

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

D.A., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATIONS & CUSTOMS)
ENFORCEMENT, Los Angeles, CA, Employer)

Docket No. 12-1956
Issued: February 5, 2013

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 24, 2012 appellant filed a timely appeal from the June 11, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. 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 developed food poisoning as a result of eating contaminated food at work on June 30, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 30, 2011 appellant, a 59-year-old enforcement and removal agent, filed a traumatic injury claim alleging that she developed stomach pain and nausea at work on that date after eating a burrito purchased from the employing establishment snack bar.

In a letter dated October 5, 2011, OWCP informed appellant that the information submitted was insufficient to establish her claim and requested additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Appellant submitted an August 17, 2011 report from Dr. Kathy R. Akashi, Board-certified in gastroenterology, who diagnosed dyspepsia, irritable bowel syndrome and a history of colonic polyp. Dr. Akashi identified August 17, 2011 as the date of the onset of appellant's diagnosed condition and placed her off work for that day.

In a September 3, 2011 report, Dr. Akashi provided the results of an endoscopy/colonoscopy, which revealed mild gastritis, *Helicobacter pylori* and hemorrhoids. She opined that appellant's current *Pylori* infection was related to functional dyspepsia. Noting the date of symptom onset, Dr. Akashi placed appellant off work from September 3 through 8, 2011. Work status reports dated September 6 and 22, 2011 contained a diagnosis of dyspepsia and placed appellant off work due to "uncontrolled symptoms." In an October 10, 2011 work status report, Dr. Akashi diagnosed dyspepsia, noting the date of onset as June 30, 2011. She recommended work restrictions, including lifting and carrying a maximum of five pounds once or twice per hour.

On November 10, 2011 appellant responded to OWCP's request for additional information. She stated that, on the date in question, she purchased a burrito from the employing establishment snack bar. After appellant had eaten a portion of the burrito, she realized that it was dark green and appeared to be covered with a fungus. Within approximately 15 minutes after eating the burrito, she developed severe stomach pain. Appellant notified her supervisor on the date of the alleged injury and stopped work due to abdominal pain.

The record contains work status reports from Dr. Tiffany Jung Park, Board-certified in family medicine, placing appellant off work for intermittent periods from July 11 through August 26, 2011. On July 11, 2011 Dr. Park diagnosed *Helicobacter pylori* infection and abdominal pain. On August 5, 2011 she placed appellant off work from August 5 through 26, 2011. On August 8, 2011 Dr. Park placed appellant off work through August 12, 2011. On August 15, 2011 she diagnosed abdominal pain, epigastric and gastroesophageal reflux disease and placed appellant off work from August 15 through 17, 2011.

Appellant submitted disability slips from Dr. David Szu-Hone Liu, Board-certified in family medicine, placing her off work for various periods from August 1 through September 2, 2011. On July 25, 2011 Dr. Liu diagnosed *Helicobacter pylori* infection. On August 30, 2011 he diagnosed dyspepsia.

In a work status report dated July 14, 2011, Dr. Cecilia Yeji Kim, Board-certified in family medicine, diagnosed gastroenteritis and placed appellant off work through July 16, 2011. The record contains a September 29, 2011 report of an abdominal ultrasound.

By decision dated November 17, 2011, OWCP denied appellant's claim on the grounds that the evidence did not establish that the claimed medical condition was causally related to the established work-related event.

On December 15, 2011 appellant requested an oral hearing. In a March 14, 2011 telephonic hearing, she reiterated the alleged facts of her case. The hearing representative informed appellant of the medical evidence that would be necessary to establish a causal relationship between her claimed condition and the accepted incident.

By decision dated June 11, 2012, an OWCP hearing representative affirmed the November 17, 2011 decision, finding that the evidence failed to establish that appellant sustained a traumatic injury as a result of the accepted June 30, 2011 incident. On June 26, 2012 an OWCP hearing representative reissued the June 11, 2012 decision.

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.³

An employee seeking benefits under FECA has the burden of proof to establish 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ When an employee claims that he or she sustained a traumatic injury in the performance of duty, he or she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

² 5 U.S.C. § 8102(a).

³ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *Robert Broome*, 55 ECAB 339 (2004).

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury, as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁶ An award of compensation may not be based on appellant's belief of causal relationship.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁸ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.⁹

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.¹⁰

ANALYSIS

OWCP accepted that the workplace incident occurred as alleged, namely, that appellant ate a burrito from the employing establishment snack bar on June 30, 2011. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

The record contains numerous reports and disability slips from Dr. Akashi. On August 17, 2011 Dr. Akashi diagnosed dyspepsia, irritable bowel syndrome and a history of colonic polyp and placed appellant off work for that day. On September 3, 2011 she provided the results of an endoscopy/colonoscopy, which revealed mild gastritis, *Helicobacter pylori* and hemorrhoids. Dr. Akashi opined that appellant's current *Helicobacter pylori* infection was related to functional dyspepsia. Work status reports dated September 6 and 22, 2011 contained a diagnosis of dyspepsia and placed appellant off work due to "uncontrolled symptoms." In an October 10, 2011 work status report, Dr. Akashi diagnosed dyspepsia, noting the date of onset as June 30, 2011. None of her reports provide an opinion as to the cause of appellant's condition.

⁶ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁸ *Id.*

⁹ 20 C.F.R. § 10.303(a).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹

Work status reports from Drs. Park, Liu and Kim placed appellant off work for various periods following the claimed injury. The reports, however, do not provide examination findings or a complete factual and medical history, nor do they contain any opinion as to the cause of appellant's claimed condition. Therefore, they are of limited probative value. The Board notes that the numerous work status reports of record contain multiple diagnoses, but no explanation as to their cause or as to the relationship between them.

The remaining medical evidence of record including disability slips, x-rays and test results, which does not contain an opinion as to the cause of appellant's diagnosed condition, is also of limited probative value and insufficient to establish appellant's claim.

Appellant expressed her belief that her *Helicobacter pylori* infection resulted from the June 30, 2011 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹² Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹³

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report describing her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how her condition was caused or aggravated by her employment, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on June 30, 2011.

Appellant may submit new evidence or argument with a written request for reconsideration to the 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 failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on June 30, 2011.

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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