United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 11-1914**
	)	**Issued: May 3, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, 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
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 23, 2011 appellant filed a timely appeal from the May 10, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her injury claim. Pursuant to the Federal Employees' Compensation Act[1] (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 an injury in the performance of duty on February 3, 2011.

FACTUAL HISTORY

On February 3, 2011 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim alleging that she inhaled chemicals on that date from an open box that was given to her for delivery. Her eyes and nose became itchy. Appellant stopped work on February 3, 2011.

[1] 5 U.S.C. § 8101 *et seq.*

In a February 3, 2011 e-mail, Helena Fontana, a safety specialist with the employing establishment, noted that appellant was exposed to odors emanating from a package that contained a bottle of tea tree oil. She explained that the bottle had broken inside the package.

In a February 3, 2011 attending physician's report, Dr. Ramy Yakobi, Board-certified in emergency medicine, stated that appellant was exposed to chemicals. He diagnosed chemical exposure and checked a box "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. Appellant was released to regular work on February 6, 2011.

By letter dated March 9, 2011, OWCP informed appellant of the evidence needed to support her claim and requested that she submit additional evidence within 30 days.

OWCP received a February 7, 2011 prescription from Dr. Salvatore J. Contristano, a family practitioner. In a February 7, 2011 duty status report, Dr. Contristano noted that appellant had inhaled tea tree oil. He did not provide a legible diagnosis and responded "yes" to the question regarding whether the diagnosis was due to injury.

In a February 3, 2011 report, Dr. Yakobi noted that appellant came in with a chief complaint of itchiness and teary eyes after inhaling fumes from an unknown package. He diagnosed "exposure." Appellant also submitted medical reports.

By decision dated May 10, 2011, OWCP denied the claim. It found that the evidence supported that the claimed exposure occurred, but there was insufficient medical evidence to establish an injury related to the exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation 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, OWCP 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

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

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

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

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 February 3, 2011 she inhaled fumes from an open box that was given to her for delivery. The material was determined to be tea tree oil. The employing establishment confirmed that appellant was exposed to tea tree oil. OWCP found that the evidence supported that the claimed exposure occurred. Appellant was working on February 3, 2011 and inhaled tea tree oil fumes while delivering packages in the performance of duty.

The Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that the inhalation of tea tree oil while at work caused a personal injury on February 3, 2011. The medical evidence of record does not adequately explain how the incident on February 3, 2011 caused or aggravated an injury.[8]

In a February 3, 2011 report, Dr. Yakobi noted that appellant came in with a chief complaint of itchiness and teary eyes after inhaling fumes from an unknown package. He diagnosed "exposure." Dr. Yakobi's February 3, 2011 attending physician's report, diagnosed chemical exposure and checked a box "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. He did not identify the fumes as from tea tree oil or explain how the exposure to the substance caused or aggravated a particular injury or illness he did not provide a firm medical diagnosis. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, it is of diminished probative value and is insufficient to establish a claim.[9] The reports of Dr. Yakobi are insufficient to establish causal relationship.

[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 448 (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).

[9] *Sedi L. Graham*, 57 ECAB 494 (2006).

In a February 7, 2011 duty status report, Dr. Contristano noted that appellant inhaled tea tree oil checked a box "yes" in regards to whether the diagnosis was due to injury. This report is also insufficient to establish the claim as he did not provide a legible diagnosis or explain how appellant's workplace exposure caused or aggravated a particular condition.

The record also contains reports from nurses. However, nurses are not physicians as defined under FECA and are not competent to render a medical opinion.[10]

The medical reports submitted by appellant do not address how the exposure at work caused or aggravated a diagnosed medical condition. These reports are of limited probative value[11] and are insufficient to establish that the February 3, 2011 employment incident caused or aggravated a specific injury.

Appellant may submit evidence or argument with a written request for reconsideration 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 has not met her burden of proof in establishing that she sustained an injury in the performance of duty on February 3, 2011.[12]

[10] *G.G.*, 58 ECAB 389 (2007).

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

[12] The Board notes that, subsequent to OWCP's May 10, 2011 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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