

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

---

**G.M., Appellant**

**and**

**U.S. POSTAL SERVICE, ATLANTA  
LOGISTICS DISTRIBUTION CENTER,  
Atlanta, GA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 10-795  
Issued: November 19, 2010**

*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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 4, 2010 appellant filed a timely appeal from a September 21, 2009 merit decision of the Office of Workers' Compensation Programs, denying his claim for an employment-related 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 met his burden of proof to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

On appeal, appellant contends that the Office pay an outstanding medical bill in the amount of \$349.00 for medical services rendered on December 3, 2008.

**FACTUAL HISTORY**

On December 23, 2008 appellant, then a 55-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that during two night shifts on December 1 and 2, 2008 he sustained

injury after his employer placed kerosene and propane heaters in an enclosed dock area. He alleged that the heaters operated in an area without ventilation and resulted in his exposure to carbon monoxide, causing a headache, sore throat, tightness in his chest, chest pains, eye irritation and nausea. On the evening of December 2, 2008, appellant was taken by his supervisor to Choice Care Clinic, where he was treated for possible carbon monoxide poisoning. He did not stop work following the incident

In a progress report dated December 2, 2008, Dr. Brian Maziarz, a Board-certified occupational medicine specialist, treated appellant at Choice Care. He advised that appellant was alert, not in a state of distress and his vital signs were normal. Dr. Maziarz noted that appellant had a past medical history of polymyositis, chronic sinus problems, and underwent bilateral shoulder and colon polyps surgery. He reported that appellant initially presented with fatigue, sore throat, and eye irritation, and then later complained of chest tightness. Dr. Maziarz advised that appellant's ears, eyes and lungs were clear, and other than some mild ejection of the mucosa from a stuffy nose and mild injection in his throat, there were no other abnormalities. His assessment of appellant was "probable" carbon monoxide exposure and referred appellant to the emergency room for further evaluation and treatment. Appellant was placed on an alternate work status with no heavy exertion. Dr. Maziarz advised appellant to return to the clinic for a follow up after his evaluation and treatment at the emergency room.

On December 3, 2008 appellant was transported by a local medical vehicle to the emergency room at Emory University Hospital for chest pain. He was treated with oxygen and given an electrocardiogram.

On December 3, 2008 Dr. James P. Capes, an emergency room attending physician, examined appellant. He advised that an electrocardiogram showed no real acute abnormalities, appellant's chest x-ray was unremarkable, his cardiac enzymes were normal and a complete blood count was unremarkable. Dr. Capes reported that all of appellant's symptoms, including lightheaded dizziness, headache, some nausea and some chest pain, were resolved during the visit.

On July 29, 2009 the Office requested submission of medical evidence pertaining to the treatment of appellant's alleged injury, including a physician's report providing medical rationale as to how the reported work incident caused or aggravated the claimed injury, as well as a secure diagnosis.

In an August 21, 2009 response, appellant replied that the Choice Care Clinic no longer had a contract with the employing establishment or employ Dr. Maziarz. He noted that he no longer experienced symptoms of carbon monoxide exposure and had no reason to seek any further medical attention after he was removed from the work area.<sup>1</sup> Appellant noted that he considered all of his medical issues to be resolved at that time.

---

<sup>1</sup> Appellant also alleged that the work area was cited for several violations and indicated that it was later torn down, but provided no evidence in support of these allegations.

On August 27, 2009 appellant requested authorization of treatment at Emory University Hospital emergency department. The Office advised appellant on August 31, 2009 that it was unable to authorize treatment because the claim was still adjudicated.

By decision dated September 21, 2009, the Office denied the claim for compensation, finding that, although the evidence supported that the claimed event(s) occurred, there was no medical evidence related to the workplace exposure. It found that he did not establish that he sustained an injury under the Federal Employees' Compensation Act (the Act).<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>3</sup> 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, that an injury was sustained in the performance of duty as alleged, and that the specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, in other words, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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.<sup>6</sup>

---

<sup>2</sup> 5 U.S.C. § 8101(5).

<sup>3</sup> *Id.* at §§ 8101-8193.

<sup>4</sup> *A.D.*, 58 ECAB 149 (2006). *See also Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.* *See also Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005). *See also Victor J. Woodhams*, *supra* note 5; *Nathaniel Milton*, 37 ECAB 712 (1986).

