

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

E.N., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
SAN JUAN VETERANS AFFAIRS MEDICAL)
CENTER, San Juan, PR, Employer)

Docket No. 17-1895
Issued: March 6, 2018

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 7, 2017 appellant filed a timely appeal from an August 3, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has met his burden of proof to establish an acute respiratory episode causally related to an accepted June 8, 2017 employment incident of chemical exposure.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 23, 2017 appellant, then a 56-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that exposure to fumes from floor cleaning chemicals on June 8, 2017 caused him difficulty breathing and sinus congestion. He alleged that the treated floor was in a “closed down area with poor ventilation.” Appellant stopped work on June 10, 2017 and was hospitalized from June 11 to 14, 2017. He returned to full-duty work on June 19, 2017. On the reverse of the claim form, appellant’s supervisor confirmed that, on June 8, 2017, a private maintenance company had stripped and cleaned an office floor in an area adjacent to appellant’s workstation. The supervisor requested that the maintenance workers close the office door to avoid spreading the odor.

In a June 23, 2017 form, appellant noted that he currently received military disability benefits for service-connected asthma.

In a June 28, 2017 letter, OWCP notified appellant of the type of additional evidence needed to establish his claim, including a diagnosis of a condition resulting from the alleged chemical exposure, and his physician’s explanation as to how that exposure would have caused the diagnosed condition. It afforded him 30 days to submit the requested evidence.

Appellant responded by June 26, 2017 letter, in which he contended that Team Leader G.E. would testify that, on June 8, 2017, appellant reported feeling ill due to exposure to the “cleaning of an office.” He submitted June 26, 2017 statements from coworkers C.R. and V.M. which corroborated that there was a strong odor from floor cleaner chemicals in appellant’s work area on June 8, 2017.

In a June 26, 2017 employing establishment incident report, appellant alleged that, at 7:00 a.m. on June 8, 2017, he experienced shortness of breath which he attributed to floor stripping and waxing in the secretary’s office. Appellant asserted that the area was poorly ventilated. He called in sick on June 9, 2017 due to shortness of breath affecting his preexisting asthma. Appellant took asthma medication. As his symptoms did not improve, he sought treatment at a hospital emergency room on June 10, 2017, where he was treated and released. Appellant continued to experience symptoms of choking and again reported to the emergency room. He was hospitalized from June 11 to 14, 2017. Appellant returned to full-duty work on June 19, 2017, but had lingering symptoms through June 28, 2017 and continuing.

The employing establishment provided June 23 and July 17, 2017 supervisory statements, which corroborated that, from 7:00 a.m. to 9:30 a.m. on June 8, 2017, there was a strong odor in appellant’s work area from chemicals used to clean, strip, and wax a nearby office floor. At the supervisor’s request, the workers closed the office door. The supervisor alleged that appellant did not complain of any symptoms on June 8, 2017.

Appellant also submitted medical reports from his hospitalization. Dr. Sony J. Rodriguez-Hernandez, a Board-certified internist, noted in a June 11, 2017 report that appellant had presented for the second consecutive day due to progressive shortness of breath and a productive cough. He diagnosed an asthma exacerbation and acute bronchitis with hypoxemia. In a June 12, 2017 report, Dr. Jesus M. Villafane-Moral, a resident physician, noted a history of

shortness of breath that appellant attributed to exposure to fumes from floor cleaning chemicals at work. In a June 14, 2017 discharge summary report, Dr. Jossette M. Axtmayer-Tolosa, a resident physician, noted that appellant was admitted on June 11, 2017 due to an “asthma exacerbation secondary to acute bronchitis.” Appellant attributed his shortness of breath to exposure to “floor cleaning fumes” at work.²

Following his hospitalization, appellant was initially followed by Dr. Angel Green, an attending Board-certified internist. In a June 19, 2017 report, Dr. Green noted appellant’s June 10, 2017 account of dyspnea and nasal congestion after he was exposed to floor cleaning chemicals at work. He summarized the treatment appellant received from June 10 to 14, 2017. In a June 28, 2017 report, Dr. Mary Ann Sanchez-Casiano, an attending internist, diagnosed “asthma/bronchitis,” treated with steroids and bronchodilators.

By decision dated August 3, 2017, OWCP accepted that on June 8, 2017, appellant was exposed to fumes when floors were waxed and stripped adjacent to his work area, but denied the claim as the medical evidence of record was insufficient to establish causal relationship between that exposure and diagnosed asthma and acute bronchitis.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish 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 or specific condition for which compensation is claimed is causally related to the 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 an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.⁵ 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.⁶

² Appellant also submitted a June 10, 2017 chest x-ray which was negative for abnormalities and June 12, 2017 nurse’s notes.

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

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

Generally, the medical evidence required to establish causal relationship is 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 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.⁷

ANALYSIS

Appellant claimed that he sustained an acute respiratory episode caused by exposure to fumes from floor cleaning and waxing chemicals on June 8, 2017. OWCP accepted that this exposure occurred at the time, place, and in the manner alleged, but denied the claim as the medical evidence was insufficient to establish causal relationship.

Appellant submitted medical evidence in support of his claim. In a June 11, 2017 report, Dr. Rodriguez-Hernandez, a Board-certified internist, diagnosed an asthma exacerbation with acute bronchitis. Dr. Sanchez-Casiano, an internist, diagnosed "asthma/bronchitis" on June 28, 2017. Neither physician mentioned the accepted June 8, 2017 employment incident of exposure nor provided an etiology of the diagnosed conditions. A well-rationalized opinion is particularly warranted in this case due to appellant's history of preexisting asthma connected to his military service.⁸ Therefore, the opinions of Dr. Rodriguez-Hernandez and Dr. Sanchez-Casiano are insufficient to meet appellant's burden of proof.⁹

Three of appellant's treating physicians reiterated his assertion that the accepted exposure caused a respiratory episode. In June 12 and 14, 2017 reports, resident physicians Drs. Villafane-Moral and Axtmayer-Tolosa noted that appellant attributed shortness of breath to fumes from floor cleaning chemicals at work. Dr. Green, a Board-certified internist, related in a June 19, 2017 report that appellant experienced shortness of breath following the accepted June 8, 2017 employment incident of exposure. However, these physicians did not support a pathophysiologic causal relationship between the accepted incident and the onset of shortness of breath.¹⁰ Drs. Green, Axtmayer-Tolosa, and Villafane-Moral merely repeated appellant's allegation that the accepted June 8, 2017 employment incident of exposure caused the claimed respiratory condition.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.¹¹ Appellant's honest belief that the June 8,

⁷ *Solomon Polen*, 51 ECAB 341 (2000).

⁸ *K.P.*, Docket No. 14-1330 (issued October 17, 2014).

⁹ *Supra* note 7.

¹⁰ *Id.*

¹¹ *D.D.*, 57 ECAB 734 (2006).

2017 employment incident caused a respiratory episode, however sincerely held, does not constitute medical evidence necessary to establish causal relationship.¹² As he has failed to provide a rationalized medical opinion sufficient to establish causal relationship between the claimed injury and the accepted June 8, 2017 employment incident, he has failed to meet his burden of proof.¹³

Appellant may submit additional 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 an acute respiratory episode causally related to an accepted June 8, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 3, 2017 is affirmed.

Issued: March 6, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹² *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

¹³ *Supra* note 6.