

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

D.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
Laredo, TX, Employer)

**Docket No. 13-1259
Issued: November 4, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 28, 2013 appellant filed a timely appeal of the December 17, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying his 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on March 27, 2012.

FACTUAL HISTORY

On March 28, 2012 appellant, then a 24-year-old border patrol agent, filed a traumatic injury claim alleging that on March 27, 2012, 15 minutes after walking along heavy brush in the

¹ 5 U.S.C. § 8101 *et seq.*

gravel pit area, he had an allergic reaction and had difficulty breathing. He noted that, as a result of the allergic reaction, he had swelling of the tonsils and some pain and discomfort to the throat.

In support of his claim, appellant submitted a Form for Authorization for Examination or Treatment, which included an attending physician's report dated March 27, 2012 signed by Dr. Eutimio Calixto-Lopez, a physician specializing in emergency medicine,² indicating that appellant had difficulty breathing at work, had pharyngitis/allergic reaction and that he may resume regular work. Dr. Calixto-Lopez also checked a box indicating that he believed that appellant's condition was caused or aggravated by his employment but did not explain his answer. In a report of the same date, he noted that appellant's symptoms onset suddenly and immediately prior to arrival in emergency department. Dr. Calixto-Lopez listed his clinical impression as acute allergic reaction and acute pharyngitis. He discharged appellant to home.

By letter to appellant dated November 7, 2012, OWCP asked him to submit further information, including medical evidence, in support of his claim. It received no response to this letter.

In a December 17, 2012 decision, OWCP denied appellant's claim for the reason that the evidence was not sufficient to establish that the event occurred as described.

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 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.³

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 or exposure, which is alleged to have occurred.⁴ An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁵ An employee has not met his or her burden of proof to establish the occurrence of an injury when

² The Board is unable to confirm whether Dr. Calixto-Lopez is Board-certified.

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ See *Betty J. Smith*, 54 ECAB 174 (2002).

there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁶ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on March 27, 2012 as the medical evidence is insufficient to support his claim for compensation.

The Board finds that appellant has established that the incident occurred as alleged. Appellant alleged that he sustained an injury in the performance of duty on March 27, 2012 when he had difficulty breathing after walking along heavy brush in a gravel pit in the performance of his federal duties. As previously noted, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹⁰ The record reflects that appellant's subsequent course of action following the alleged employment incident is consistent with his statement describing the March 27, 2012 incident. Appellant received medical attention on the same date as the alleged incident. He filed his claim on March 28, 2012, the date after the alleged incident. Appellant's statement with regard to his working conditions is unchallenged by any other evidence. There is no evidence in the record, such as inconsistent statements by appellant or others, to refute his statements.¹¹ Accordingly, the Board hereby modifies OWCP's decision to indicate that appellant established that the employment incident occurred at the time, place and in the manner as alleged.

⁶ *D.G.*, Docket No. 13-870 (issued July 16, 2013).

⁷ *Gregory J. Reser*, 57 ECAB 277 (2005).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁹ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹⁰ *Gregory J. Reser*, *supra* note 7.

¹¹ *See L.H.*, Docket No. 13-184 (issued April 15, 2013).

However, the Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the employment incident of March 27, 2012 caused or aggravated appellant's acute pharyngitis.¹² Dr. Calixto-Lopez checked a box indicating that he believed that appellant's condition was caused or aggravated by his employment but did not explain his answer. The Board has held that an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant's condition was related to the employment incident is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.¹³ Although Dr. Calixto-Lopez did indicate that the onset of appellant's symptoms was immediately prior to his arrival in the emergency department, the Board has held that the mere fact that an injury occurs during the workday is not sufficient, in and of itself, to bring an injury within the performance of duty. For compensability, the concomitant requirement of an injury arising out of the employment must be shown.¹⁴ Dr. Calixto-Lopez did not describe the employment activities that appellant alleged caused the breathing issues, nor does he provide any explanation as to how appellant's employment on March 27, 2012 led to his breathing issues. Without medical evidence establishing this causal relationship, appellant has not met his burden of proof to establish that he sustained a diagnosed condition causally related to the accepted employment factors and thus he did not meet his burden of proof.

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 met his burden of proof to establish that he sustained an injury in the performance of duty on March 27, 2012.

¹² *S.M.*, Docket No. 13-1140 (issued July 23, 2013).

¹³ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹⁴ *V.P.*, Docket No. 13-714 (issued July 1, 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2012 is affirmed as modified.

Issued: November 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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