

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

J.S., Appellant)

and)

U.S. POSTAL SERVICE, CHARLOTTE)
PROCESSING & DISTRIBUTION CENTER,)
Charlotte, NC, Employer)

Docket No. 22-0883
Issued: December 7, 2023

Appearances:

Erik B. Blowers, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 24, 2022 appellant, through counsel, filed a timely appeal from a February 8, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted employment exposures.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 4, 2019 appellant, then a 52-year-old tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging chronic bilateral nasal obstruction with hypertrophy of both interior nasal turbinates, and chronic rhinitis due to factors of his federal employment including continuous exposure to engine fumes and secondhand tobacco smoke at his workplace during the previous 12 years. He noted that he first became aware of his condition and realized its relation to his federal employment on September 27, 2019. Appellant did not stop work.

In a September 27, 2019 report, Dr. Robert Harley, a Board-certified otolaryngologist recounted appellant's complaints of chronic bilateral nasal obstruction. Since 2007, appellant had worked 10- to 12-hour shifts as a tractor trailer driver for the employing establishment and had been exposed to secondhand smoke from other drivers who used the same vehicle during prior work shifts. On examination, Dr. Harley noted moderate bilateral inferior turbinate hypertrophy, a Mallampati score of 3, enlarged tonsils, and mild tongue base enlargement. He opined that appellant's moderate bilateral inferior turbinate hypertrophy had "more likely than not been caused and aggravated by continued exposure to toxic fumes and secondhand smoke." Dr. Harley recommended that appellant avoid exposure to vehicle exhaust fumes and secondhand smoke. He recommended bilateral submucous resection of the inferior turbinates.

In a development letter dated November 14, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of what potentially harmful substances appellant had been exposed to. It afforded both parties 30 days to respond.

In response, the employing establishment submitted a December 9, 2009 statement confirming that appellant worked 40 hours a week as a tractor trailer operator. Employees were offered respiratory masks to minimize exposure. Appellant had been assigned to a single vehicle that was not to have been utilized by a smoker to avoid having fumes in the vehicle. The employing establishment contended that employees were not allowed to smoke in any postal vehicle. It also provided an official position description dated November 16, 2002 for appellant's tractor trailer operator job.

By decision dated December 18, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence submitted was insufficient to establish that the implicated employment exposure occurred as described. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On January 9, 2020 appellant, through counsel, requested reconsideration.

In a January 9, 2020 statement, appellant asserted that he had been required to share multiple vehicles with multiple drivers as there was a shortage of available vehicles. He contended that many of the drivers with whom he shared vehicles had smoked tobacco products during their shifts, which left secondhand smoke in the vehicle. Additionally, appellant alleged that many of the vehicles were in poor condition such that dangerous fumes recirculated into the truck.

Appellant submitted a September 9, 2019 report, wherein Dr. Harley recounted that appellant drove trucks for 10 to 12 hours at a time with exposure to engine fumes and secondhand tobacco smoke. He had never smoked. On examination Dr. Harley observed continued moderate bilateral inferior turbinate hypertrophy. He diagnosed hypertrophy of both inferior nasal turbinates and chronic rhinitis. Dr. Harley recommended that appellant avoid secondhand tobacco smoke and vehicle exhaust fumes. He again recommended surgical submucous resection of the inferior turbinates.

By decision dated April 8, 2020, OWCP modified its prior decision to accept that appellant was exposed to secondhand tobacco smoke and vehicle fumes in the course of his federal employment, as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted employment exposure.

On December 18, 2020 appellant, through counsel, requested reconsideration.

Appellant submitted additional evidence. In an October 16, 2020 report, Dr. Harley opined that appellant had developed chronic nasal congestion, facial pressure, and refractory rhinorrhea due to occupational exposures to vehicle exhaust, engine smoke, transmission fluid leaks, coolant leaks, oil leaks, smokestack problems, and secondhand tobacco smoke from cigarettes, cigars, and vapes used by other drivers. Additionally, he referenced three published medical studies that supported that chronic exposure to secondhand tobacco smoke affected the sinonasal mucosa, resulting in chronic rhinosinusitis. Dr. Harley explained that principles discussed in the articles applied to appellant's specific factual situation.

By decision dated March 18, 2021, OWCP denied modification of its April 8, 2020 decision.

On August 23, 2021 appellant, through counsel, requested reconsideration.

OWCP subsequently received a May 22, 2021 report, wherein Dr. Harley opined that appellant "developed chronic nasal obstruction after prolonged exposure to airborne irritants including tobacco smoke and engine fumes." Dr. Harley noted that appellant had undergone bilateral submucous resection of the inferior nasal turbinates on April 26, 2021 as his chronic nasal obstruction had been refractory to oral antihistamines and topical nasal steroids. He explained that the results of the three medical studies noted in his October 16, 2020 report supported that appellant's chronic exposure to secondhand tobacco smoke had increased his risk of chronic sinusitis and had a deleterious effect on his sinonasal mucosa.

By decision dated February 8, 2022, OWCP denied modification.

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 timely filed within the applicable

³ *Id.*

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 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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted employment exposures.

In his September 9 and 27, 2019 and October 16, 2020 reports, Dr. Harley provided a history of the accepted employment exposures to vehicle fumes and secondhand tobacco smoke. He opined that these exposures caused and aggravated bilateral inferior turbinate hypertrophy with chronic nasal obstruction and refractory rhinorrhea, necessitating surgical resection on April 26, 2021. Dr. Harley, however, failed to provide medical rationale explaining how the accepted employment exposures physiologically caused or aggravated any of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the case of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁰ Therefore, these reports are insufficient to establish appellant's claim.

⁴ *C.D.*, Docket No. 20-0858 (issued November 30, 2020); *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *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).

⁸ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *G.R.*, Docket No. 21-0695 (issued June 2, 2022); *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *F.S.*, Docket No. 22-0070 (issued June 14, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Additionally, in reports dated October 16, 2020 and May 22, 2021, Dr. Harley referenced medical studies generally supporting causal relationship between exposure to secondhand tobacco smoke and the development of chronic rhinorrhea and nasal congestion. The Board has held, however, that reliance on medical literature is of diminished probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case.¹¹ As such, this evidence is also insufficient to meet appellant's burden of proof.¹²

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted employment exposures, the Board finds that appellant has not met his burden of proof.

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 a medical condition causally related to the accepted employment exposures.

¹¹ *L.S.*, Docket No. 22-0023 (issued March 1, 2023); *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

¹² *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board