United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 15-0922**
	)	**Issued: October 26, 2015**
DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION, Benicia, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2015 appellant filed a timely appeal of a February 27, 2015 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 the case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on June 11, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested oral argument. In a separate order, the Board denied his request. *Order Denying Request for Oral Argument*, Docket No. 15-0922 (issued August 27, 2015).

FACTUAL HISTORY

On June 18, 2014 appellant, then a 52-year-old security guard, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2014 he sustained a pulmonary condition as a result of smoke inhalation from a "possible fire insider CRAFT TD-68 TUG" while performing a routine security check while in the performance of duty. A witness indicated that he saw appellant exit the boat asking for assistance relative to smoke. He indicated that he returned to the boat to find that a heater was left on and smoke was coming from the overheated metal. Appellant did not stop work.

In a June 13, 2014 treatment note, Dr. Kai M. Lee, Board-certified in emergency medicine, noted that appellant could return to work on June 16, 2014.

In a June 19, 2014 report, Dr. M. Neis-Gemenez, a Board-certified internist, noted that appellant was being followed for exacerbation of a chronic medical condition and that he should only do semisedentary work, with no security rounds. She also advised against climbing up and down stairs or walking long distances. Dr. Neis-Gemenez noted that further testing was pending.

On June 23, 2014 appellant accepted a light-duty position within his restrictions.

In a September 17, 2014 attending physician's report, Dr. Thiennu Vu, a Board-certified internist, noted that appellant was exposed to smoke at a fire on a ship where he works. He checked the box "yes" in response to whether appellant had a history of preexisting injury or disease or physical requirements and filled in "history of asthma." For diagnosis, Dr. Vu filled in "smoke inhalation injury." He checked the box "yes" in response to whether the condition was caused or aggravated by an employment activity and filled in "exposure to smoke while working (from fire)." Dr. Vu noted that appellant was partially disabled commencing June 18, 2014 and continuing. He advised that appellant could walk at a slow pace for up to 45 minutes then one hour and climb up to 10 steps of stairs.

In an October 9, 2014 statement, Gloria Gatan, a program consultant with the employing establishment, indicated that appellant was initially accommodated for light duty due to the effects of a one- to two-minute exposure to smoke inhalation from a watercraft that caught on fire which exacerbated his preexisting asthma. However, effective October 5, 2014, the employing establishment was unable to accommodate his restrictions and he was placed on leave without pay.

By letter dated October 20, 2014, OWCP advised appellant that additional factual and medical evidence was needed.

Appellant provided a June 18, 2014 treatment note from Dr. Vu who noted that appellant had a history of respiratory failure in 2001. Dr. Vu noted that appellant recently had smoke exposure due to a fire on a ship where he worked. He assessed dyspnea and recent exposure to smoke from fire. In an August 4, 2014 note, Dr. Vu noted that the chest computerized tomography (CT) scan done on August 1, 2014 revealed no evidence of parenchymal lung disease. He noted that the findings included that appellant had near resolution of previously described consolidation in the left upper lobe with residual linear densities in this region, likely representing scar and chronic obstructive pulmonary disease (COPD). In an August 27, 2014 treatment note, Dr. Vu related that appellant had a recent exposure to smoke from fire. An

August 1, 2014 chest thorax magnetic resonance imaging (MRI) scan report read by Dr. Navid Zenooz, a Board-certified diagnostic radiologist, revealed no acute finding in the chest with no evidence of interstitial lung disease. OWCP also received pulmonary testing results from September 2, 2014, which revealed that appellant had a history of dyspnea and interstitial lung disease.

In an October 29, 2014 statement, Esther Harris, a coworker, indicated that she called appellant to confirm his exposure time and he indicated that it was only about one or two minutes and proclaimed "as soon as I opened the entrance door to the boat I smelled the smoke so I got out of there."

In a letter dated October 31, 2014, Dale Dubin, a lead program consultant with the employing establishment, controverted the claim. He explained that appellant indicated that he was exposed to smoke in the tugboat for a period of one to two minutes. Mr. Dubin noted that a heater malfunctioned and caused excessive heat and smoke but a fire did not occur. He noted that the report from Dr. Vu was inaccurate as he indicated that appellant was exposed to a fire.

