

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

J.P., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
NORTHERN ARIZONA HEALTHCARE
SYSTEM, Prescott, AZ, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 18-0660
Issued: October 3, 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 February 5, 2018 appellant filed a timely appeal from a November 14, 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 this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish upper respiratory, nasal, and vocal cord conditions causally related to the accepted factor of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence on appeal. The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision. Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

FACTUAL HISTORY

On September 21, 2017 appellant, then a 78-year-old emergency medical services work leader, filed an occupational disease claim (Form CA-2) alleging that he developed upper respiratory and mucous membrane conditions and experienced larynx and bronchial burning, loss of voice, puffiness, and dryness as a result of counting microfiber mops that were used to clean and disinfect all areas of the hospital in which he worked. He alleged that he first became aware of his claimed conditions and of their relationship to his federal employment on June 19, 2017.

OWCP, by development letter dated September 29, 2017, advised appellant of the deficiencies in his claim and requested that he submit additional factual and medical evidence, including a detailed narrative report from his physician containing a history of the injury and a medical explanation with objective evidence of how the reported work exposure caused, contributed to, or aggravated his condition. It afforded appellant 30 days to submit the necessary evidence.

In a September 19, 2017 chest x-ray report, Dr. Brian D. Kimball, a Board-certified radiologist, provided an impression of no acute findings and hyperinflation of the lungs.

In a partial neck computerized tomography (CT) scan report dated September 25, 2017, Dr. Marc R. Kramer, an employing establishment physician Board-certified in radiology, noted a history that appellant was a smoker with laryngitis. He provided the impression of mild-to-moderate mucosal thickening with gas fluid level and mucous stranding seen in the right maxillary sinus which suggested acute on chronic right maxillary sinus disease. Dr. Kramer also provided an impression of mild mucosal thickening seen in the left maxillary sinus, visualized mastoid air cells that appeared to be clear, vertebral arteries that were symmetric in size, and bilateral carotid calcifications.

Dr. Derek Hewitt, a Board-certified otolaryngologist, noted in a September 26, 2017 medical report, a history that appellant started to lose his voice about two months ago following his exposure to chemicals at the employing establishment. Appellant related to Dr. Hewitt that he lost his voice at the same time he dealt with a large amount of mop heads that were cleaned with certain chemicals. He related his other complaints which included neck pain, fatigue, shortness of breath, and a raw and tight throat. Dr. Hewitt noted a history of appellant's medical treatment, which included a chest x-ray that showed hyperinflation of the lungs. He reviewed the results of a neck CT scan performed at the employing establishment, which revealed thickening and air-fluid level in the right maxillary sinus and no other abnormal findings. Dr. Hewitt also reviewed a partial report that he believed was associated with the CT scan report. He related that the report revealed irregularity along the tongue base and glottis and recommended visualization. Dr. Hewitt described findings on physical examination and performed a diagnostic laryngoscopy, flexible fiberoptic. He believed that appellant had developed some muscle tension dysphonia. Dr. Hewitt related that he had a great view of his upper aerodigestive tract which revealed no particular abnormal findings, nothing to suggest thrush. He found no evidence of sinusitis, noting that, in other words, there was no particular drainage down the throat. Dr. Hewitt advised that there was a "remote possibility" of chemical exposure contributing to or triggering this condition, but it was difficult for him to say. He recommended that appellant finish the Augmentin and Prednisone he

was presumably taking for sinusitis. Dr. Hewitt related that he would recommend voice therapy if appellant continued with dysphonia.

In an after-visit summary report dated September 25, 2017, Dr. David A. Bryman, an employing establishment physician and family practitioner, examined appellant, diagnosed acute sinusitis, unspecified, and addressed his treatment plan.

By decision dated November 14, 2017, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the accepted exposure to microfiber mops used to clean and disinfect areas of the hospital.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof 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.⁴ 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.⁵

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) a 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 the claimant.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.⁷ The opinion of the physician must be based on a complete

³ *Supra* note 1.

⁴ *T.H.*, Docket No. 17-747 (issued May 14, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *T.H., id.*; *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁷ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

factual and medical background of the employee, 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 employee.⁸

ANALYSIS

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained upper respiratory, nasal, and vocal cord conditions caused or aggravated by the accepted factor of his federal employment.

Dr. Hewitt's September 26, 2017 report related a history that appellant started to lose his voice about two months ago after he was exposed at work to a large amount of mop heads that were cleaned with certain chemicals. He reviewed diagnostic test results and examined appellant. Dr. Hewitt indicated that appellant had some muscle tension dysphonia and that there was a "remote possibility" that chemical exposure contributed to or triggered the condition although it was difficult for him to say for sure. The Board finds that this report is of diminished probative value on the relationship between the observed condition and the accepted employment factor, because Dr. Hewitt's opinion on causal relationship, which merely notes a "remote possibility" of causal relationship, is speculative and equivocal in nature.⁹

The September 19 and 25, 2017 diagnostic test results of Dr. Kimball and Dr. Kramer, respectively, and the September 25, 2017 after summary visit report of Dr. Bryman addressed appellant's chest, neck, and nasal conditions, but failed to provide an opinion explaining causal relationship between the diagnosed conditions and the accepted employment factor. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish upper respiratory, nasal, and vocal cord conditions are causally related to the accepted employment factor. As such, appellant has not met his burden of proof.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹¹ Appellant's honest belief that his exposure to mops and the cleaning chemicals in the performance of his federal employment caused his medical conditions is not in question, but that belief, however sincerely held, does not constitute the medical evidence to establish causal relationship.¹²

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

⁹ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004) (medical opinions that are speculative or equivocal in character are of diminished probative value).

¹⁰ *See T.M.*, Docket No. 16-1456 (issued January 10, 2017); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *A.D.*, 58 ECAB 149 (2006).

¹¹ *G.E.*, Docket No. 17-1719 (issued February 6, 2018); *D.D.*, 57 ECAB 734 (2006).

¹² *G.E.*, *id.*; *H.H.*, Docket No. 16-897 (issued September 21, 2016).

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 upper respiratory, nasal, and vocal cord conditions are causally related to the accepted factor of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 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