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

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| **J.C., Appellant** | ) | |
| **and** | ) | |
| **DEPARTMENT OF HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT AGENCY, Webster, TX, Employer** | ) | **Docket No. 10-1195**<br>**Issued: March 23, 2011** |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On March 26, 2010 appellant, through his attorney, filed a timely appeal from the February 19, 2010 merit decision of the Office of Workers' Compensation Programs denying his claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act,[1] 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 his respiratory, cardiac or neurological conditions are causally related to a January 7, 2009 employment incident.

On appeal, appellant contends that the Office's February 19, 2010 decision was contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On January 12, 2009 appellant, then a 27-year-old disaster reservist, filed a traumatic injury claim (Form CA-1) alleging that on January 7, 2009 he sustained respiratory, cardiac and neurological injuries after being exposed to chemicals from an industrial explosion at a site in Pasadena, TX.

A medical report of January 7, 2009 from Immediate Medical Care indicated that he was exposed to chemicals and had "abnormal Nares (mucosa, septum, turbinates)." A January 7, 2009 chest x-ray report by Dr. Larry L. Patchell, a Board-certified radiologist, revealed evidence of chronic spondylosis in the mid and lower portions of the thoracic spine with minimal disc space narrowing and anterior osteophyte formation from approximately T4-5 through T9-10.

Appellant's coworker, Jim Swillery, reported in a witness statement dated January 12, 2009 that he was also chemically exposed. He felt an explosion on January 7, 2009, smelled a very strange odor and saw appellant responding to the scene.

Appellant submitted a narrative statement describing the events from January 7 through 10, 2009. On January 7, 2009 he was in the kitchen at work when he felt shaking and heard what sounded like an explosion. Appellant was told that the first explosion was caused by a hydrogen valve that experienced too much pressure and a second explosion was caused by the opening of the same valve. A number of employees complained of headaches after the explosions. Appellant was sent to the medical clinic for diagnostic testing. On January 8, 2009 he was directed to work off site and his blood pressure was high. Appellant stated that he had his blood pressure taken again three hours later and it was lower. On January 9, 2009 he was told to report to the occupational health clinic because he was to take part in an investigation of the explosion. Appellant stated that on January 10, 2009 he still experienced headaches and chest congestion and that his blood pressure went up again. On January 14, 2009 he received a call from occupational health with negative chest x-rays for him and all of the other employees.

On July 24, 2009 the Office requested additional factual and medical information from appellant.[2] It allotted him 30 days to submit evidence and respond to its inquiries.

Appellant submitted a narrative statement dated August 3, 2009. The immediate effects of the chemical exposure were headache, high blood pressure, hypertension, dry nasal cavity, and a heavy chest as if his lungs were filled with mucus with difficult breathing. Appellant alleged that, over the eight months post-explosion, his medical condition had worsened, his headaches became worse to the point of incapacitation, he was light headed, had occasional blurred vision and coughed up mucus. This caused him to be out of his regular job as a correctional officer in Washington. Appellant had no allergies and only had bronchitis once when he was a teenager. He claimed he never had asthma or any other respiratory issues before the explosion and was a healthy 27-year-old who used to play sports all the time and was a

[2] According to another letter from the Office dated July 24, 2009 requesting additional factual and medical information, appellant also filed a notice of occupational disease (Form CA-2), on a date unknown as the form is not found in the record, alleging that he sustained a "pulmonary condition." It did not issue a final decision on the occupational disease claim, therefore, this issue is not properly before the Board on appeal. 20 C.F.R. § 501.2(c).

volunteer/Resident Fire Fighter. Appellant used a preventative inhaler to help with his chest congestion. He reported that he smoked for about six months while serving in the military.

In a medical report dated August 3, 2009, Dr. John S. Smoots, a Board-certified internist, stated that appellant was seen for complaints of headache, dizziness and lightheadedness. Appellant had dyspnea on exertion and chest congestion with productive cough. He had no family history of asthma or lung disease but of heart disease, hypertension, stroke, diabetes, seizure disorder, psychological illness, migraine in a cousin, thyroid disease, hypercholesterolemia and osteoporosis. Dr. Smoots diagnosed asthma new onset, headache, dizziness, lightheaded and fatigue syndrome. He noted that a January 2009 chest x-ray was normal.

