

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

H.A., Appellant)	
)	
and)	Docket No. 13-1265
)	Issued: November 4, 2013
DEPARTMENT OF LABOR, OFFICE OF THE)	
INSPECTOR GENERAL, Washington, DC,)	
Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

-JURISDICTION

On April 30, 2013 appellant filed a timely appeal from a February 13, 2013 merit decision of the Office of Workers' Compensation Programs' (OWCP) hearing representative. Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish that she sustained acute bronchospasm causally related to a March 27, 2012 employment incident.

FACTUAL HISTORY

On April 11, 2012 appellant, then a 36-year-old supervisory program analyst, filed a traumatic injury claim alleging that on March 27, 2012 she experienced difficulty breathing and tightness in her chest when she attended a meeting on the fourth floor of the Francis Perkins

¹5 U.S.C. § 8101 *et seq.*

Building (FPB) while on temporary duty status.² She explained that her health continued to deteriorate and that on April 2, 2012 she went to urgent care for breathing treatments and was prescribed an inhaler.

In an April 23, 2012 e-mail, appellant stated that after her April 2, 2012 visit to urgent care she needed to use an inhaler. When she used her inhaler at home on April 8, 2012 she became dizzy and fell down, hurting her back. Appellant believed that her back condition was related to the original March 27, 2012 incident at work.

By letter dated May 3, 2012, OWCP informed appellant that her claim was initially accepted as a minor injury, but since she was off work due to a back condition it would reopen her claim on the merits. It advised her that the evidence submitted was insufficient to support her claim and requested additional factual and medical evidence to establish that she sustained a diagnosed condition as a result of the alleged employment incident.

On May 27, 2012 OWCP received appellant's completed questionnaire. Appellant stated that on March 27, 2012 she attended a meeting on the fourth floor of the FPB and was exposed to an airborne allergen, which resulted in a severe allergic reaction (acute bronchospasm). She experienced chest pain, chest tightness and shortness of breath. Appellant noted that her health continued to deteriorate through the week. On April 8, 2012 she was teleworking when she experienced shortness of breath and took a dose of her inhaler. Appellant felt dizzy and fell down, pulling a muscle in her back. She attributed her back injury to the March 27, 2012 workplace incident because she fell down as a result of the inhaler prescribed to her for the March 27, 2012 workplace incident. Appellant described the medical treatment she received after these two incidents and the correspondence she had with her supervisors regarding her time off work. She noted that she included these medical reports and e-mails.³

In an April 2, 2012 chart note, Dr. John Murphy, a Board-certified orthopedic surgeon, related appellant's complaints of tightness in her chest. He noted that appellant worked for the employing establishment in the FPB and began to experience shortness of breath and wheezing since last July when she had training on the fourth floor of the building. Appellant moved to California and experienced no more problems, but she returned to Washington, DC a few days ago on temporary duty status and attended a meeting on the fourth floor of the FPB. She related that she experienced shortness of breath and tightness in her chest again. Dr. Murphy reviewed appellant's history and conducted an examination. He observed no sinus tenderness presently and fair, but diminished air entry bilaterally. Dr. Murphy diagnosed acute bronchospasm and noted probable environmentally-induced acute extrinsic asthma.

In an April 11, 2012 hospital report, Dr. Jeffrey D. Weitzman, Board-certified in emergency and internal medicine, noted that he examined appellant for complaints of nonradicular low back pain after she fell down. He reviewed her history and conducted an examination. Dr. Weitzman observed normal reflexes and normal sensory examination of the

² The record reveals that appellant filed a previous August 16, 2011 traumatic injury claim (File No. xxxxxx314) for a similar incident and condition.

³ Appellant also submitted various work e-mails dated from August 2011 regarding the previous July 2011 work incident and previous medical reports regarding this incident.

lower extremities. He stated that x-rays of the lumbar spine showed no fracture, dislocation or soft tissue swelling. Dr. Weitzman diagnosed mechanical fall with a lumbar sprain.

In an April 11, 2012 x-ray of the lumbar spine, Dr. Brian K. Nagai, a Board-certified diagnostic radiologist, observed normal alignment of the lumbar spine on the lateral view and well-preserved vertebral body heights. He diagnosed mild levoscoliosis and normal alignment of the lumbar spine.

