

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

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J.M., Appellant	)	
	)	
and	)	<b>Docket No. 12-1541</b>
	)	<b>Issued: January 8, 2013</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, Philadelphia, PA,	)	
Employer	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 9, 2012 appellant filed a timely appeal of the June 13, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. 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 his burden of proof to establish that he sustained a traumatic injury in the performance of duty.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On April 30, 2012 appellant, then a 45-year-old federal air marshal, filed a traumatic injury claim alleging that on April 18, 2012 he developed Eustachian tube dysfunction and otitis media as a result of a change in the air pressure in the airplane cabin while descending to his destination. He stopped work from April 22 to 29, 2012.

On May 9, 2012 OWCP advised appellant of the evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed ear condition and the claimed incident.

The employing establishment submitted an April 27, 2012 light-duty job offer which advised that appellant could perform all law enforcement and administration duties but could not be in an environment with drastic changes in air pressurization. Appellant accepted the position and returned to work.

In an April 27, 2012 statement, appellant related that on April 18, 2012 while flying on a mission he experienced sharp pain in his right ear while the plane was descending. He tried to relieve the pressure by swallowing and drinking water but the pain continued. Appellant informed his supervisor the next day and sought medical treatment. He submitted a statement from Ryan McAndrew, a coworker, who noted that on April 19, 2012 appellant advised of trouble hearing in his right ear.

Appellant submitted medical records dated April 23 and 26, 2012. He was diagnosed with Eustachian tube dysfunction. The healthcare provider, whose signature was illegible, recommended oral medications. A May 2, 2012, employing establishment incident investigative report advised that on April 18, 2012 upon descending to Minneapolis-St. Paul airport appellant experienced a sharp pain in the right ear. He reported swallowing and drinking water as a remedy for the pain but it did not work. The cause of the incident was described as depressurization of the aircraft cabin upon landing. On May 10, 2012 appellant was treated by Dr. Robert L. Witt, a Board-certified otolaryngologist, who examined appellant and found that his ears were normal and he was cleared to fly. In a note dated May 10, 2012, Dr. Witt advised that appellant had a normal ear examination and hearing test and was cleared to fly. He submitted an audiogram dated May 10, 2012.

On June 13, 2012 OWCP denied appellant's claim finding that the medical evidence was insufficient to establish that his right ear condition was related to the accepted incident.

## **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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the

employment injury. 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>2</sup>

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.<sup>3</sup> The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

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.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### ANALYSIS

OWCP accepted that appellant worked as a federal air marshal and on April 18, 2012 his flight descended as alleged. Appellant asserted that the descent of the airplane caused a right ear condition. The Board finds that he did not submit sufficient medical evidence to establish a right ear condition causally related to the April 18, 2012 work incident. On May 9, 2012 OWCP advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the April 18, 2012 incident caused or aggravated a diagnosed medical condition.

Appellant submitted medical records dated April 23 and 26, 2012. He was diagnosed with Eustachian tube dysfunction. However, the signature of the provider who completed the report is illegible. The Board has held that a medical report may not be considered as probative

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Id.*

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). Reports lacking proper identification do not constitute probative medical evidence.<sup>7</sup> Thus, these documents from the medical center cannot be considered probative medical evidence.

On May 10, 2012 appellant was treated by Dr. Witt, who noted that his ears were normal and he was cleared to fly. On May 10, 2012 Dr. Witt advised that appellant had a normal ear examination and hearing test and was cleared for flying. His reports are insufficient to establish the claim as the physician did not provide a history of the April 18, 2012 incident or a firm medical diagnosis.<sup>8</sup> Rather Dr. Witt opined that appellant's hearing was normal. Therefore, the reports are insufficient to meet appellant's burden of proof.

The record contains no other medical evidence. Because appellant has not submitted reasoned medical evidence explaining how and why a right ear condition is employment related, he has not met his burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.<sup>9</sup> Appellant failed to submit such evidence and OWCP therefore properly denied appellant's claim for compensation.

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

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<sup>7</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>8</sup> *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

<sup>9</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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