By decision dated September 4, 2009, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish a firm medical diagnosis or that the noted conditions were causally related to factors of his federal employment.

On September 28, 2009 appellant requested an oral hearing. In a letter dated April 24, 2009, Kyle Killebrew of Centauri Technologies advised Mr. Swilley that a fire occurred on January 7, 2009. Their calculations revealed that the limited amount of ammonia and hydrogen that was not burned was below the reportable quantity thresholds established by the Texas Commission on Environmental Quantity.

In a September 23, 2009 report, Dr. Smoots opined that appellant's asthma was more probable than not the result of chemical exposure on the job.

On December 9, 2009 a telephonic hearing was held. The hearing representative accepted that the January 7, 2009 employment incident occurred at the time, place and in the manner alleged. He clarified that appellant's claim was for respiratory problems, headaches, high blood pressure, lightheadedness and dizziness. Appellant testified that he was currently treated for occupational asthma. The hearing representative requested additional medical evidence.

A March 8, 2007 chest x-ray was reported negative and showed appellant's lungs to be clear. An April 30, 2006 Material Safety Data Sheet (MSDS) for ammonia indicated potential acute health effects as toxic by inhalation and severely corrosive to the respiratory system. An August 12, 2008 MSDS for hydrogen indicated potential health effects for inhalation as asphyxiation and loss of mobility or consciousness.

On January 14, 2009 Dr. Alexandra M. Popescu-Vladimir, a Board-certified internist, advised that there were no findings on examination. Dr. Popescu-Vladimir stated that appellant complained of headaches and increased blood pressure after the incident. She measured a systolic of 192 as the highest blood pressure he had since the incident and that it had come down. Dr. Popescu-Vladimir stated that appellant's respiratory system was "[c]lear to auscultation bilaterally" and that the chemicals to which appellant was exposed were still unknown.

In a progress report dated March 13, 2009, Dr. Popescu-Vladimir reported that appellant's blood pressure was normal when he first visited in January 2009 and continued to be normal that day. Appellant reported that he no longer had issues with hypertension, but still had

chest tightness, headaches and lightheadedness. Dr. Popescu-Vladimir concluded that the cause of appellant's headaches and lightheadedness was currently unknown and ordered a computerized axial tomography (CAT) scan of his head.

Dr. Nancy Sahakian, an occupational health physician Board-certified in family and occupational medicine, reported on April 13, 2009 that appellant's January 7, 2009 EKG was normal, a January 7, 2009 chest x-ray showed mild arthritis in his thoracic spine and his January 9, 2009 lab tests revealed normal levels of urine cadmium blood cadmium and blood lead.

In a progress report of April 14, 2009, Dr. Popescu-Vladimir reported that appellant's head CAT scan was negative. The chemical substance to which appellant was exposed was still unknown.

On April 17, 2009 Dr. Sahakian confirmed that, on January 8, 2009, the day after the explosion, an environmental and medical investigation of the incident commenced. She reported that discussions between an occupational medicine physician and a toxicologist at the Centers for Disease Control and Prevention failed to determine what possible chemical exposure may have caused worker symptoms. The daily pressure readings of workers by the occupational health nurse daily for two days showed normalization of blood pressure. Dr. Sahakian opined that "it is not likely that these blood pressure changes are due to the incident." She also noted that the nature of the workers' headaches was not identified and the cause of the persistent headaches was not clear. The headaches might relate to an exacerbation of a prior sinus problem or likely due to unrelated causes. Again, Dr. Sahakian stated that it was unknown whether the workers' respiratory symptoms were related to the accepted exposure.

A January 28, 2009 Industrial Hygiene Air Monitoring Assessment report, noted that the source of the odors that the employees were exposed to on January 7, 2009 "could not be determined." The air monitoring survey results "indicated that all airborne concentrations of detected contaminants were well below the [Occupational Safety and Health Administration] Permissible Exposure Limits."

In an Employee Fact Sheet, Dr. Sahakian reported that occupational health found that symptoms experienced by workers are unlikely to have long-term health consequences. She reported that the suspect chemicals were not identified, no "clear cause" for the workers' symptoms and testing found no indication of health impairment believed to be related to the suspect exposure. Dr. Sahakian identified periodic headaches as an unexplained mild symptom that persisted in some workers and, while the exact cause of these symptoms was not clear, due to the time lapse and pattern of the symptoms it was "unlikely they are associated with the suspected event." As for the chest tightness, she concluded that the lack of clinical findings at the time of the incident made an association with the incident less likely. A July 14, 2009 magnetic resonance imaging (MRI) scan of appellant's brain showed no significant abnormality.

