

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

B.S., Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 20-0927
Issued: January 29, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 16, 2020 appellant filed a timely appeal from a September 26, 2019 merit decision and a February 20, 2020 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish dermatitis causally related to the accepted factors of his federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 21, 2018 appellant, then a 59-year-old shipfitter, filed an occupational disease claim (Form CA-2) alleging that he developed dermatitis due to factors of his federal employment. He noted that he first became aware of his condition and realized that it was caused or aggravated by factors of his federal employment on November 23, 2017. Appellant explained that the chemicals he was exposed to caused him pain and skin irritation around his sideburns and facial structure. He did not stop work. .

In an August 29, 2018 letter, Dr. Reginald Henry, a Board-certified dermatologist, noted that he had been treating appellant since March 2018 for an itchy dermatitis on his beard area and scalp. He explained that, through the use of medication, he was able to get appellant's condition under control; however, when appellant cuts his beard his rashes return. Dr. Henry requested that appellant be assigned to a job where he did not have to wear a respirator so that he would not have to cut his beard and, thereby, prevent his rash.

In an October 10, 2018 statement, R.C., appellant's supervisor, indicated that at some point in October appellant began working with the painters. He recounted asking appellant how everything was going and he would respond that the paint fumes and chemicals that he used to mop the floors would bother him and cause headaches. In February 2018, R.C. began to notice facial sores in appellant's beard. On March 29, 2018 appellant provided a letter from his physician that stated that wearing a respirator would worsen appellant's skin condition. On August 21, 2018 R.C. recounted that appellant was assigned to a job that required him to wear a respirator and he refused to shave his beard due to the issues he was dealing with on his face.

In a November 5, 2018 personal statement, appellant explained that, from October 16 to December 14, 2017, he was assigned to a job that required him to sweep, mop, and wax various floors. Shortly, after he began his assignment, he recounted experiencing headaches due to the smell of the liquid chemicals and paint and informing R.C. of his situation. Appellant worked for eight hours a day, five days per week. By November 23, 2017 his sideburns, face, jaw, and chin began itching, burning and watering. Appellant went to a local pharmacy where a pharmacist recommended a medication to address his symptoms. After the medication did not help, he followed up with Dr. Henry on March 2, 2018 who continued to treat him for his condition.

In a development letter dated November 21, 2018, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of his claimed injury and requested a narrative medical report from his treating physician, which contained a detailed description of findings and diagnosis, explaining how his work activities caused, contributed to, or aggravated his medical condition. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond. No additional evidence from either party was received.²

² The Board notes that the November 21, 2018 development letters to appellant and the employing establishment were both returned as undeliverable.

By decision dated January 2, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed condition was causally related to the accepted factors of his federal employment.

OWCP continued to receive evidence. In a January 28, 2019 letter, Dr. Henry detailed his history of treatment of appellant for dermatitis. He explained that it was never clear what his dermatitis was from, but appellant informed him that during the fall of 2017 appellant began to experience headaches and rashes after he began cleaning and waxing office floors at work. Dr. Henry stated that his dermatitis did not fit any specific dermatitis diagnosis and explained that the condition was most often a reaction to something. He opined that appellant's condition was likely a reaction to the chemicals he was exposed to at work and declared that he could not find any other reason for him to develop a rash.

In a February 20, 2019 documentation of temporary work restrictions, Dr. Elizabeth Merrell, Board-certified in internal medicine, submitted temporary work restrictions for appellant and advised that he not use a respirator.

In an undated statement, appellant provided that he was submitting additional information concerning the chemicals he was exposed to at work, as well as additional statements from his coworkers. He attached a series of material safety data sheets providing information on an epoxy adhesive, a heavy duty nonduty 1 floor stripper, an industrial enamel, nonflaming water-based enamel, a silicone alkyd copolymer, a leak sealer, and a specially denatured alcohol.

On June 3, 2019 appellant requested reconsideration of OWCP's January 2, 2019 decision.

In a March 27, 2019 statement L.B., appellant's coworker, recounted appellant's duties consisting of sweeping, moping and stripping floors, taking out trash, cleaning tables with furniture polish, sanding walls, painting walls, and wiping down trophy cases.

By decision dated July 17, 2019, OWCP denied modification of its January 2, 2019 decision.

OWCP continued to receive evidence. On July 25, 2019 Dr. Henry referred appellant to Dr. Ronald Buckley, a Board-certified dermatologist, for a second opinion concerning appellant's medical condition.

In an August 22, 2019 medical report, Dr. Buckley evaluated appellant for a skin rash. He noted the onset of appellant's symptoms were gradual over two years and began following exposure to chemicals at work. Dr. Buckley provided that, based on Dr. Henry's evaluation, he concurred with his assessment and treatment and opined that it was likely that the chemicals used in appellant's work environment may have contributed to the development of his condition. He concluded by reasoning that it was likely that appellant's condition would exacerbate if appellant returned to his original job.

Appellant also resubmitted copies of the material safety data sheets and medical evidence previously received by OWCP.

