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

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| **C.H., Appellant** | ) | |
| **and** | ) | **Docket No. 14-650** |
| | ) | **Issued: June 12, 2014** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Huntington, WV, Employer** | ) | |

*Appearances*:
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On January 30, 2014 appellant, through counsel, timely appealed the October 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury claim. 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 the claim.

### *ISSUE*

The issue is whether appellant sustained an injury in the performance of duty on August 22, 2013.

### *FACTUAL HISTORY*

On August 27, 2013 appellant, then a 58-year-old registered nurse, filed a claim for a traumatic injury (Form CA-1) that occurred on August 22, 2013. Shortly after arriving at work

[1] 5 U.S.C. §§ 8101-8193.

that morning, she went to the canteen where she purchased a fountain drink. Appellant thought she had filled her cup with crystal lite raspberry ice, but on consumption she was immediately overtaken by a terrible soapy taste in her mouth. She experienced a burning and bubbling sensation in her throat and nose, followed by a runny nose. A canteen worker reportedly identified the substance as "sanitizer" that had not been removed following cleaning of the fountain dispenser. Appellant's supervisor did not disagree with the facts as described.[2] No additional information or medical evidence accompanied appellant's Form CA-1.[3]

On September 5, 2013 OWCP wrote to both appellant and the employing establishment regarding the need for additional factual and medical evidence in support of her claim. The employing establishment was instructed to submit additional information regarding the August 22, 2013 alleged incident. OWCP advised appellant that there was no medical evidence diagnosing an injury-related condition. The development letter also noted that the evidence was insufficient to establish the alleged incident.[4] OWCP afforded appellant 30 days to submit the requested factual and medical information.

Appellant subsequently identified Dr. James M. Detherage, a Board-certified family practitioner, as her treating physician with respect to the August 22, 2013 incident. In an August 29, 2013 note, Dr. Detherage advised that appellant had an appointment with him on August 26, 2013 and was able to return to work on September 3, 2013. He did not provide a specific diagnosis or address causal relationship.

OWCP also received an August 23, 2013 employing establishment incident report. The description of the August 22, 2013 incident was as follows: "Went to canteen and purchased crystal lite drink. Took big drink and started to feel bubbling and throat hurting. Nurse taken to ER for evaluation. Later sent to KDMC and was admitted." The August 22, 2013 incident was classified as "Environmental/Toxic Exposure."

By decision dated October 9, 2013, OWCP denied appellant's traumatic injury claim finding that she failed to establish fact of injury.

## ***LEGAL PRECEDENT***

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,

[2] The supervisor merely noted that appellant was not performing her duties at the time, but was instead in the canteen to get a beverage.

[3] The CA-1 indicated that, on August 22, 2013, appellant was seen on premises by Dr. Saka R. Disu, an employing establishment physician.

[4] OWCP specifically inquired about the amount of sanitizer appellant allegedly consumed, the immediate effects of the injury and what she did shortly thereafter. It also advised her to submit any witness statements or other documentation that would support her claim.

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Injuries arising on the premises may be approved if the employee was engaged in activity reasonably incidental to the employment such as: (1) personal acts for the employee's comfort, convenience and relaxation; (2) eating meals and snacks on the premises; and (3) taking authorized coffee breaks.[8]

## ***ANALYSIS***

OWCP found that appellant failed to establish that the August 22, 2013 employment incident occurred as alleged. Appellant also failed to provide sufficient medical evidence in relation to the alleged incident. The Board notes that she did not reply to OWCP's September 5, 2013 request for specific details and documentation regarding what transpired on August 22, 2013. Based on the current record, it is unclear what appellant ingested. Appellant claimed that a canteen worker identified the substance as sanitizer; but there is no statement from the canteen worker that might establish the substance that appellant ingested. The employing establishment's August 23, 2013 incident report provided little detail. There is no contemporaneous medical evidence to corroborate appellant's claim to have ingested sanitizer. The August 27, 2013 Form CA-1 and the employing establishment incident report indicated that appellant received medical treatment on premises following the August 22, 2013 alleged incident, but the emergency room treatment records from Dr. Disu are not included in the record. Moreover, Dr. Detherage's August 29, 2013 note did not include a diagnosis; any history of the incident at work; or any other explanation regarding the type of care appellant received on August 26, 2013.

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). 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 specific employment factor(s). *Id.*

[8] *T.L.*, 59 ECAB 537, 540 (2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.4a(2) (August 1992).

Accordingly, appellant failed to establish either component of fact of injury. She may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[9]

## ***CONCLUSION***

Appellant has not established that she sustained an injury in the performance of duty on August 22, 2013.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[9] 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605, 10.607.