In an April 12, 2012 report, Dr. Danielle Walker, a Board-certified internist, stated that appellant was seen for follow-up examination for complaints of back pain. She related that appellant had two episodes of acute bronchospasm, which were believed to be due to an environmental exposure at work when she inhaled some particular matter from an air conditioner and had an asthma attack. Appellant was treated at urgent care and prescribed an inhaler. Dr. Walker explained that when appellant was at home she took a couple of puffs of her inhaler, felt dizzy and fell on the ground, spraining her back. Appellant complained of excruciating back pain and went to the emergency room. Dr. Walker stated that it was still considered a workplace injury. Upon examination of appellant's lungs, she observed good expansion and clear airway to auscultation. Examination of her back revealed tenderness over the left paraspinal muscles and pain with any movement of back. Straight leg raise testing was positive on the left at 45 degrees. Dr. Walker diagnosed reactive airway disease from environmental exposure at work and lower back sprain. She advised changing appellant's inhaler to something less likely to cause dizziness as well as heat, massage and gentle stretching.

In a decision dated August 9, 2012, OWCP denied appellant's claim finding insufficient medical evidence to establish her claim. It accepted that she attended a meeting on March 27, 2012 in the FPB, while on temporary duty status and that she was diagnosed with acute bronchospasm but determined that the medical evidence failed to demonstrate that her diagnosed condition was causally related to her employment.

On August 24, 2012 appellant submitted a request for an oral hearing. She alleged that Dr. Murphy's diagnosis of "probable environmentally induced asthma" was strong enough evidence to establish the cause of her fall and resulting back sprain. Appellant also pointed out that Dr. Walker's diagnosis of reactive airway disease to environmental exposure at work and lower back sprain was strong enough to establish causal relationship.

Appellant provided witness statements from Ray Armada, the Audit Director and Thomas Fasser, the Chief of Employee Relations. They observed that appellant had difficulty breathing and continued chest pain after a March 27, 2012 meeting on the fourth floor of the FPB in Washington, DC and noted the time loss from work that she took after the employment incident.

On November 27, 2012 a telephone hearing was held. Appellant stated that she did not have any history of asthma and never had difficulty breathing, except for these two episodes when she was on the fourth floor of the FPB. She explained that the first episode occurred in July or August 2011 when she worked on the fourth floor and she believed that it might have been caused by the air conditioning unit. The second incident occurred in 2012 when appellant went to the fourth floor to attend a meeting. She related that she was treated at urgent care and underwent nebulizer treatment for wheezing. Appellant was prescribed an inhaler. She stated

that when she used the inhaler she felt dizzy and fell down. Appellant explained that she initially thought she just pulled her back, but the pain became too severe. She went to the emergency room and was diagnosed with lumbar back sprain. Appellant alleged that Dr. Weitzman's report at the emergency room showed a diagnosis of lumbar back sprain and connected it to the March 27, 2012 employment incident.

In a December 17, 2012 statement, appellant provided additions and corrections to the telephone hearing transcript.

By decision dated February 13, 2013, an OWCP hearing representative affirmed the August 9, 2012 decision denying appellant's traumatic injury claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

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.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.¹⁰

While on temporary-duty assignment, an employee is covered by FECA 24 hours a day with respect to any injury that results from activities incidental to the temporary assignment. The fact that an employee was on a special mission or in travel status during the time the condition manifested itself does not raise an inference that the condition was causally related to the incidents of employment.¹¹

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *See Rene Bonnin*, 38 ECAB 193 (1986).

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹² 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 the specific employment factors identified by the employee.¹³ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁴

The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁵

ANALYSIS

Appellant alleged that on March 27, 2012 she sustained acute bronchospasm as a result of attending a meeting on the fourth floor of the FPB, while on temporary travel status and being exposed to an unknown allergen. She also alleged that, as a result of using medication prescribed for her respiratory condition, she sustained a back sprain. OWCP accepted that the March 27, 2012 appellant attended a meeting in the FPB and that she was diagnosed with acute bronchospasm but denied the claim finding insufficient medical evidence to establish that her respiratory condition was causally related to the March 27, 2012 work event.

