

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

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Abilene, TX, Employer**

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**Docket No. 12-1049
Issued: October 10, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 19, 2012 appellant filed a timely appeal from a November 17, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established an injury in the performance of duty on May 13, 2010.

FACTUAL HISTORY

On May 21, 2010 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a throat injury on May 13, 2010 when a strobe light bulb in his vehicle burned out. The reverse of the claim form indicated that he did not stop

¹ 5 U.S.C. § 8101 *et seq.*

work. Appellant submitted a duty status report (Form CA-17) dated May 28, 2010 from Dr. Michael Jenks, a family practitioner, who diagnosed chemical irritation.

OWCP did not initially adjudicate the claim. On April 27, 2011 appellant submitted a claim for recurrence of disability (Form CA-2a). He stated that he still felt pressure on the right side of his chest when inhaling deeply, his eyesight was changing and he tired more quickly. Appellant submitted a May 10, 2011 CA-17 form from Dr. Jenks diagnosing chemical pneumonitis.

By letter dated May 13, 2011, the employing establishment stated that an investigation revealed that a circuit board, located inside the strobe light modulator, had overheated and filled the cab with smoke. The employing establishment stated that the manufacturer of the part was no longer in business. The record contains a February 3, 2011 letter from the Occupational Safety and Health Administration (OSHA) stating that a May 27, 2010 inspection of appellant's vehicle had been performed. OSHA reported that air sampling at that time revealed an absence of aldehydes and phenols, noting that the inspection was conducted nearly 14 days after the incident and there was no way to determine what contaminants may have been present on May 13, 2010.

In a decision dated June 9, 2011, OWCP denied the claim for compensation. It found that appellant had not established the factual or medical elements of the claim.

Appellant requested a hearing before an OWCP hearing representative, which was held on September 22, 2011. He resubmitted medical evidence that had previously been signed by a nurse and now signed by Dr. Jenks. This included the attending physician's report (Form CA-20) dated May 13, 2010, diagnosing inhalation of toxic fumes/smoke and checking a box "yes" that the condition was causally related to employment. Dr. Jenks also signed treatment notes dated May 28 and June 3, 2010.

In a May 4, 2011 letter, a regional administrator of OSHA reiterated that the air sampling results were negative and there was no way to determine contaminant concentrations. The letter stated that, with respect to the strobe light circuit board, OSHA did not perform hazard determinations on such items. Further, there was no information indicating that the employing establishment was aware of these modules burning out or causing a potential toxic exposure and no violations were found during the inspection.

By decision dated November 17, 2011, the hearing representative affirmed the June 9, 2011 OWCP decision, with modification. The hearing representative found that appellant experienced smoke inhalation on May 13, 2010 but the medical evidence was insufficient to find that such exposure caused the chest pain or vision condition.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."² The

² *Id.* at § 8102(a).

phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of an in the course of employment.”³ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.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 be established only by medical evidence.⁵

OWCP’s procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁶ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician’s affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁷

To constitute rationalized medical evidence, the opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁸

ANALYSIS

The June 9, 2011 decision found that appellant had not established a May 13, 2010 incident as alleged. The hearing representative modified this determination to find that the evidence established a 20 minute period of smoke/fumes inhalation on that date. OSHA indicated that it could not make a determination as to any specific contaminants, as an investigation was 13 days later and at that time did not reveal any aldehydes or phenols. The May 13, 2010 incident is established as appellant was exposed to smoke and fumes of uncertain composition. The issue is whether the medical evidence is sufficient to establish a diagnosed condition casually related to the employment incident. The medical evidence must contain a rationalized medical opinion on the issue.

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

⁷ *Id.*

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

In this case, appellant submitted a May 13, 2010 form report with a box checked “yes” as to causal relationship. The Board has held that checking “yes” on a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁹ This is particularly true in this case, as the form report lacked a firm medical diagnosis and was apparently signed by Dr. Jenks at a later date without any additional explanation. The treatment notes do not provide a rationalized opinion on causal relationship between any medical diagnosed condition and the employment incident. Dr. Jenks submitted a May 10, 2011 CA-17 form diagnosing pneumonitis, without addressing causal relationship with the accepted incident.

On appeal, appellant stated that he had a right to know what substances to which he was exposed and contended this information was being withheld. In this case, the evidence from OSHA stated that there was no way to determine what specific substances may have been present in the smoke or fumes in his vehicle. There is no probative evidence to establish that any further factual development is warranted or would result in relevant information regarding the compensation claim. As noted, the deficiency in establishing the claim for compensation was the medical evidence of record.

In the absence of a narrative report with a complete and accurate factual and medical history, findings on examination, a firm medical diagnosis and a rationalized opinion on causal relationship between the diagnosed condition and the May 13, 2010 employment incident, the Board finds that appellant has not met his burden of proof in this case.

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 has not established an injury in the performance of duty on May 13, 2010.

⁹ See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2011 is affirmed.

Issued: October 10, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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