United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 14-321**
	)	**Issued: August 25, 2014**
DEPARTMENT OF THE ARMY, FORT RUCKER AVIATION CENTER, Fort Rucker, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2013 appellant filed a timely appeal from an October 11, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 in this case is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on August 1, 2013.

FACTUAL HISTORY

On August 13, 2013 appellant, then a 54-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging an allergic reaction as a result of exposure to air

[1] 5 U.S.C. § 8101 *et seq.*

freshener that had been sprayed in her workplace area on August 1, 2013. She identified the brand of air freshener as Lysol Neutra Air Sanitizing Spray and listed its active ingredients. Appellant's supervisor checked a box indicating that appellant had been injured in the performance of duty.

In support of her claim, appellant submitted hospital discharge notes dated August 2, 2013.

On August 28, 2013 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit a comprehensive medical report from an attending physician including dates of examination and treatment, the history and date of injury given to her by the physician, a detailed description of findings, results of all x-ray and laboratory tests, a diagnosis and clinical course of treatment and an opinion based on medical explanation as to how the claimed work incident caused or aggravated her claimed injury.

By letter dated August 28, 2013, Dr. Mark H. Kalenian, Board-certified in allergy and immunology, stated that appellant had recently visited an emergency room due to exposure to an aerosol fragrance spray causing bronchospasm or an asthma-like attack. He noted that she had a history of fragrance allergy, acid reflux and likely chemical asthma. Dr. Kalenian explained that appellant's pulmonary function showed no reversibility indicative of inflammatory asthma and that, because of this observation, he thought it was likely that she had bronchospasm secondary to a chemical-type asthma affecting lungs as well as skin. He listed her current medications for allergy and respiratory problems and recommended that the employing establishment use Occupational Safety and Health Administration-approved chemicals and cleaning agents, as well as fragrance-free products, to accommodate her condition. Dr. Kalenian stated that, because his practice was not occupational medicine and could not test for airborne chemicals, he recommended that appellant be transferred for further care to a certified occupational health clinic.

In a statement dated August 29, 2013, appellant noted that her acid reflux was related to H-Pylori, which was treated by antibiotics and submitted unsigned medical records regarding this diagnosis and treatment.

In the "attending physician's report" section of a Form CA-16 dated September 9, 2013, a person with an illegible signature checked a box indicating that appellant's bronchospasm due to an inhalation injury was caused or aggravated by employment activity. The employing establishment's page of the CA-16 form was not present in the case record.

Appellant submitted an incomplete letter from St. Vincent's Occupational Health Clinics dated September 9, 2013. The letter contained no closing or signature from a physician.

In a patient visit form dated September 9, 2013, Dr. Michael L. Cloyd, Board-certified in preventative medicine, noted that appellant had described her injury as an allergic reaction to a cleaning material resulting in chest and lung pain.

By letter dated September 15, 2013, Dr. Kalenian described appellant's history of injury and course of treatment and diagnosed her with a chemical-type asthma and fragrance sensitivity. He noted that she first reacted to a chemical on October 1, 2012, when cleaning contractors came

to her building and she noticed a burning sensation while using the commode. Subsequently, appellant was unable to use the commode without a burning sensation. Initially, she was felt to have allergic contact dermatitis due to cleaning chemical exposure. Appellant was given an Epi-Pen and it was recommended that her employing establishment use a peroxide-only fragrance-free cleaner. On March 13, 2013 she noted a hive-type reaction to a bottle of lotion in her purse, as well as a possible fragrance from one of her many household cleaners. Appellant was urged to change to unscented detergent and cleaning products. A review of material safety data sheets of cleaning agents used at the employing establishment found that two cleaning agents, Clean on the Go and Go Tribase, contained fragrance. On a visit of August 8, 2013 Dr. Kalenian noted that, one week prior, appellant had a bronchospasm after an air ventilation system was being worked on and that a coworker had sprayed a can of aerosol in the work area, which had bothered her. Appellant stated that she ended up in the emergency room. A spirometry test in Dr. Kalenian's office on August 9, 2013 calculating her FEV_1/FVC ratio, showed an FEV_1 of 1.94 or 90 percent predicted prealbuterol and 1.91 liters or 89 percent post-albuterol, for a -2 percent change in the large airway and a 15 percent increase in the small airway, with no reversibility. On that date, her diagnoses were listed as chemical asthma, acid reflux and fragrance allergy. Dr. Kalenian stated that appellant was felt to have fragrance sensitivity with respiratory and skin contact components. He explained that, while the spirometry did not show improvement after albuterol, it can remain unchanged if someone does not have chronic inflammatory asthma, but rather chemical asthma. Patch testing was negative, but this looks for delayed allergies and her reactions were immediate. Dr. Kalenian recommended that appellant work in a fragrance and chemical-free work environment. He noted that materials used in fragrance are not required to be disclosed on labels, making it often difficult to identify the ingredient or product responsible for the sensitivity.