On July 14, 2009 Dr. Gregory D. Foltz, a Board-certified neurosurgeon, indicated that appellant complained of dizziness, lightheadedness, and headaches. He stated that the July 14, 2009 MRI scan of appellant's brain was within normal limits.

In a report dated July 30, 2009, Dr. Lawrence Murphy, a Board-certified neurologist, diagnosed lightheadedness and headaches of "[p]ossible neurological/labyrinthine versus cardiovascular etiology." He reported that appellant had a CAT scan and an MRI scan of the brain that showed a suspected left temporal lobe cyst. Appellant subsequently saw Dr. Foltz who did not think there was a cyst on repeat imaging.

Appellant submitted an August 3, 2009 chest x-ray which was reported negative. It showed that his lungs were clear and no acute cardiovascular or pulmonary abnormality.

An August 14, 2009 videonystagmography (VNG) test, for vertigo, dizziness and balance disorders, was stated to be within normal limits. Audiologist Merill Hill reported that audiometric results were normal and appellant's performance results were within clinical limits. Although appellant reported experiencing symptoms, "the VNG showed no clinically significant gaze, spontaneous or positional nystagmus," the Dix-Hallpike test for benign paroxysmal positioning vertigo was negative for both sides, the reduced vestibular response was normal and the Directional Preponderance was also normal limits.

An August 14, 2009 electroencephalogram showed "no focal or lateralizing abnormalities." Dr. Murphy's found the test normal for appellant's age. In a progress report dated August 31, 2009, Dr. Murphy diagnosed persistent dizziness and headaches.

A series of pulmonary functions tests from December 1 and 15, 2009 showed "possible early obstructive pulmonary impairment" possibly due to a mild degree of small airway disease and/or the earliest stages of emphysema. On December 1, 2009 Dr. Taiil Ted Song, a Board-certified internist, reported that the pulmonary study he conducted on December 1, 2009 showed reactive airway dysfunction syndrome (RADS), but did not meet the criteria for asthma. He stated that appellant had "no history of allergic rhinitis as trigger for his dyspnea." Appellant tested positive for allergies to grass, but because he had respiratory symptoms outside of grass pollinating season, it was most likely a false positive.

In a December 15, 2009 progress report, Dr. Song diagnosed RADS and described appellant as a "nonatopic patient who has respiratory symptoms after exposure to chemical fire." He characterized ammonia and hydrogen as known irritants. Although appellant showed signs of asthma, Dr. Song reported that the diagnostic tests showed "no obstruction or restriction at baseline and his postforced expiratory volume in one second ($FEV_1$) showed "no reversibility," meaning appellant did not meet the American Thoracic Society criteria for asthma.

By decision dated February 19, 2010, the Office denied modification of the September 4, 2009 decision. While appellant was exposed to a fire involving ammonia and hydrogen on January 7, 2009, he did not establish any claimed medical condition as causally related to the January 7, 2009 incident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Act[3] 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

[3] 5 U.S.C. §§ 8101-8193.

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[4] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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.[7]

## ***ANALYSIS***

The Office accepted the employment incident of January 7, 2009, appellant's exposure to a fire involving ammonia and hydrogen. The issue is whether his conditions of high blood pressure, asthma or RADS, lightheadedness, dizziness and headaches resulted from the January 7, 2009 incident. The Board finds that appellant did not submit sufficient medical evidence to establish a causal relationship between the conditions for which compensation is claimed and the January 7, 2009 employment incident.[8]

On August 3, 2009 Dr. Smoots diagnosed asthma, headache, dizziness, lightheaded and fatigue syndrome. He noted that a January 2009 chest x-ray was normal. On September 23, 2009 Dr. Smoots concluded that appellant's asthma was more probable than not the result of

[4] The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *M.W.*, 57 ECAB 710 (2006). *See Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Id. See John J. Carlone*, 41 ECAB 354 (1989); *Shirley A. Temple*, 48 ECAB 404 (1997).

