United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, LOGAN INTERNATIONAL AIRPORT, East Boston, MA, Employer	)	**Docket No. 09-652** **Issued: October 5, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 7, 2009 appellant filed a timely appeal of the decisions of the Office of Workers' Compensation Programs dated July 24 and December 19, 2008 denying his claim for a traumatic injury. Pursuant to 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 established that he sustained an injury in the performance of duty on April 29, 2008.

On appeal, appellant contends that the documentation clearly outlined that the incident took place as he alleged and showed that the irritation rash was caused by the liquid to which he was exposed during his federal employment. He argues that his claim is supported by his statements as well as the statement of his supervisor, the agriculture specialist and the safety

investigation data form. Appellant argues that it would not be prudent for a physician to make an accusation as to the cause of the rash as the physician was not there when the incident occurred.

FACTUAL HISTORY

On May 20, 2008 appellant, then a 40-year-old customs and border protection officer, filed an occupational disease claim alleging that, on April 29, 2008, while conducting an examination of a passenger, he came in contact with an unknown substance in the passenger's luggage, which caused him to suffer nausea, dizziness and a slight arm irritation. By letter dated June 17, 2008, the Office asked him to submit further evidence, including medical evidence, in support of his claim.

In an "authorization for examination and/or treatment, appellant's supervisor authorized treatment. The form noted, "Exposure to unidentified liquid believed to be organophosphate which is harmful to humans. Exposure limited to right forearm." Appellant also submitted a safety investigation data form signed by his supervisor and a local safety officer, indicating that while he was inspecting a passenger's luggage, he was exposed to a pesticide/flammable leaked in the luggage ..." The form indicated that he suffered from nausea, dizziness and a headache. Appellant also submitted a copy of an article from the internet about Dichlorvos and a note from an agriculture specialist with regard to the incident. He also submitted responses to the Office's questions with regard to how the incident occurred. Appellant described how on April 29, 2008, with latex gloves while examining a passenger's luggage after a flight from Nigeria, he opened a bag with a strange and pungent odor. He noted that, when he reached into the bag, some of the liquid which had spilled in transit got on his forearm. Appellant noted that, although he immediately wiped the liquid off, he began to feel lightheaded, nauseous and dizzy and informed his supervisor.

Appellant also submitted a discharge order dated April 30, 2008 by a Dr. Vishnukrupa Reddy noting that he was treated in the emergency room after complaining of a history of chemical exposure nausea for which Dr. Reddy diagnosed as organophosphate exposure. In unsigned notes accompanying the report, Dr. Reddy noted that appellant was a baggage handler and had a spill on his arm. He noted that, although there was skin rash present, appellant had no headache, visual symptoms, drooling or increased salivation or shortness of breath. Dr. Reddy released appellant to return to work full duty as of May 1, 2008.

By decision dated July 24, 2008, the Office treated appellant's claim as one for a traumatic injury and denied it as he failed to establish that he sustained an injury in the performance of duty. It found that, although the evidence supported that the claimed events occurred as alleged,[1] there was no medical evidence showing that a diagnosis was made which could be connected to the events.

By letter dated October 10, 2008, appellant requested reconsideration. In support of his request, he resubmitted the April 30, 2008 report by Dr. Reddy and the accompanying

[1] The Office found that evidence did support that appellant came in contact "with some type of liquid substance on April 29, 2008, presumed to be Dichlorvos Organophosphate." However, it found that there was no proof of the identity of the liquid.

documents from his emergency room visit; however, this time the notes were signed by Dr. Robert M. Miller, a Board-certified emergency medicine specialist.

By decision dated December 19, 2008, the Office found that the evidence established that there was a physician's diagnosis of a skin rash. However, it found that the medical records did not indicate whether the skin rash was related to the workplace chemical exposure and, therefore, the medical records were insufficient to show a causal relationship. Accordingly, the Office modified the July 24, 2008 decision to find that the medical evidence was insufficient to establish an injury-related condition causally related to appellant's chemical exposure on April 29, 2008.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or claim, including the fact that an 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

Causal relationship is a medical issue[6] 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,[7] must be one of reasonable medical certainty,[8]

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[2] 5 U.S.C. § 8122(a).

[3] *Id.*

[4] *John J. Carlone*, 41 ECAB 345 (1989).

[5] *Shirley A. Temple*, 48 ECAB 404 (1997).

[6] *Mary J. Briggs*, 37 ECAB 578 (1986).

[7] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

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.[9]

ANALYSIS

There is no dispute that appellant established that he was exposed to a liquid during the course of his employment as a customs and border protection officer and he suffered from a rash on his forearm. The Office denied his claim because there was no medical evidence in the file establishing that the rash on his forearm was causally related to the exposure to the liquid during his federal employment.[10]

The Board finds that there is no rationalized medical evidence in the record establishing that appellant's rash was causally related to the exposure to the liquid during his federal duties. The hospital medical records signed by physicians, Drs. Reddy and Miller, indicate that appellant had a rash. These records, although noting appellant's history of injury, do not conclusively relate the rash to the specific incident.[11] Thus, these reports are of diminished probative value.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief (nor the belief of his supervisor or other nonphysician) that the condition was caused by his employment is sufficient to establish causal relationship.[12] The Board has held the fact that a condition manifests itself or worsens during a period of employment[13] or that the work activities produce symptoms revelatory of an underlying condition[14] does not raise an inference of causal relationship between the two. As appellant failed to provide medical evidence establishing the causal relationship between his rash and his employment, the Office properly denied the claim.

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[9] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[10] Appellant filed his claim as an occupational disease claim; however, this claim is actually a traumatic injury claim. A traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q), (ee)*; Andy J. Paloukos*, 54 ECAB 712 (2003). As the incident, *i.e.*, exposure to a liquid on appellant's forearm, occurred on a specific day, April 29, 2008, this is a claim for a traumatic injury.

[11] Appellant also submitted an article from the internet with regard to Dichlorvos Organophosphate. The Board has held that newspaper clippings, internet articles, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[12] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[13] *E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[14] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on April 29, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 19 and July 24, 2008 are affirmed.

Issued: October 5, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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