The Board affirms the denial of the claim as appellant has not established that an environmental exposure on March 27, 2012 in the performance of duty caused her diagnosed conditions.

Appellant was initially treated by Dr. Murphy, who related her complaints of shortness of breath and tightness in her chest after being on the fourth floor of the FPB. Dr. Murphy reviewed her history and conducted an examination. He diagnosed acute bronchospasm and noted probable environmentally-induced acute extrinsic asthma. Dr. Murphy did not note any specific environmental exposure which caused the bronchospasm. Although he provides a diagnosis, his opinion that appellant's acute bronchospasm was from "probable" environmentally-induced extrinsic asthma is speculative in nature, especially since he was unable to identify any environmental agent as the cause. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁶ An award of compensation may not be based on surmise, conjecture or speculation.¹⁷ Because Dr. Murphy's opinion does not definitively relate appellant's acute bronchospasm to any specific

¹²See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹³*I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁴*James Mack*, 43 ECAB 321 (1991).

¹⁵*W.W.*, Docket No. 09-1619 (issue June 2, 2010); *David Apgar* supra note 9.

¹⁶*D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁷*Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

environmental exposure at the FPB on March 27, 2012, the Board finds that it lacks probative value and is insufficient to establish her claims.

In an April 12, 2012 report, Dr. Walker stated that appellant had two episodes of acute bronchospasm, which were believed to be due to an environmental exposure at work. She also related that appellant felt dizzy after using an inhaler prescribed for her bronchospasm and fell down injuring her back. Examination of appellant's lungs revealed good expansion and clear airway. Dr. Walker diagnosed reactive airway disease from environmental exposure at work and lower back sprain. She advised changing appellant's inhaler to something less likely to cause dizziness and heat, massage and gentle stretching. The Board notes that Dr. Walker provided an accurate history of injury of appellant's acute bronchospasm condition and subsequent back condition. She also diagnosed lower back sprain and reactive airway disease from exposure at work. Although Dr. Walker attributes appellant's airway disease to environmental exposure at work and the back condition to the bronchospasm condition, the Board finds that she did not identify any specific environmental exposure at the Francis Perkins building and did not provide any medical explanation or rationale to explain why appellant's attendance at the March 27, 2012 meeting caused her diagnosed conditions. Medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁸ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a condition to absolute certainty, neither can such opinion be speculative or equivocal.¹⁹ Accordingly, the Board finds that Dr. Walker's opinion is insufficient to establish causal relationship.

Appellant was also treated in the hospital on April 11, 2012 by Dr. Weitzman, following her fall at home on April 8, 2012. Dr. Weitzman noted her complaints of nonradicular low back pain after she fell down and reviewed her history. While appellant alleges that she fell after becoming dizzy, following use of her inhaler, the evidence of record does not substantiate that her attendance at the meeting on March 27, 2012, necessitated the use of her inhaler on April 8, 2012 and then caused her fall. Dr. Weitzman diagnosed mechanical fall with a lumbar sprain. While he provides a diagnosis of appellant's back sprain, he fails to provide an opinion explaining how her back condition resulted from her attendance at the meeting on March 27, 2012. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁰ Similarly, Dr. Nagai's April 11, 2012 x-ray report is likewise insufficient to establish her claim as he provided a diagnosis of lumbar sprain but provided no opinion on the cause of appellant's back condition. Because these reports are of diminished probative value, the Board finds that they are insufficient to establish appellant's claim.

On appeal, appellant alleges that OWCP should not consider the medical reports speculative given the totality of her 2011 and 2012 OWCP cases. As noted above, however, none of the medical reports submitted by appellant contain a rationalized medical opinion explaining

¹⁸*J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁹*See Samuel Senkow*, 50 ECAB 370 (1999).

²⁰*R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

how appellant's diagnosed conditions were causally related to the March 27, 2012 employment incident. The employee's lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.²¹ Appellant has not provided such rationalized medical opinion evidence in this case. Thus, she has not met her burden of proof to establish her claim.

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 did not establish that her acute bronchospasm and lumbar sprain were causally related to her March 27, 2012 employment factors.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

²¹*Gloria J. McPherson*, 51 ECAB 441 (2000).