[7] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[8] *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See also W.W.*, Docket No. 09-1619 (issued June 2, 2010).

chemical exposure from work. An August 3, 2009 chest x-ray, ordered by Dr. Smoots, was negative and showed appellant's lungs to be clear with no acute cardiovascular or pulmonary abnormality. Although Dr. Smoots provided a firm diagnosis, he failed to address the issue of causal relationship. He did not explain how the January 7, 2009 employment incident cause was competent to or aggravate appellant's high blood pressure, asthma, lightheadedness, dizziness or headaches. The reports of Dr. Smoots are not sufficient to establish that appellant sustained an injury on January 7, 2009.

In a December 1, 2009 medical report, Dr. Song reported that he conducted pulmonary studies on December 1, 2009 which showed RADS, but did not meet the criteria for asthma. He noted that appellant had no history of allergic rhinitis as trigger for his dyspnea. On December 15, 2009 Dr. Song diagnosed RADS and described appellant as a nonatopic patient who had respiratory symptoms after exposure to a chemical fire. He identified ammonia and hydrogen as known irritants. Although appellant showed signs of asthma, Dr. Song reiterated that testing showed no obstruction or restriction and the post $FEV_1$ showed no reversibility. Therefore, appellant did not meet the American Thoracic Society's criteria for asthma. Although Dr. Song suspected asthma, did not relate the asthma his reports do not establish that appellant sustained asthma under accepted protocols. He did not adequately support the issue of causal relationship. Dr. Song's reports are not sufficient to establish that appellant sustained a compensable injury.

In a January 14, 2009 medical report, Dr. Popescu-Vladimir noted that appellant complained of headaches and increased blood pressure after the explosion. On examination, appellant's respiratory system was clear to auscultation bilaterally and the chemicals to which he was exposed was unknown. On March 13, 2009 Dr. Popescu-Vladimir reported that appellant's blood pressure was normal when he first went to see her after the work incident in January 2009 and continued to be normal. Appellant reported no further problems with hypertension, but complained of headaches, lightheadedness and chest tightness. Dr. Popescu-Vladimir noted that the cause of appellant's headaches and lightheadedness was unknown. On April 14, 2009 she reported that appellant's head CAT scan was negative. Again Dr. Popescu-Vladimir advised that the chemical substance to which he was exposed was unknown. She did not provide a firm diagnosis of appellant's condition. Diagnostic studies were reported as normal and she failed to offer any opinion regarding the cause of appellant's conditions, except to allude to the fact that he complained of headaches and hypertension immediately following the incident at work. This medical evidence is of limited probative value on the issue of causal relationship. The reports of Dr. Popescu-Vladimir's do not establish injury, as claimed.

Drs. Patchell, Foltz and Murphy provided the results of various diagnostic test. Dr. Murphy reported lightheadedness and headaches of neurological origin, conditions for which appellant claimed compensation. Drs. Patchell, Foltz and Murphy did not provide a rationalized opinion relating any findings to the January 7, 2009 employment incident. This medical evidence is of limited probative value on the issue of causal relationship and fails to establish injury.[9]

[9] *Id.*

Dr. Sahakian reviewed the occupational request for suspected environmental exposure. She found that it was not likely that any blood pressure changes were due to the work incident. As for complaints of chest tightness, Dr. Sahakian concluded that the lack of clinical findings at the time of the incident made any association to the incident less likely. She explained how it was difficult to identify the origins of symptoms regarding any exposure appellant experienced. The Board finds that the reports of Dr. Sahakian are not adequate to establish injury. Dr. Sahakian did not provide a medical opinion which supported that the incident of January 7, 2009 caused or contributed to any diagnosed condition. Consequently, her medical reports are insufficient to establish appellant's claim.

In an August 14, 2009 VNG test report, Audiologist Merill Hill reported that audiometric results were within normal limits and appellant's performance results for VNG were within clinical limits. The Board has held that audiologists are not physicians under the Act.[10] Therefore, the report is not probative medical evidence.[11]

Appellant has not submitted sufficient rationalized medical evidence to support that he sustained an injury causally related to the January 7, 2009 employment incident. He failed to meet his burden of proof to establish a claim for compensation.

## ***CONCLUSION***

The Board finds that appellant has not submitted rationalized medical opinion evidence to establish that he sustained a traumatic injury in the performance of duty on January 7, 2009, as alleged.

[10] 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides in pertinent part: (2) "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

[11] *Leon Thomas*, 52 ECAB 202 (2001).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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