

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

D.P., Appellant)	
)	
and)	Docket No. 18-1647
)	Issued: March 21, 2019
DEPARTMENT OF DEFENSE, DEFENSE)	
INTELLIGENCE AGENCY, Washington, DC,)	
Employer)	
)	

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 August 29, 2018 appellant filed a timely appeal from a March 5, 2018 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish medical conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 22, 2014 appellant, then a 36-year-old intelligence analyst, filed an occupational disease claim (Form CA-2) alleging that, while in the performance of duty, she

¹ 5 U.S.C. § 8101 *et seq.*

suffered from Gulf War Illness/Chronic Multisymptom Illness. She alleged that she was exposed to burn pits while deployed to Iraq in 2009, causing, contributing to, or aggravating the following symptoms of widespread chronic pain, sleep disturbances including insomnia and sleep paralysis, chronic fatigue and exhaustion, shortness of breath, numbness and tingling, dysesthesia, cognitive difficulties, difficulties with memory, poor concentration tremulousness, orthostatic intolerance which includes fainting when standing for longer than an 10-minute period, rapid heart rate, high blood pressure, visual disturbances, palpitations, and chest pain, sensitivity to light and sounds, muscle weakness and cramping, gastrointestinal issues including gastroparesis, bloating, nausea and vomiting, frequent urination and incontinence, constipation, dry eyes, night sweats, recurring skin rashes and flushing of the skin, recurring infections, and an exacerbation of migraine headaches and symptoms of Raynaud's disease. Appellant noted that she first became aware of her condition on September 7, 2009 and related it to her federal employment on April 8, 2014. She did not stop work.

By development letter dated February 3, 2015, OWCP acknowledged receipt of a medical report from Dr. Benjamin Natelson, a Board-certified neurology specialist, dated December 1, 2014 and a medical report from Dr. Ruben Cintron, a Board-certified neurology specialist, dated November 19, 2014.² It informed appellant that additional evidence was needed to establish her occupational disease claim. OWCP advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. It afforded appellant 30 days to submit additional evidence.

In a separate development letter of even date, OWCP asked the employing establishment to submit information concerning appellant's claim. No response was received.

On February 4, 2015 OWCP received various diagnostic test results and medical reports dated between 2009 and 2014. Appellant noted a November 10, 2009 visit with Dr. Shalini Kaneriya, a Board-certified internal medicine specialist, was one of her first appointments with her primary care physician after she began experiencing symptoms upon her return from deployment. Dr. Kaneriya indicated that appellant complained of chronic low back pain.

In a November 24, 2009, Dr. Cintron noted a portion of appellant's symptoms, including severe headaches, paresthesias in the lower extremities and back, and arthalgias, some of the treatments attempted, and some of the examinations performed or planned that could shed light on the situation.

By statement dated March 1, 2015, appellant indicated that she began to suffer from symptoms a week after she left Iraq in September 2009, although she was unaware of the cause. It was not until Dr. Natelson diagnosed "Gulf War Illness" after a November 26, 2014 appointment that she believed her illness related to her exposure to environmental toxins during her deployment to Iraq.

OWCP received a Department of the Air Force memorandum, dated December 20, 2006, documenting the burn pit at Balad Air Base as "a health concern" based upon after action reports.

² The Board notes that these reports do not appear in the record prior to the February 3, 2015 development letter in which OWCP acknowledges receiving them.

Lt. Col. D.C., a bioenvironmental engineering flight commander with the U.S. Air Force Biomedical Sciences Corps, reported that contaminants resulting from open burning of solid waste that exceeded the Military Exposure Guides had not yet been quantified, but noted that smoke hazards are associated with burning plastics, Styrofoam, paper, wood, rubber, POL products, nonmedical waste, some metals, some chemicals, such as paints and solvents, and incomplete combustion by-products. Possible contaminants included acetaldehyde, acrolein, arsenic, benzene, carbon dioxide, carbon monoxide, dichlorofluoromethane, ethylbenzene, formaldehyde, hydrogen cyanide, hydrogen chloride, hydrogen fluoride, various metals, nitrogen dioxide, phosgene, sulfuric acid, sulfur dioxide, toluene, trichloroethane, trichloropropane, and xylene.