On September 6, 2019 appellant requested reconsideration of OWCP's July 17, 2019 decision.

By decision dated September 26, 2019, OWCP denied modification of its July 17, 2019 decision.

OWCP continued to receive evidence. Appellant submitted a November 1, 2019 report of Dr. Henry the contents of which mirrored his January 28, 2019 report dated November 1, 2019.

On November 18, 2019 appellant requested reconsideration of OWCP's September 26, 2019 decision.

By decision dated February 20, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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,³ 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.⁴ 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.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) 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 identified employment factors.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that he developed dermatitis causally related to the accepted factors of his federal employment.

Appellant submitted multiple copies of Dr. Henry's January 28, 2019 letter in which Dr. Henry detailed his history of treatment of appellant for his dermatitis. He informed Dr. Henry that during the fall of 2017 he began experiencing headaches and rashes after he began cleaning and waxing office floors at work. Dr. Henry explained that appellant's dermatitis did not fit any specific diagnosis and opined that his condition was likely a reaction to the chemicals he was exposed to at work. While he provided an affirmative opinion on causal relationship, he did not offer any medical rationale sufficient to explain how and why he believes that the factors of appellant's federal employment could have resulted in or contributed to his diagnosed condition. Without explaining how the chemicals appellant's was exposed to at work caused or contributed to his condition, Dr. Henry's letter is of limited probative value.¹⁰ Additionally, Dr. Henry's statement that appellant's condition was "likely" a reaction to the chemicals appellant was exposed to is speculative and equivocal, and thus insufficient to establish appellant's burden of proof.¹¹ Further, his conclusions are largely based on appellant's opinion as to what caused his condition, rather than by his independent analysis of the cause of his dermatitis.¹² For these reasons, Dr. Henry's January 28, 2019 letter is insufficient to meet appellant's burden of proof.

Dr. Henry's remaining evidence consisted of multiple copies of his August 29, 2018 letter in which he explained that, through the use of medication, he was able to get appellant's dermatitis under control and recommended that appellant only perform work that did not require him to shave his beard or to wear a respirator. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ As Dr. Henry's August 29, 2018 letter did not offer an opinion

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *Id.*; *Victor J. Woodhams*, *supra* note 6.

¹⁰ *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹¹ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *see Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹² *See D.L.*, Docket No. 15-0866 (issued November 23, 2015); *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

as to whether appellant's dermatitis was causally related to the accepted factors of his federal employment, the Board finds that it is insufficient to meet appellant's burden of proof.

Dr. Buckley noted in his August 22, 2019 medical report that the onset of appellant's symptoms were gradual over two years and began following his exposure to chemicals at work. He opined that, based on Dr. Henry's evaluation, it was likely that the chemicals used in appellant's work environment may have contributed to the development of appellant's condition. As explained above, Dr. Buckley's statement that it was "likely" that the chemicals used in appellant's work environment "may" have contributed to the development of his condition is speculative and equivocal, and thus insufficient to establish appellant's burden of proof.¹⁴ For this reason, his August 22, 2019 medical report is insufficient to meet appellant's burden of proof.

The remaining medical evidence consisted of Dr. Merrell's February 20, 2019 documentation of temporary work restrictions in which she submitted temporary work restrictions for appellant and advised that he not used a respirator. The Board has held that a medical report that does not address causal relationship is of no probative value.¹⁵ For this reason, Dr. Merrell's medical evidence is insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that his dermatitis is causally related to the accepted factors of his federal employment, the Board finds that he has not met his burden of proof to establish his claim.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA¹⁶ vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.¹⁷

To require OWCP to reopen a case for merit review under 5 U.S.C. § 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁸

¹⁴ *Supra* note 11.

¹⁵ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *Supra* note 1.

¹⁷ 5 U.S.C. § 8128(a).

¹⁸ 20 C.F.R. § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.¹⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁰ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed a timely request for reconsideration on February 20, 2020,²² but he did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that he is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).²³

Appellant also failed to submit relevant and pertinent new evidence in support of his February 20, 2020 request for reconsideration. The underlying issue on reconsideration was whether he had met his burden of proof to establish that his dermatitis was causally related to the accepted factors of his federal employment. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.²⁴ Appellant submitted a November 1, 2019 report of Dr. Henry the contents of which mirrored the January 28, 2019 report dated November 1, 2019. While this evidence is new, it is substantially similar to the prior evidence of record. Providing additional medical evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.²⁵ As appellant did not provide relevant and pertinent new evidence, he is not entitled to a merit based on the third requirement under 20 C.F.R. § 10.606(b)(3).²⁶

¹⁹ *Id.* at § 10.607(a).

²⁰ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²¹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²² *Supra* note 19; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

²³ *Supra* note 18.

²⁴ *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

²⁵ *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁶ *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

Accordingly, the Board finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²⁷

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he developed dermatitis causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2020 and September 26, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 29, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁷ See *D.S.*, Docket No. 18-0353 (issued February 18, 2020).