United States Department of Labor
Employees' Compensation Appeals Board

F.K., Appellant	)	
and	)	**Docket No. 07-1794**
	)	**Issued: December 27, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Windsor Locks, CT, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 19, 2007 denying modification of a June 14, 2006 decision finding that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on April 24, 2005.

FACTUAL HISTORY

On December 28, 2005 appellant, then a 27-year-old transportation security screener, filed a traumatic injury claim alleging that he inhaled a dangerous odor on April 24, 2005 during a routine bag check. He stopped work on April 24, 2005 and returned on April 26, 2005.

By letter dated January 17, 2006, the Office informed appellant of the evidence needed to support his claim and requested that he submit the additional evidence within 30 days.

In a December 30, 2005 statement, Elizabeth Pajak, an official from the employing establishment, confirmed that appellant had a physical reaction described as "eye irritation" from a substance called "jungle juice."

By decision dated February 24, 2006, the Office denied the claim. It found that the evidence supported that the claimed exposure occurred. However, there was no medical evidence that provided a diagnosis which could be connected to the events.

On March 17, 2006 the Office received appellant's request for reconsideration. It subsequently received an April 24, 2005 examination sheet signed by an individual whose name or credentials are not discernible, which contained a diagnosis of toxic fume exposure. The April 24, 2005 emergency room notes of Dr. Edward Ewald, a family practitioner, diagnosed "chemical exposure." Discharge instructions dated April 24, 2005 contained a diagnosis of "toxic effect-gas/fumes/vapors." In a prehospital patient care report dated April 24, 2005, an individual whose signature is illegible indicated that appellant was exposed to "jungle juice." By decision dated June 14, 2006, the Office denied modification of the February 24, 2006 decision.

Appellant requested reconsideration on November 29, 2006 and submitted additional evidence, including a copy of a prehospital patient care report dated April 24, 2005 which appears to be signed by a nurse and an April 24, 2005 emergency room treatment note from Dr. R. Kent Sargent, Board-certified in emergency medicine. He noted appellant's reported history of searching suitcase and inhaling "an air freshener called 'jungle juice'" and diagnosed "toxic effect-gas/fumes/vapors." Dr. Sargent discharged appellant to go home and advised that he was in satisfactory condition. Also submitted were hospital forms and information sheets, an April 24, 2005 e-mail from Ms. Pajak, a position description and previously submitted documents.

By decision dated April 19, 2007, the Office denied modification of the June 14, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.[7]

ANALYSIS

Appellant alleged that on April 24, 2005 he inhaled a substance while performing a routine bag check in the performance of duty. The employing establishment confirmed that he was exposed to a substance called "jungle juice." The Office found that the evidence supported that the claimed exposure occurred. Therefore, the first component of fact of injury is established; the claimed incident -- that appellant was working on April 24, 2005 and inhaled a substance while performing a routine bag check.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the inhalation or exposure to "jungle juice" while at work caused a personal injury on April 24, 2005. The medical evidence contains no reasoned explanation of how the specific employment incident on April 24, 2005 caused or aggravated an injury.[8]

The record contains April 24, 2005 emergency room notes from Dr. Ewald who diagnosed "chemical exposure" and Dr. Sargent who diagnosed "toxic effect-gas/fumes/vapors."

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[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[6] *Id*. For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

[7] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007).

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

However, the physicians did not specifically address causal relationship, nor did they provide a firm diagnosis other than to note "chemical exposure" and "toxic effect-gas/fumes/vapors." Neither physician diagnosed a particular medical condition that resulted from the workplace exposure to any vapor or chemical. Other medical records submitted by appellant do not contain a physician's opinion addressing causal relationship. Office procedures recognize that, in clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[9] The present case, where appellant was exposed to fumes of unknown chemical composition upon opening a suitcase, is not such an obvious case. In the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet his burden of proof. As the medical reports provided by appellant do not contain a firm diagnosis and a specific and reasoned opinion regarding the cause of his condition, they are insufficient to establish that appellant sustained an employment injury on April 24, 2005.[10]

The record also contains reports from nurses. However, nurses are not physicians under the Act and are not competent to render a medical opinion.[11]

Because the medical reports submitted by appellant do not address how the activities at work caused or aggravated a diagnosed condition, these reports are of limited probative value[12] and are insufficient to establish that the April 24, 2005 employment incident caused or aggravated a specific injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on April 24, 2005.

[9] *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (July 2000).

[10] *See Willie M. Miller*, 53 ECAB 697 (2002).

[11] *G.G.*, *supra* note 9.

[12] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 19, 2007 is affirmed.

Issued: December 27, 2007
Washington, DC

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

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

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