

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**STEVEN A. FISHER, Appellant**

**and**

**DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF INVESTIGATION, Knoxville, TN,  
Employer**

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**Docket No. 05-1387  
Issued: September 15, 2005**

*Appearances:*  
*Steven A. Fisher, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 16, 2005 appellant filed a timely appeal from the May 17, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his claim that he developed an upper respiratory condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant developed an upper respiratory condition in the performance of duty.

**FACTUAL HISTORY**

On March 14, 2005 appellant, then a 47-year-old special agent, filed a claim alleging that his burning throat and chronic cough were a result of his federal employment: "While on temporary duty in Baghdad, contracted an upper respiratory illness that persisted for over two weeks and has progressed into a chronic cough and burning throat." The Office requested

additional information, including a comprehensive medical report providing, among other things, the doctor's opinion, with medical reasons, on the cause of his condition. "Specifically," the Office stated, "if your doctor feels that exposure in your federal employment contributed to your condition, an explanation of how such exposure contributed should be provided."

Appellant submitted an attending physician's form report dated March 16, 2005 and signed by a certified physician's assistant. A radiology report dated March 14, 2005 indicated that appellant's lungs were mildly hyperinflated but clear. The impression was mild hyperinflation seen with reactive airways disease or other obstructive pulmonary disease. A March 14, 2005 treatment note related appellant's chief complaint and history, findings on physical examination and a treatment plan.

In a decision dated May 17, 2005, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to his established work-related duties.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

Causal relationship is a medical issue,<sup>3</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

### **ANALYSIS**

The Office does not dispute the duties appellant performed in Baghdad, Iraq, in February 2005. The employing establishment indicated that it had reviewed the information appellant provided and had no points of disagreement. The Board finds, therefore, that appellant has met his burden to establish that he experienced a specific exposure occurring at the time, place and in the manner alleged. The question for determination is whether this exposure caused an injury.

This is where appellant's claim fails. To establish a causal relationship between his duties on temporary assignment and the upper respiratory condition for which he seeks compensation, he must submit a well-reasoned medical opinion from his physician explaining how the duties he performed or his specific exposure caused or aggravated his diagnosed condition. The only evidence offering an opinion on causal relationship is the March 16, 2005 attending physician's form report signed by a certified physician's assistant. A physician's assistant is not a "physician" within the meaning of the Act and is therefore not competent to render a medical opinion.<sup>7</sup> This leaves the record devoid of any competent medical opinion addressing the issue of causal relationship. The Board will therefore affirm the denial of appellant's claim.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an upper respiratory condition in the performance of duty.

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<sup>7</sup> *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979); see 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 17, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board