## ANALYSIS

The Board notes that, although appellant filed a claim for traumatic injury, he attributed his dizziness and shortness of breath to work over two shifts on December 1 and 2, 2009 following exposure to space heaters in a closed environment. The Office's federal regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.<sup>7</sup> As appellant alleged illness to work over two shifts, the Board finds that his claim is one for occupational disease rather than a traumatic injury.

Appellant was initially taken by his supervisor to a contract health clinic on December 2, 2009 where he was examined by Dr. Maziarz who advised that appellant was alert but presented with a history of fatigue, eye irritation and chest tightness. Dr. Maziarz obtained a history of "probable" carbon monoxide exposure. The record reveals that the clinic contacted local emergency medical services through 911 and appellant was then transported to the emergency department at Emory University Hospital in the early hours of December 3, 2009, where he was seen for chest pain. Appellant was treated by Dr. Capes who noted a history of the employer placing large propane heaters in the work area to keep the employees warm. An electrocardiogram was obtained which Dr. Capes advised revealed no acute abnormality. Other laboratory work, including a complete blood count and chest x-ray, were reported as unremarkable. Although Dr. Capes recommended that appellant be admitted for further testing in order to rule out cardiac disease, he declined.

The Board finds that the medical reports from Dr. Maziarz and Dr. Capes are not sufficient to establish appellant's claim of injury due to the accepted exposure to fumes from heaters in his work space. Dr. Maziarz provided care but did not list any firm medical diagnosis.<sup>8</sup> He noted only "probable" exposure to carbon monoxide.<sup>9</sup> In turn, Dr. Capes obtained diagnostic tests at Emory University Hospital which were reported as negative. He provided a general impression of "a patient with some kind of fume exposure with chest pain." This, too, is not a firm medical diagnosis.<sup>10</sup> Moreover, neither physician provided any opinion on causal relationship. Their reports do not address how the symptoms they treated were caused or contributed to by appellant's accepted occupational exposure over the two work shifts. For this reason, the medical evidence of record is not sufficient to establish appellant's claim.

The Office, however, did not adjudicate the issue of appellant's incurred medical expenses. On appeal, appellant requested payment of a medical bill for services rendered on December 3, 2008 at Emory University Hospital. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee with a properly executed

---

<sup>7</sup> 20 C.F.R. § 10.5(q). See *E.J.*, 61 ECAB \_\_\_\_ (Docket No. 09-1481, issued February 19, 2010).

<sup>8</sup> See *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>9</sup> *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009). The speculative nature of Dr. Maziarz's opinion also reduces its probative value. See *Kathy Kelley*, 55 ECAB 206 (2004).

<sup>10</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

CA-16.<sup>11</sup> Under section 8103 of the Act,<sup>12</sup> however, the Office has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances.<sup>13</sup> The Office may exercise its discretion to authorize medical care even if a Form CA-16 has not been issued and the claim is subsequently denied. Payment in such situations is determined on a case-by-case basis.<sup>14</sup>

Due to complaints of headaches, chest pain, eye irritation and nausea, appellant received treatment at the employing establishment contract clinic. Subsequently, he was transported to Emory University Hospital where he received treatment. Appellant's supervisor verified this on the claim form. In denying appellant's claim, the Office failed to consider whether emergency or otherwise unusual circumstances were present such that reimbursement of medical expenses would be appropriate in this case. The Board finds that the circumstances of the case warrant additional development of this issue. The case will be remanded to the Office for further development, to be followed by the issuance of a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant did not establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment. The case is returned to the Office for adjudication of the issue of reimbursement of medical expenses related to his treatment on December 3, 2008.

---

<sup>11</sup> *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

<sup>12</sup> 5 U.S.C. § 8103.

<sup>13</sup> *Val D. Wynn*, *supra* note 11; 20 C.F.R. § 10.304.

<sup>14</sup> *See Thomas W. Keene*, 42 ECAB 623 (1991); *see also* Federal (FECA) Procedure Manual, *supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2009 decision of the Office of Workers' Compensation Programs is affirmed, as modified. The case is remanded for further development consistent with this decision of the Board.

Issued: November 19, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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