By decision dated April 7, 2015, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that she was exposed to burn pits as alleged. It noted that her documentation lacked specificity regarding frequency or intensity of her alleged exposure. OWCP further noted that the Air Force memorandum characterizing the burn pit as a health concern was dated several years prior to her deployment.

On April 7, 2016 appellant requested reconsideration. In support of this request, she submitted U.S. Army Public Health Command Screening Health Risk Assessments May 11 to June 19, 2009. They detailed the findings of ambient air samples in the vicinity of the Balad burn pit, determining that polychlorinated aromatic hydrocarbons (PAHs), dioxins/furans, particulate matter (PM) PM₁₀ and PM_{2.5} and associated metals were present in the ambient air in amounts greater than established guidelines.

On April 13, 2016 OWCP received a report dated March 31, 2016 from Deborah Norris, Ph.D., a neurotoxicologist, who reviewed appellant's history and the Army air sample reports. Dr. Norris provided toxicological profiles and permissible occupational exposure limits for several observed substances. She concluded that appellant's exposure to N-Hexane, Acetone, PM₁₀ and PM_{2.5} from the burn pit caused her illnesses.

By decision dated July 6, 2016, OWCP modified the April 7, 2015 decision, finding that the Army report was sufficient to establish moderate exposure to PAHs, dioxins/furans, PM₁₀ and PM_{2.5}, and associated metals greater than established guidelines, and therefore establishing fact of injury. However, the claim remained denied because there was insufficient medical opinion evidence to establish causal relationship between appellant's diagnosed conditions and the accepted occupational exposure.

On January 3, 2017 appellant requested reconsideration. In support of her request, she referenced two medical reports that she stated she previously submitted, but that claims examiners did not discuss in their decisions: Dr. Natelson's December 1, 2014 report and Dr. Cintron's November 19, 2014 report. Appellant indicated that she enclosed a copy of each report with her request for reconsideration.³

³ The Board notes that the record reflects only Dr. Natelson's December 1, 2014 report was received with the request for reconsideration. This is the first instance of this report appearing in the record. Dr. Cintron's November 19, 2014 report previously appeared in the record on December 14, 2017.

By decision dated April 3, 2017, OWCP denied modification of its July 6, 2016 decision. It found that Dr. Natelson's December 1, 2014 report, which had not been previously considered, was insufficient to establish a diagnosed condition causally related to the accepted exposure because the report lacked a definitive opinion regarding causation. Further, OWCP noted that the report did not detail a well-rationalized medically certain opinion as to the specific relationship between appellant's diagnosis and her employment.

On December 14, 2017 appellant requested reconsideration. In support of her request, she submitted a copy of Dr. Cintron's November 19, 2014 report, which she indicated had been previously submitted, but overlooked in OWCP decisions to date.⁴ In this report, Dr. Cintron noted appellant's exposure to burn pits during her deployment to Iraq in 2009 and symptoms that began less than a week after her return to the United States. Detailing appellant's "wide range of multi-system issues" and visits and examinations she had with various physicians, he opined "with reasonable medical certainty that [appellant] was exposed to an environmental toxin during her deployment which resulted in her illness." Dr. Cintron diagnosed Gulf War Illness/Chronic Multisymptom Illness.

By decision dated March 5, 2018, OWCP denied modification of its April 3, 2017 decision. It found that Dr. Cintron's December 1, 2014 report, which had not been previously considered, was insufficient to establish a diagnosed condition causally related to the accepted exposure. OWCP found that the report lacked discussion of the specific hazardous or infectious agents appellant was exposed to, the duration and rate of frequency of exposure, and well-rationalized medical explanation cited by clinical findings explaining how exposure caused, aggravated, or exacerbated any diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷

In an occupational disease claim, appellant's burden requires submission of 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

⁴ The Board notes this is the first instance in which Dr. Cintron's November 19, 2014 report appears in the record.

⁵ *Supra* note 1.

