident.

In a January 22, 2024 report, Dr. Iqbal described clinical findings and diagnosed bilateral knee lacerations following the January 17, 2024 MVA. He recommended that appellant avoid physical therapy on the knees due to the lacerations as well as difficulty bending the knees.

OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.[13] As the evidence of record establishes that the accepted January 17, 2024 employment incident resulted in a visible injury, the Board finds that appellant has met her burden of proof to establish bilateral knee lacerations causally related to the accepted January 17, 2024 employment incident.[14] The case shall, therefore, be remanded to OWCP for payment of medical expenses for appellant's bilateral knee lacerations and any attendant disability.[15]

[10] *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.800.6a (June 2011). *See also* Chapter 2.805.3c (January 2013); *A.J.*, Docket No. 19-1289 (issued December 31, 2019).

[12] *Id.*; *see B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

[13] *Id.*; *see also S.G.*, Docket No. 22-0016 (issued October 31, 2022); *J.B.*, Docket No. 21-1322 (issued April 4, 2022).

[14] *See S.B.*, Docket No. 22-0221 (issued March 14, 2024); *K.C.*, Docket No. 22-0788 (issued August 23, 2023) (the Board accepted a visible injury of left knee contusion as causally related to the accepted employment incident); *N.B.*, Docket No. 20-0794 (issued July 29, 2022) (the Board accepted a visible injury of right shoulder contusion as causally related to the accepted employment incident); *B.W.*, Docket No. 22-0134 (issued May 24, 2022) (the Board accepted a visible injury of lower back/buttocks contusion as causally related to the accepted employment incident).

[15] *Supra* note 11 at Chapter 2.805.3c (May 2023). *See also J.N.*, Docket No. 24-0169 (issued April 26, 2024); *C.S.*, Docket No. 21-0560 (issued July 13, 2023).

The Board further finds that appellant has not met her burden of proof to establish additional medical conditions as causally related to the accepted January 17, 2024 employment injury.[16]

In reports dated January 22 and February 12, 2024, Dr. Iqbal provided additional diagnoses of post-traumatic headache, not intractable, cervical spine sprain, thoracic spine sprain, lumbar spine disc displacement, right shoulder derangement, left hip strain, bilateral hip strain, and bilateral knee derangement, noting that appellant was totally disabled as a result of her injuries. In a January 19, 2024 report, Dr. Majeed reported evaluating appellant on that date and restricted her from returning to work through January 29, 2024. In a March 21, 2024 report, Dr. Scibilia recounted a history of injury and provided diagnoses. However, they did not provide an opinion on the cause of the diagnosed medical conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[17] Thus, this evidence is insufficient to establish the claim.

Appellant also submitted medical reports from Drs. Levi and DeSano, chiropractors, who documented treatment for her injuries from the January 17, 2024 MVA finding that she was totally disabled. A chiropractor is considered a physician as defined by section 8101(2) of FECA only if his or her services consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[18] As Dr. Levi and Dr. DeSano did not diagnose subluxation based upon x-ray evidence, he is not considered a physician as defined under FECA and his medical reports do not constitute competent medical evidence.[19]

Appellant also submitted reports by a nurse practitioner. The Board has held, however, that medical reports signed solely by a physician assistant, nurse practitioner, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.[20] Consequently, these medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.[21] Accordingly, these reports are insufficient to establish the claim.

[16] *J.N., id.*

[17] *I.D.*, Docket No. 22-0848 (issued September 2, 2022); *T.G.*, Docket No. 14-751 (issued October 20, 2014).

[18] 5 U.S.C. § 8101(2). *See also S.L.*, Docket No. 21-0760 (issued January 6, 2022); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[19] *J.D.*, Docket No. 22-0240 (issued June 8, 2022); *R.P.*, Docket No. 19-0271 (issued July 24, 2019).

[20] 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. *See* 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, supra note 11 at Chapter 2.805.3a(1) (May 2023); *T.S.*, Docket No. 24-0605 (issued August 23, 2024) (medical reports signed solely by a nurse practitioner are of no probative value as these care providers are not considered physicians 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).

[21] *T.S., id.*

The diagnostic studies submitted by appellant also fail to establish her claim. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted January 17, 2024 employment incident caused the diagnosed condition.[22]

As the medical evidence of record is insufficient to establish causal relationship between any additional medical conditions and the accepted January 17, 2024 employment injury, the Board finds that appellant has not met her burden of proof with regard to expansion of the acceptance of the claim.[23]

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 met her burden of proof to establish bilateral knee lacerations causally related to the accepted January 17, 2024 employment incident. The Board further finds that appellant has not met her burden of proof to establish additional medical conditions as causally related to the accepted January 17, 2024 employment injury.

[22] *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

[23] *I.D.*, *supra* note 17; *T.G.*, *supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2024 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 14, 2024
Washington, DC

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

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

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