United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 20-0576**
	)	**Issued: August 6, 2020**
U.S. POSTAL SERVICE, DETROIT PROCESSING & DISTRIBUTION CENTER, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On January 21, 2020 appellant filed a timely appeal from a September 17, 2019 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 this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its September 17, 2019 decision. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on July 31, 2019, as alleged.

FACTUAL HISTORY

On July 31, 2019 appellant, then a 67-year-old occupational health nurse, filed a traumatic injury claim (Form CA-1) alleging that on that morning she experienced burning in her nose and face, itching, a headache, and a hoarse throat after encountering the strong smell of a fragrant odor while in the performance of duty. She stopped work the same day. On July 31, 2019 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical treatment for her claimed injury.

In an August 1, 2019 statement, M.W., a human resource specialist with the employing establishment, explained that she went to the medical unit to investigate appellant's claim of a strong odor of perfume which caused her to cough, have headaches, and burning eyes and skin. When she got to the medical unit she recounted a faint smell of perfume and food. M.W. asked appellant and another employee about the odor and the other employee explained that the smell originated from a spray bottle utilized by appellant after she used the restroom. M.W. then opened the bottle and smelled the solution, noting that it had a very strong odor. Appellant insisted that the solution was odorless and sprayed the solution in another room to prove it was odorless. M.W. noted that the solution still had a strong smell and stated that it was not odorless.

In a development letter dated August 9, 2019, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus limited expenses had therefore been authorized. However, a formal decision was now required. OWCP advised appellant that the evidence submitted was insufficient to establish that she actually experienced the incident alleged to have caused the injury. It requested additional factual and medical evidence and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's traumatic injury claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to submit the necessary evidence.

In a July 31, 2019 medical report, Dr. Katherine Cybinski, Board-certified in family medicine, evaluated appellant's symptoms of headaches and burning in her nose and lips after she was exposed to a heavy perfume at work. She diagnosed an acute nonintractable headache, unspecified headache type and an allergic reaction and opined that it was likely a skin irritation.

In an August 1, 2019 medical report, Dr. Elaine Cassen, Board-certified in internal medicine, indicated that on the morning of July 31, 2019 appellant experienced adverse effects to an aerosol spray that a nurse sprayed in the hallway at work. She also noted appellant's history of chronic rhinitis. Dr. Cassen opined that appellant experienced an irritation to the spray and recommended that she remain out of work for the remainder of the day and through

August 2, 2019. She diagnosed a nonintractable headache, unspecified chronic pattern, unspecified headache type and rhinitis, unspecified type.

In an August 1, 2019 attending physician's report (Form CA-16), Dr. Cassen again noted that appellant experienced a burning nose and raspy voice after being exposed to a sprayed fragrance. She checked a box marked "No" to indicate her belief that appellant's injury was not caused or aggravated by her federal employment, except that her exposure to the aerosol had occurred on the job.

Appellant submitted e-mails dated from August 9 to 14, 2019 between herself and Dr. Cassen in which she reported that her symptoms continued and requested referral to an allergist for further evaluation. Dr. Cassen explained that an allergist may not be able to help because her symptoms sounded like an adverse reaction to the aerosol and the stress of the situation, not an allergic reaction.

In an August 16, 2019 statement, J.C., appellant's coworker, indicated that appellant requested that she come to her office on July 31, 2019 and explained that when she went to the medical unit she smelled a perfume or deodorizer in the hallway.

In an August 22, 2019 medical report, Dr. Cassen noted that appellant was still experiencing symptoms related to her exposure to a fragrant aerosol. She reviewed the medications appellant was using to treat her symptoms and diagnosed chronic rhinitis and stress at work.

In a September 3, 2019 e-mail M.S., appellant's coworker, explained that appellant used a citrus spray in the workplace and that it could be smelled throughout the medical department.

In a September 4, 2019 medical note, Dr. Rachel Kado, a Board-certified allergist, noted that she saw appellant that day and requested that she be excused from work for the remainder of the day.

In a September 9, 2019 response to OWCP's questionnaire, appellant explained that she had a bottle of citrus spray that she kept in the bathroom and that she never sprayed it in the hallway. She insisted that she only used the spray for certain odors and that M.S. also used a spray on a daily basis in her room next door to appellant's room.

In undated treatment instructions, Dr. Kado explained that appellant's symptoms seemed to be associated to an irritant effect causing vasomotor rhinitis.

By decision dated September 17, 2019, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It explained that she had not submitted factual evidence to support that she experienced a work-related condition due to her office containing a strong fragrance.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] Fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[10] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[11] An employee's

[3] *Supra* note 1.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[11] *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the claimed July 31, 2019 employment incident occurred in the performance of duty, as alleged.

The record establishes that on July 31, 2019 appellant was exposed to a strong odor from a fragrance in the medical unit. M.W.'s August 1, 2019 statement confirms that on the day of the alleged incident appellant complained that the strong smell of a perfume in the medical unit caused her to cough, have a headache, and experience burning in her eyes and skin. Upon further investigation, she confirmed that she smelled a faint odor of perfume and food in the area where the appellant was exposed. Further, she found that the spray bottle in the office had a very strong odor. Appellant's coworker, J.C, provided an August 16, 2019 statement asserting that she was called to appellant's office and that she could smell a perfume or deodorizer in the hallway on July 31, 2019. Additionally, appellant sought prompt medical care, first with Dr. Cybinski on July 31, 2019, who noted her exposure to a strong perfume at work the same day and diagnosed a headache and allergic reaction. Drs. Cassen and Kado also evaluated appellant's symptoms in relation to the July 31, 2019 employment incident on August 1 and September 4, 2019, respectively, and a nonintractable headache, unspecified chronic patter; unspecified headache type and rhinitis, unspecified type; and symptoms associated with irritant effect causing vasomotor rhinitis.

The injuries appellant claimed are consistent with the facts and circumstances she set forth, statements from her coworkers, her course of action and the medical evidence she submitted. Further, the history of the employment incident was confirmed by Drs. Cybinski, Cassen, and Kado's contemporaneous medical reports. The Board thus finds that appellant has met her burden of proof to establish that the July 31, 2019 employment incident occurred in the performance of duty, as alleged.[13]

As appellant has established that the July 31, 2019 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.[14] As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's September 17, 2019 decision and remand the case for consideration of the medical evidence of record.[15] After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted July 31, 2019 employment incident.

[12] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[13] *See M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[14] *Id*.

[15] *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the July 31, 2019 employment incident occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established an injury causally related to the accepted July 31, 2019 employment incident.[16]

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 6, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[16] The case record contains an authorization for examination and/or treatment (Form CA-16) dated July 31, 2019. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).