⁶ *See J.I.*, Docket No. 18-0286 (issued September 17, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *See R.B.*, Docket No. 18-0416 (issued September 14, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish medical conditions causally related to the accepted factors of her federal employment.

Appellant alleged that she developed Gulf War Illness/Chronic Multisymptom Illness as a result of exposure to burn pits and associated airborne hazards while deployed to Iraq in 2009. OWCP accepted her occupational exposure, as well as a medical diagnosis. However, it denied the claim because the medical evidence submitted failed to establish a causal relationship between appellant's diagnosed Gulf War Illness/Chronic Multisymptom Illness and the accepted occupational exposure.

In the November 19, 2014 report, Dr. Cintron noted appellant's exposure to burn pits during her deployment to Iraq in 2009 and symptoms that began less than a week after her return to the United States. Detailing appellant's "wide range of multi-system issues" and visits and examinations she had with various physicians, he opined "with reasonable medical certainty that [appellant] was exposed to an environmental toxin during her deployment which resulted in her illness." Dr. Cintron diagnosed Gulf War Illness/Chronic Multisymptom Illness. However, he did not provide a probative, rationalized opinion regarding how the accepted federal employment exposure caused the diagnosed condition.¹⁰

While this report addresses appellant's diagnosis and an opinion concerning its cause, the report falls short of the requisite rationalized medical opinion evidence FECA requires. In this report, Dr. Cintron only generally noted her exposure to burn pits and neurotoxins. He did not sufficiently explain why, medically, appellant would have sustained Gulf War Illness/Chronic Multisymptom Illness due to her exposure.¹¹ The Board has held that medical evidence which does not offer a clear opinion explaining the physiological cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² The Board has also held that a mere

⁸ See *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

⁹ See *J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁰ *M.G.*, Docket No. 18-0654 (issued October 17, 2018); 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).

¹¹ *Id.*

¹² *L.J.*, Docket No. 17-1993 (issued March 13, 2018); see *R.B.*, Docket No. 16-1700 (issued September 25, 2017).

conclusion without the necessary rationale explaining how appellant's specific accepted work duties could result in the diagnosed condition is insufficient for her to meet her burden of proof.¹³

As well, Dr. Cintron failed to provide a detailed history of the neurotoxin exposure, only generally noting that appellant was exposed on a daily basis to burn pits and unspecified "materials that have been known to cause chronic health issues similar to hers." Without an understanding of the exposure, any opinion on causal relationship is of limited probative value as the physician is unable to describe how the incident caused her condition.¹⁴ Dr. Cintron's report lacks the specificity and detail needed to establish appellant's claim.¹⁵ Medical conclusions unsupported by rationale are of limited probative value.¹⁶ Thus, the Board finds that Dr. Cintron's report is insufficient to meet appellant's burden of proof.

Appellant also emphasizes Dr. Natelson's report dated December 1, 2014. The Board notes that he did not definitively relate her diagnosed medical conditions to the accepted exposure. Dr. Natelson indicated that the temporal relation between appellant's return to the U.S. from Iraq and the onset of her symptoms make it "highly likely" that her deployment caused her illness. His opinion on causation is speculative and couched in equivocal terms. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.¹⁷ Dr. Natelson's opinion therefore lacks the specificity and detail needed to establish appellant's claim.¹⁸

Appellant contends that the causation element of her claim is demonstrated in part by Dr. Norris' report, but there is no indication that Dr. Norris, a Ph.D., is a physician under FECA.¹⁹ Her opinion is of no probative value because lay individuals are not competent to render a medical opinion under FECA.²⁰

The Board finds that the medical evidence of record is insufficient to establish appellant's claim that her medical conditions are causally related to the accepted factors of her federal employment.²¹

¹³ *M.G.*, *supra* note 10; *see J.S.*, Docket No. 18-0477 (issued August 28, 2018).

¹⁴ *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁵ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁶ *See T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹⁷ *See Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁸ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁹ *See D.W.*, Docket No. 16-0226 (issued March 28, 2016); 5 U.S.C. § 8101(2) ("physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law").

²⁰ *See A.P.*, Docket No. 18-0238 (issued July 20, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

²¹ *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

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 her burden of proof to establish diagnosed medical conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2019
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