

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

M.H., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
HOSPITAL, Bremerton, WA, Employer**

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**Docket No. 12-1631
Issued: January 9, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2012 appellant filed a timely appeal from a May 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied 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.²

ISSUE

The issue is whether appellant sustained an exacerbation of asthma causally related to a March 15, 2012 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, the Board notes that appellant submitted additional medical evidence. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

FACTUAL HISTORY

On March 27, 2012 appellant, then a 63-year-old medical support assistant, filed a traumatic injury claim, alleging that on March 15, 2012 her asthma was exacerbated by painting in her work area. She stopped work and returned on March 26, 2012. The employing establishment controverted appellant's claim alleging that her medical history documented chronic sinusitis with nasal congestion and cough.

On April 13, 2012 OWCP advised appellant that she had not submitted any evidence to establish her claim. It requested that she address how the March 15, 2012 incident occurred as alleged and medical evidence to establish that her asthma resulted from the alleged incident.

In a March 15, 2012 hospital record, Dr. Reid D. Holtzclaw, a Board-certified internist, stated that appellant was at work when she had an onset of dryness and chest tightness which felt like typical asthma exacerbation. He related that she had increased stress at work over the past month and felt that it may have contributed to her exacerbation. Dr. Holtzclaw diagnosed acute exacerbation of asthma. He indicated that appellant was hospitalized and was unable to return to work until March 26, 2012.

In a March 16, 2012 report, Dr. David P. Murphy, a Board-certified internist, stated that appellant was a known severe asthma patient who was admitted to the intensive care unit from the emergency department due to an asthma exacerbation most likely triggered by a sinus infection.

In a March 26, 2012 statement, an A.C. Edwards stated that on March 15, 2012 he noticed appellant coughing with a very red face, hanging her head over her working area desk and gasping for breath. He brought her to the emergency room.

In an April 2, 2012 statement, appellant noted that she was working in the pediatrics clinic and painting was being done in an area about 30 feet away from where she worked. She explained that she had a history of sensitivity to paint and believed that her asthma exacerbation was triggered by painting. Appellant was treated in the emergency department followed by two days in the intensive care unit and one week at home for rest and recuperation.

In a decision dated May 14, 2012, OWCP denied appellant's traumatic injury claim. It accepted that the March 15, 2012, paint fume exposure, occurred as alleged but denied her claim finding insufficient medical evidence to establish that her asthma attack was causally related to the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established.⁶ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹¹ The weight of the 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.¹²

ANALYSIS

OWCP accepted that on March 15, 2012 painting was being done near the area where appellant worked but denied the claim. The Board finds that appellant did not meet her burden of proof to establish that she sustained an exacerbation of her asthma in the performance of duty.

Appellant submitted a hospital report by Dr. Holtzclaw, who related that appellant was at work when she had an onset of dryness and chest tightness which felt like typical asthma exacerbation. He noted that appellant cited to increased stress at work over the past month and felt that it may have contributed to her exacerbation. Dr. Holtzclaw diagnosed acute exacerbation of asthma. While he provided a definitive diagnosis, he did not adequately explain how her asthma exacerbation was related to the accepted factor of painting in appellant’s work

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

area. The Board notes that OWCP has not accepted that any specific stressful activity occurred at the employing establishment during the time period in question.

Dr. Murphy reported that appellant's asthma exacerbation was most likely triggered by a sinus infection. As previously noted, part of appellant's burden of proof is to submit evidence, generally only in the form of probative medical evidence, establishing that the employment incident caused a personal injury.¹³ In this case, neither Dr. Holtzclaw nor Dr. Murphy opined that appellant's asthma exacerbation resulted from the paint fumes incident. Thus, the Board finds that she did not meet her burden of proof to establish her claim.

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 failed to establish that her exacerbation of acute asthma was causally related to the March 15, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹³ *Supra* note 8.