By decision dated October 11, 2013, OWCP denied appellant's claim for compensation. It found that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the incident of August 1, 2013. OWCP noted that the evidence it had reviewed in support of appellant's claim included the following: a letter from Dr. Kalenian, from Alabama Asthma & Allergy, P.C., dated August 28, 2013; a request for change of address dated September 3, 2013; a one page letter from St. Vincent's OHC, with no closing, dated September 9, 2013; a patient visit form signed by Dr. Cloyd, dated September 9, 2013; Part B of an attending physician's report dated September 9, 2013; and a three-page letter from Dr. Kalenian, dated September 15, 2013.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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; that an injury was sustained while 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

[2] *Id*.

employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.[5] 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.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

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.[8] An award of compensation may not be based on appellant's belief of causal relationship. 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.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[11] 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.[12]

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[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[4] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[5] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3 n.5.

[6] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

[7] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 3 n.5.

[8] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[9] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[11] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[12] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

OWCP accepted that the employment incident of August 1, 2013 occurred. The issue is whether appellant's chemical-type asthma and fragrance sensitivity caused or was aggravated by the August 1, 2013 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between her conditions and the incident.

In a letter dated September 15, 2013, Dr. Kalenian described appellant's history of injury and course of treatment and diagnosed her with a chemical-type asthma and fragrance sensitivity. He described her employment exposure to fragrance-containing cleaning products in the workplace and recommended that she work in a fragrance and chemical-free work environment. Dr. Kalenian explained that, on a visit of August 8, 2013, he noted that one week prior appellant had a bronchospasm after an air ventilation system was being worked on and that a coworker had sprayed a can of aerosol in the work area, which had bothered her. Appellant stated that she ended up in the emergency room. A spirometry test in Dr. Kalenian's office on August 9, 2013 calculating her FEV_1/FVC ratio, showed an FEV_1 of 1.94 or 90 percent predicted prealbuterol and 1.91 liters or 89 percent post-albuterol, for a -2 percent change in the large airway and a 15 percent increase in the small airway, with no reversibility. On that date, appellant's diagnoses were listed as chemical asthma, acid reflux and fragrance allergy. Dr. Kalenian stated that she was felt to have fragrance sensitivity with respiratory and skin contact components.

The Board finds that Dr. Kalenian's report is not sufficient to meet appellant's burden of proof. While Dr. Kalenian provided an accurate history of injury and diagnosed her with chemical-type asthma and fragrance sensitivity, as well as offering the medical opinion that she ought to work in a fragrance and chemical-free work environment, he did not provide the necessary medical reasoning to explain how the symptom of bronchospasm on August 1, 2013 established that the diagnosed conditions were due to the accepted exposure to fragrance. The Board has held that generally a spasm is a symptom, not a diagnosis of a specific condition.[13] Without some medical explanation of how the accepted exposure caused or aggravated appellant's diagnosed condition, this report does not contain the necessary medical rationale to establish appellant's claim. Dr. Kalenian's letter of August 28, 2013 similarly lacks rationalized medical explanation of his opinion that he thought it was likely that she had bronchospasm secondary to a chemical-type asthma affecting lungs as well as skin.

In a patient visit form dated September 9, 2013, Dr. Cloyd noted that appellant had described her injury as an allergic reaction to a cleaning material resulting in chest and lung pain. He offered neither diagnoses nor an opinion regarding causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14] The mere fact that a disease or condition manifests itself during a period of employment or the claimant's belief that the disease or condition was caused or aggravated by employment factors or incidents is insufficient to establish causal

[13] *See also* generally spasm is a symptom, *E.B.*, Docket No. 13-1705 (January 8, 2014); *M.P.* Docket No 11-762 (issued October 5, 2011); *see Gordon C. Muncy*, 38 ECAB 607 (1987) for the proposition that bronchospasm is a symptom.

[14] *See Michael E. Smith*, 50 ECAB at 316 n.8 (1999).

relationship.[15] Thus, Dr. Cloyd's report is insufficient to establish appellant's claim for compensation.

Appellant submitted documents that were illegibly signed or did not contain signatures, such that the author could not be determined. Consequently, these documents are of no probative value on the issue of causal relationship and do not establish her traumatic injury claim, as it cannot be discerned whether a physician signed or authored the documents.[16]

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to an August 1, 2013 employment incident, she has failed to meet her burden of proof to establish a claim.

The Board notes that appellant submitted evidence after the issuance of the October 11, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[17] Appellant may submit this or any 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 her burden of proof to establish that her chemical-type asthma and fragrance sensitivity was caused or aggravated by an August 1, 2013 employment incident.

[15] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997); *Charles E. Evans*, 48 ECAB 692, 693 (1997).

[16] *See also Sheila A. Johnson*, 46 ECAB 323, 327 (1994); *see Merton J. Sills*, 39 ECAB 572, 575 (1988).

[17] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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