

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

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A.T., Appellant	)	
	)	
and	)	Docket No. 12-909
	)	Issued: September 6, 2012
DEPARTMENT OF HOMELAND SECURITY,	)	
FEDERAL EMERGENCY MANAGEMENT	)	
AGENCY, Birmingham, AL, Employer	)	
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*Appearances:* *Case Submitted on the Record*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 14, 2012 appellant filed a timely appeal of a February 6, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On June 2, 2011 appellant, then a 75-year-old community relations field specialist, filed an occupational disease claim alleging that she sustained heat stroke and dehydration as a result

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

of walking in rural areas for 12 hours each shift. She became aware of her condition and its relationship to her federal employment on May 27, 2011 and stopped work on May 30, 2011. OWCP advised appellant in a June 17, 2011 letter that evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing her job duties and a report from a qualified physician explaining how a diagnosed condition resulted from this activity.

Dr. Margaret S. Morr, a Board-certified family practitioner, diagnosed malaise, fatigue, myalgia and myositis in May 29 and 31, 2011 notes while unsigned June 1, 2011 emergency department discharge instructions indicated that appellant experienced dizziness.

In a June 1, 2011 report, Dr. Donald L. Abele, an internist, related that appellant was a part of the employing establishment's relief effort to assist storm victims. Appellant informed him that she became symptomatic on the job due to high temperatures in late May 2011. A physical examination was normal while blood tests ruled out rhabdomyolysis. Dr. Abele diagnosed malaise and fatigue of "unclear etiology."

Appellant specified in a June 29, 2011 statement that she was deployed to Alabama for the period May 9 to June 9, 2011 to canvas residents who may have been impacted by recent tornadoes. As a result, she was exposed to heat 12 hours each workday for three weeks and developed dizziness, fatigue and headaches, *inter alia*.

In a June 29, 2011 report, Dr. Morr remarked, "The patient related in her interview that she was employed by [the employing establishment] and had been out in the heat for 12[-]hour periods, at which time she developed [extreme fatigue and headaches]."

By decision dated September 12, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that a diagnosed condition resulted from the accepted work activity.

Appellant requested reconsideration on October 29, 2011 and submitted new evidence. In an October 28, 2011 report, Dr. Abele opined:

"During the month of June 2011 [appellant] was a patient of mine while working as a [federal] disaster employee assisting with the tornadoes. She presented to the clinic with specific symptoms that indicated a need for lab tests to be done. In spite of the symptoms [appellant] was displaying, the tests were negative.

However, after a thorough exam[ination] of the patient, I found significant evidence to substantiate a diagnosis of heat exhaustion, fatigue, headache and malaise which in my medical opinion was a direct result of being in the field in the May [to] June Alabama heat."

On February 6, 2012 OWCP denied modification of the September 12, 2011 decision.

### **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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>4</sup> To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>5</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background, 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>

### ANALYSIS

The case record supports that appellant canvased as part of her job duties in May 2011 and was diagnosed with malaise, fatigue, myalgia and myositis. The Board finds, nevertheless, that she failed to establish her occupational disease claim because the medical evidence did not sufficiently demonstrate that her condition was causally related to this accepted work activity.

In a June 1, 2011 report, Dr. Abele obtained appellant's account that she became symptomatic on the job due to extreme heat. Neither the physical examination nor laboratory tests showed abnormalities. Dr. Abele diagnosed malaise and fatigue and pointed out that the cause was unclear. However, in a subsequent October 28, 2011 report, he opined that appellant sustained heat exhaustion, fatigue, headache and malaise due to "being in the field in the May to June Alabama heat," citing "significant" findings on examination. Inconsistent and contradictory reports from the same physician lack probative value and cannot constitute competent medical evidence.<sup>7</sup>

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *See S.P.*, 59 ECAB 184, 188 (2007).

<sup>5</sup> *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

<sup>7</sup> *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987). *See also Robert P. Bourgeois*, 45 ECAB 745 (1994) (medical evidence required to prove causal connection is that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical).

Dr. Morr remarked in a June 29, 2011 report that appellant “related in her interview that she ... had been out in the heat for 12-hour periods, at which time she developed [extreme fatigue and headaches].” She appeared to be merely communicating appellant’s belief regarding causal relationship.<sup>8</sup> Assuming *arguendo* that this represented her opinion on causal relationship, Dr. Morr did not present fortifying medical rationale.<sup>9</sup>

The remaining evidence, namely Dr. Morr’s May 29 and 31, 2011 notes and unsigned June 1, 2011 emergency department discharge instructions, was of diminished probative value on the issue of causal relationship because none of these documents addressed whether appellant’s federal employment caused or contributed to a diagnosed condition.<sup>10</sup> In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.

Appellant contends on appeal that the medical evidence sufficiently established causal relationship. The Board has already addressed the deficiencies of the claim. Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained an occupational disease in the performance of duty.

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<sup>8</sup> See *P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant’s belief of causal relationship).

<sup>9</sup> *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

<sup>10</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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