OWCP received additional treatment notes from Dr. Neis-Gemenez. In Dr. Neis-Gemenez's August 27, 2014 note, she advised that appellant had dyspnea and history of interstitial lung disease. She performed spirometry pre and post bronchodilator, diffusing capacity of the lung for carbon monoxide, and blood volumes. In an October 29, 2014 note, Dr. Neis-Gemenez noted that appellant had steroid-dependent asthma and was seen for shortness of breath and wheezing on June 13, 2014 and thereafter followed up with a pulmonologist.

On November 19, 2014 Dr. Vu released appellant to full duty.

By decision dated November 25, 2014, OWCP denied appellant's claim finding that there was insufficient medical evidence supporting that the accepted employment incident caused a diagnosed condition.

In a letter dated December 4, 2014, appellant requested reconsideration and argued that he had established his claim. He also provided a description of the June 11, 2014 incident. OWCP also received medical evidence previously of record in addition to reports of diagnostic testing.

By decision dated February 27, 2015, OWCP denied modification of the prior decision.

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,[3] and that an injury was sustained in the performance of duty.[4] These

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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 which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6]

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[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]

ANALYSIS

Appellant alleged that he sustained a pulmonary condition after being exposed to smoke from an overheated heater while in the performance of duty on June 11, 2014. OWCP accepted that the claimed event. It found that appellant was exposed to smoke, occurring in the performance of duty. The Board finds that the first component of fact of injury, the claimed incident -- that he was in fact exposed to smoke, occurred as alleged.

However, the Board also finds that the medical evidence is insufficient to establish that the employment incident caused the claimed injury. The medical reports of record do not establish that appellant's exposure to smoke at work caused a personal injury on June 11, 2014. The medical evidence contains no reasoned explanation of how the specific employment incident on June 11, 2014 caused or aggravated an injury.[9]

Dr. Vu provided several reports. The relevant reports include his June 18, 2014 treatment note and a September 17, 2014 attending physician's report in which he noted that appellant was exposed to smoke due to a fire on a ship where he works. Dr. Vu noted appellant's history of

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[7] *Id*. For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[8] *Id.*

[9] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

asthma and indicated that appellant had a "smoke inhalation injury." In the attending physician's report, he checked a box "yes" to affirm appellant's condition was caused or aggravated by work activity and filled in "exposure to smoke while working (from fire)." Dr. Vu diagnosed dyspnea and recent exposure to smoke from fire. However, the checking of a box yes in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[10] In an August 27, 2014 treatment note, Dr. Vu related that appellant had a recent exposure to smoke from fire. However, he did not provide a diagnosis or any opinion on causal relationship other than to report appellant was exposed to smoke from fire. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[11] The need for medical rationale is particularly important as the medical record indicates that appellant had a preexisting pulmonary condition. A well-rationalized opinion is partially warranted when there is a history of a preexisting condition.[12]

Appellant submitted reports from Dr. Neis-Gemenez. They included Dr. Neis-Gemenez's June 19, 2014 report, in which she advised that appellant was being followed for exacerbation of a chronic medical condition. On October 29, 2014 she noted that appellant had steroid-dependent asthma and was seen for shortness of breath and wheezing on June 13, 2014. In these and her other treatment records, Dr. Neis-Gemenez did not specifically address the cause of any diagnosed conditions or relate any conditions to appellant's June 11, 2014 employment injury. This evidence is of little probative value.[13]

Other medical reports received by OWCP are also of limited probative value as this evidence does not specifically support that the June 11, 2014 work incident caused or aggravated a diagnosed medical condition.[14] Consequently, appellant has failed to submit sufficient medical evidence to establish that the June 11, 2014 incident caused an injury.

On appeal, appellant argues that he is addressing lost wages and why he was not given a reasonable accommodation. The Board notes that appellant had not established his claim so he is not owed benefits under FECA.

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 June 11, 2014.

[10] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[11] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[12] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[13] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[14] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board