

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

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**T.B., JR, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS, H.  
JOHN HEINZ III VETERANS  
ADMINISTRATION, Pittsburgh, PA, Employer**

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**Docket No. 17-0444  
Issued: May 5, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 20, 2016 appellant filed a timely appeal from a November 18, 2016 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 to consider the merits of the case.

**ISSUE**

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

**FACTUAL HISTORY**

On September 22, 2016 appellant, then a 63-year-old housekeeping aid, filed an occupational disease claim (Form CA-2) alleging that he developed light-headedness on

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

September 9, 2016 due to fumes in the environment. He first realized his condition was caused or aggravated by his federal employment on September 15, 2016.

In a letter dated October 12, 2016, OWCP requested additional factual and medical evidence in support of appellant's claim. It noted that the evidence of record was insufficient to establish that appellant actually experienced the employment factors alleged to have caused injury and that no diagnosis of any condition resulting from appellant's employment had been provided. OWCP requested that appellant complete an attached questionnaire identifying the particulars of the claimed exposure, to include where the exposure occurred, the manner of the exposure, when the exposure occurred, the identity of the substance to which he had exposure, and the names of any others who may have had exposure. OWCP afforded 30 days for a response. No response was received from appellant.

The employing establishment responded to OWCP's request for information and provided appellant's position description. Appellant's supervisor indicated that appellant normally cleans administrative areas and patient care walk-in areas. On September 14, 2016 he asked appellant to help a coworker with parts of the patient care floors and emphasized that appellant was not to work in the biohazardous waste areas. Appellant reported he was dizzy and light-headed within a half an hour after beginning tasks on the patient care floor, and sought medical treatment via ambulance. Appellant's supervisor also noted that appellant was provided with N-95 masks, that he was not exposed to biohazardous trash or waste.

By decision dated November 18, 2016, OWCP denied appellant's occupational disease claim finding that he had failed to establish the factual component of fact of injury as he provided no details of his alleged work exposure, such as the location and source of his exposure, how he was exposed, and the dates and length of each exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."<sup>4</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must

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<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>3</sup> *P.W.*, Docket No. 10-2402 (issued August 5, 2011); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> 20 C.F.R. § 10.5(q).

submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; 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 the claimant.<sup>5</sup>

Appellant's burden of proof includes the submission of a detailed description of the employment factors or conditions which he believes caused or adversely affected a condition for which compensation is claimed.<sup>6</sup>

### ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish an occupational disease causally related to factors of his federal employment.

Appellant filed an occupational disease claim alleging that on September 9, 2015 he developed light-headedness due to exposure to fumes while cleaning in the performance of his federal job duties. He did not submit any additional factual evidence in support of his occupational disease claim. Appellant did not respond to OWCP's request for additional description of his employment exposures. As noted, appellant has the burden of proof to submit a detailed description of the employment factors or conditions that he believes caused or adversely affected the condition or conditions for which he claims compensation.<sup>7</sup> The Board finds that he failed to respond to OWCP's request that he describe in greater detail the work factors alleged to have caused or contributed to light headedness or further specify and describe his claimed fume exposure at specific times and places.

Consequently, the Board finds that appellant has failed to sufficiently identify employment activities alleged to have caused or contributed to his claimed conditions to meet his burden of proof.<sup>8</sup> As appellant has not established an employment factor or exposure alleged to have caused an injury, it is unnecessary to consider the medical evidence with respect to causal relationship.<sup>9</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.

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<sup>5</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

<sup>6</sup> *Lori A. Facey*, 55 ECAB 217 (2004); *J.C.*, Docket No. 16-1663 (issued January 18, 2017); *P.G.*, Docket No. 15-1345 (issued August 23, 2016).

<sup>7</sup> See *id.*; see also *J.D.*, Docket No. 12-0073 (issued May 10, 2012); *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>8</sup> *J.C.*, *supra* note 6; *R.Z.*, Docket No. 13-1911 (issued September 15, 2014).

<sup>9</sup> See *id.*; *Bonnie A. Contreras*, 57 ECAB 364 (2006).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish an occupational disease in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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