



## **FACTUAL HISTORY**

On February 8, 2018 appellant, then a 29-year-old special agent trainee, filed an occupational disease claim (Form CA-2) alleging that he sustained sharp chest pain and heavy breathing while shooting at the firing range and running from class to class. He did not stop work.

In a development letter dated February 12, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of evidence needed, including a reasoned medical report from a physician providing an opinion on causal relationship. In an attached questionnaire, OWCP asked appellant about “exposure to substances such as paint, fumes, solvents, *etc.* that contributed to his pulmonary condition.” In a separate letter of even date, it asked the employing establishment to comment on his exposure to substances and provide results of air sampling and safety data.

Appellant submitted a February 6, 2018 emergency department report in which Dr. Douglas Sturm, an osteopath Board-certified in emergency medicine, noted a history of chest pain with light activity, worsened by movement, and deep breaths. He described examination findings of normal heart rate and rhythm, normal heart sounds, and normal pulses. Appellant was not in respiratory distress, and breath signs were normal. Two electrocardiograms were performed. Each showed early repolarization. Dr. Sturm diagnosed atypical chest pain and referred appellant to Dr. Anna Czajka, a Board-certified cardiologist, for follow-up. A February 6, 2018 chest x-ray showed no convincing evidence of acute thoracic disease.

In a report dated February 8, 2018, Dr. Czajka noted a history of left-sided chest pain aggravated by deep breaths over the prior two weeks. She described examination findings and diagnosed chest pain, unspecified, and abnormal electrocardiogram. Dr. Czajka recommended additional studies.

In correspondence dated March 14, 2018, an employing establishment supervisory special agent M.H., indicated that appellant’s injury/illness was consistent with his allegations. Further, M.H. indicated no knowledge that appellant was exposed to harmful substances, fumes, dust, or chemicals. The employing establishment also forwarded a position description coversheet for the position of special agent.

By decision dated May 11, 2018, OWCP denied the claim finding that appellant had not established fact of injury because the evidence submitted was insufficient to establish that the event occurred as alleged.

On January 9, 2019 appellant requested reconsideration. He asserted that he was forced against his will to go to the emergency room. Appellant maintained that his claimed injury was caused by his required rigorous 20-week training cycle, and that if he had not gone to the medical appointments he would have been deemed unable to complete his training. He noted that he was only requesting reimbursement for funds covering the appointments. Appellant attached a completed questionnaire in which he stated that when the injury occurred he was at the firing range and was not inhaling irritants, and that he had been sent to the emergency room.

By decision dated January 17, 2019, OWCP found that appellant had established fact of injury, but denied the claim because he had not submitted medical evidence that established a diagnosis in connection with the accepted factors of his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 of FECA, 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.<sup>4</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>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must 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 diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background, 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 incident.<sup>8</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision.

On February 8, 2018 appellant filed an occupational disease claim alleging that he sustained sharp chest pain and heavy breathing while shooting at the firing range and running from class to class. OWCP sent development letters to both him and the employing establishment on February 12, 2018. Each letter, however, identified a claimed pulmonary condition rather than a

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<sup>3</sup> *Id.*

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>7</sup> *D.L.*, Docket No. 19-1053 (issued January 8, 2020).

<sup>8</sup> *D.J.*, *supra* note 4.

cardiac condition, and requested further information regarding appellant's exposure to substances, including paint, fumes, and cleaning solvent etc.

OWCP's procedures provide that it is responsible for requesting evidence in developing a case,<sup>9</sup> including all information needed to properly adjudicate a case.<sup>10</sup> This includes issuing development letters to a claimant and the employing establishment that are tailored to the specifics of the individual case.<sup>11</sup> OWCP did not appropriately tailor the development letter to the specific allegations made in this case. Appellant did not allege exposure to substances such as paint, fumes, or solvents, which could cause a pulmonary condition. Rather, he alleged chest pain and heavy breathing while firing at a shooting range and running from class to class. The Board notes that, while OWCP has accepted employment factors, it is unclear what factors are accepted, given the discrepancy in the development of appellant's claim. The Board also finds that, because OWCP failed to send proper claim development letters requesting required information about a claimed cardiac condition, rather than solely a pulmonary condition, appellant's claim has not been properly developed.<sup>12</sup> The Board, therefore, finds that the case must be remanded to OWCP to prepare appropriate development letters that properly identify a claimed cardiac event.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> Once OWCP undertakes development of the record, it must do a complete job in procuring evidence that will resolve the relevant issues in the case.<sup>14</sup> In this case it failed to properly develop the claim, and its January 17, 2019 decision failed to make adequate findings on the issues presented. As OWCP did not properly discharge its responsibilities in development of the record, the case will be remanded to OWCP.

On appeal appellant maintains that he was forced against his will to go to the emergency room by the employing establishment. OWCP, however, did not adjudicate the issue of whether emergency or unusual circumstances were present, which would allow OWCP to exercise its discretion for payment of medical expenses. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed authorization for examination and/or treatment (Form CA-16) within four hours of the alleged injury. In this case, the record does not contain a CA-16 form or any other authorization from OWCP for medical treatment. However, under section 8103 of FECA, OWCP has broad

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4.c(2) (June 2011); see *W.B.*, Docket No. 19-1775 (issued December 18, 2019).

<sup>10</sup> Federal (FECA) Procedure Manual, *id.* at Chapter 2.800.5.b(1).

<sup>11</sup> *Id.*

<sup>12</sup> See *D.B.*, Docket No. 19-0443 (issued November 15, 2019).

<sup>13</sup> *W.B.*, *supra* note 9.

<sup>14</sup> *C.H.*, Docket No. 19-0255 (issued September 3, 2019).

discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances.<sup>15</sup>

After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

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

Issued: March 9, 2020  
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See J.W.*, Docket No. 19-0335 (issued July 2, 2019); *see also supra* note 9 at Part 3 -- Medical, *Authorizing Examination and Treatment* at Chapter 3.300.3a.(3) (February 2012).