

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

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S.M., Appellant )  
and ) Docket No. 14-107  
DEPARTMENT OF TRANSPORTATION, ) Issued: March 27, 2014  
TRANSPORTATION SECURITY )  
ADMINISTRATION, Lihue, HI, Employer )  
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)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 21, 2013 appellant filed a timely appeal of the October 2, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 merit decision of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On August 12, 2013 appellant then a 38-year-old transportation security officer filed a Form CA-2, occupational disease claim alleging that she developed heat stroke while working at

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

a checkpoint while in the performance of duty. She became aware of her condition and realized it was causally related to her employment on July 30, 2013. Appellant did not stop work.

On August 19, 2013 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

The employing establishment submitted an August 7, 2013 incident report from Crystal M. DeRego, supervisory transportation security officer, who noted that on August 7, 2013 appellant reported that she felt ill and was hot and had a headache. Ms. DeRego noted appellant reported feeling ill one week prior with the same symptoms, refused medical attention but rested in the break room for two hours. Appellant refused to go home because she did not have enough leave and indicated that she would file a claim for compensation. Ms. DeRego noted that appellant reported to the break room and then was taken to the hospital for treatment. In a letter of contravention dated August 30, 2013, the employing establishment asserted that appellant had not established her claim.

In a statement dated September 6, 2013, appellant indicated that on July 30, 2013 it was extremely hot and humid as a tropical storm had passed through the area. She noted working in the airport main checkpoint and noticed the temperature was 86.1. Appellant noted that she was scheduled to be an x-ray operator in a lane that was close to a wall without air circulation. She advised that by 1:55 p.m. she was overheated and developed heat stroke and her heart started to race, she began to pant, she became nauseous, weak and dizzy and requested to sit in the break room. Appellant reported the symptoms of weakness, dizziness, fatigue, headaches, nausea lasted for three weeks.

Appellant submitted a Hawaii emergency medical services (EMS) report prepared by an unidentifiable health care provider on August 1, 2013 which noted her complaints of a frontal headache for two days. She reported not feeling well with symptoms of fever and chills. Appellant was diagnosed with frontal headache, possible migraine versus rebound headaches and anxiety.

Appellant was treated by Dr. Erik J. Schumacher, Board-certified in emergency medicine, on August 1, 2013, for a headache present for two days which developed at work. She reported resting and within a couple of hours the headache resolved. Appellant returned to work and stated that the headache and nausea returned and attributed the symptoms to an extremely hot day. Dr. Schumacher noted normal examination findings. He diagnosed acute headache and discharged appellant from his care in satisfactory condition. Appellant was provided discharge instructions for headaches.

Appellant was treated by Dr. Spencer Smith, Board-certified in emergency medicine, on August 7, 2013, for headache, dizziness and nausea. She reported that she "overdid it" at work last week and was treated in the emergency room for heat stroke. Appellant indicated that she was discharged from the emergency room in stable condition and attempted to return to work but continued to feel dizzy, nauseated with a persistent headache. Dr. Smith noted normal examination findings. He diagnosed headache, dizziness and nausea and discharged appellant. Dr. Smith noted that she was given valium for the dizziness but she continued to have lingering

symptoms. He noted that appellant requested a lengthy release from work to rest. Dr. Smith provided her with discharge instructions for self-care for headaches. In a medical excuse form dated August 7, 2013, he treated appellant for an illness and diagnosed "medical" and stated that she could not work from August 8 to 17, 2013. Appellant submitted laboratory reports dated August 7, 2013 and discharge instructions for self-care for headaches.

In an October 2, 2013 decision, OWCP denied the claim on the grounds that the medical evidence was insufficient to establish that appellant's claimed conditions were causally related to work events.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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.<sup>3</sup>

### **ANALYSIS**

It is not disputed that appellant's duties as transportation security officer included prolonged standing and being exposed to temperatures of approximately 85 degrees while performing her duties. It is also not disputed that she has been diagnosed with acute headache, dizziness and nausea. However, appellant has not submitted sufficient medical evidence to

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<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carbone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

establish that any of these conditions are causally related to specific employment factors or conditions.

Appellant submitted an August 1, 2013 report from Dr. Schumacher who, had treated her for a headache two days prior at work. She reported her headache resolved after rest but, upon returning to work, the headache and nausea returned. Appellant attributed her symptoms to an extremely hot day. Dr. Schumacher noted normal findings on examination and diagnosed acute headache and discharged her from his care in satisfactory condition. He appears to be repeating the history of injury as reported by appellant without providing own opinion regarding whether her condition was work related. To the extent that Dr. Schumacher is providing his own opinion, he did not provide a rationalized opinion regarding the causal relationship between her headaches, dizziness and nausea and the factors of employment believed to have caused or contributed to such condition.<sup>4</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

In an August 7, 2013 report, Dr. Smith treated appellant for headache, dizziness and nausea. Appellant reported that she overdid it at work and was treated in the emergency room for heat stroke. She indicated that she was discharged from the emergency room in stable condition and attempted to return to work but continued to feel dizzy, nauseated with a persistent headache. Dr. Smith noted an essentially normal examination and diagnosed headache, dizziness and nausea and discharged appellant. As noted above, he appears to be repeating the history of injury as reported by her without providing his own opinion regarding whether her condition was work related. Even if this could be construed as an opinion supporting causal relationship, Dr. Smith did not provide medical rationale explaining that particular work factors caused or aggravated appellant's headaches, dizziness and nausea.<sup>5</sup> Therefore, this report is insufficient to meet appellant's burden of proof. Also submitted was an August 7, 2013 medical excuse form from Dr. Smith who treated her for an illness and diagnosed "medical" and stated that appellant could not work from August 8 to 17, 2013. However, this note is of limited probative value as it does not address whether employment factors caused appellant's disability. Therefore this note is insufficient to meet her burden of proof.

Other medical evidence submitted by appellant including laboratory reports and discharge instructions for a headache are also insufficient as such evidence does not provide a physician's opinion on the causal relationship between her job and her diagnosed headaches, dizziness and nausea. Consequently, the medical evidence is not sufficient to meet her burden of proof.

Appellant also submitted an August 1, 2013 Hawaii EMS report prepared by an unidentifiable health care provider which noted her complaints of a frontal headache and diagnosed frontal headache, possible migraine versus rebound headaches and anxiety. However, this is of no probative medical weight as there is no evidence that this document is from a physician. The Board has held that a medical report may not be considered as probative medical

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<sup>4</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>5</sup> See *supra* note 5.

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).<sup>6</sup>

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 her burden of proof to establish that her claimed conditions were causally related to her employment.<sup>7</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> C.B., Docket No. 09-2027 (issued May 12, 2010).

<sup>7</sup> With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).