United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 13-2121**
	)	**Issued: March 5, 2014**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, RAIL YARD, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2013 appellant filed a timely appeal from the July 24, 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that he was injured in the performance of duty on December 23, 2012, as alleged.

On appeal, appellant alleges that he was exposed to a chemical spill during his employment and the employing establishment sent him to the hospital as a precautionary

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence on appeal. However, the Board lacks jurisdiction to review such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(a); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

measure. He noted that he could not know if he had any lasting injuries from his scratchy throat and coughing until he was checked by a physician.

FACTUAL HISTORY

On December 25, 2012 appellant, then a 51-year-old Customs and Border Protection officer, filed a claim for occupational disease alleging that on December 23, 2012 he was exposed to Dipentene while working at the rail yard.

In support of his claim, appellant submitted a report by Dr. Michael Paul, a Board-certified surgeon, who treated appellant in the emergency department at Port Huron Hospital on December 23, 2012. The intake notes indicate that appellant was seen for exposure to Dipentene for less than one minute and that appellant denied contact with skin. The notes indicate that appellant complained of a slight scratchy sensation to his throat but denied an eye irritation. Dr. Paul stated that appellant had chemical inhalation. He listed diagnosis of acute pharyngitis, moderate elevation of systolic blood pressure and seasonal/environmental allergies. An x-ray taken at the hospital was read by Dr. John J. Ference, a Board-certified radiologist, as showing no acute process, findings suggestive of chronic obstructive pulmonary disease and asymmetric sclerosis to the anterior margin the right first rib.

By letter dated April 1, 2013, OWCP asked appellant to submit further evidence, including medical evidence, in support of his claim. In a handwritten response to the questions on April 9, 2013, appellant indicated that he was exposed to Dipentene for approximately two minutes at work and that he experienced a scratchy throat that is now better. He noted that he has seasonal allergies.

On April 16, 2013 a representative from the employing establishment submitted responses to OWCP questions and admitted that appellant was exposed to Dipentene fumes. He noted that appellant was working in the office and a worker from the warehouse entered the office and told the employees that a barrel of Dipentene had been pierced and that they should get out of the building. The representative noted that appellant removed himself from the building and moved upwind of the building and went to the hospital to be checked per fire department personnel recommendation.

By decision dated July 24, 2013, OWCP denied appellant's claim because the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the claimed event or work factors.

LEGAL PRECEDENT

OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[3] An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her

[3] 20 C.F.R. § 10.5(e).

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.[4]

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.[5] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] 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.[8]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.[9] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[10]

[4] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

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

[6] *Linda S. Jackson*, 49 ECAB 486 (1998).

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

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

[9] *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[10] 20 C.F.R. § 10.303(a); *see also S.H.*, Docket No. 10-1952 (issued May 5, 2011).

ANALYSIS

Initially, the Board finds that, although appellant filed a claim for occupational disease, this claim is actually a traumatic injury, as the specific incident occurred during a single workday or shift.[11] The employing establishment does not contest that appellant was exposed to Dipentene on December 23, 2012. Accordingly, appellant submitted sufficient evidence to establish an occupational exposure to Dipentene while in the course of his federal employment. However, in order to meet his burden of proof, he must also submit sufficient evidence that the accepted Dipentene exposure caused an injury. The Board finds, however, that appellant did not submit such evidence.

In support of his claim, appellant submitted his treatment notes with regard to his visit to the emergency department on December 23, 2012 wherein Dr. Paul diagnosed pharyngitis, moderate elevation of systolic blood pressure and seasonal/environmental allergies. Dr. Ference noted that appellant's x-rays were suggestive of chronic obstructive pulmonary disease and asymmetric sclerosis to the anterior margin of the right first rib. However, neither of these physicians explained how these diagnoses were connected to appellant's brief exposure to Dipentene on December 23, 2012. As stated above, simple exposure to a workplace hazard does not entitle an employee to medical treatment under FECA unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.[12] In this case, the medical record does not demonstrate that appellant sustained an injury or condition from briefly inhaling Dipentene at work.[13] Therefore, appellant has not met his burden of proof that this exposure caused an injury. Accordingly, he has not established fact of injury and his claim was properly denied.

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 he was injured in the performance of duty on December 23, 2012, as alleged.

[11] 20 C.F.R. § 10.5(15), (16) defines a traumatic injury as a wound or other injury caused by a specific event or incident within a single workday or shift, whereas an occupational injury is defined as a condition produced in the work environment over a period longer than a single workday or shift. As appellant's exposure occurred only during one work shift, it is being treated as a condition arising from a traumatic work incident within a single day. *See J.G.*, Docket No. 07-2371 (issued April 8, 2008).

[12] 20 C.F.R. § 10.303(a).

[13] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2013 is affirmed.

Issued: March 5, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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