

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

A.B., Appellant)	
)	
and)	Docket No. 23-0827
)	Issued: December 27, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, UNITED STATES)	
PENITENTIARY ATLANTA, Atlanta, GA,)	
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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 23, 2023 appellant filed a timely appeal from a December 1, 2022 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 over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 1, 2022 decision, appellant submitted additional evidence to OWCP. 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 his burden of proof to establish a diagnosed medical condition in connection with the accepted February 14, 2022 employment incident.

FACTUAL HISTORY

On March 9, 2022 appellant, then a 47-year-old facility management employee, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2022 he experienced coughing, sneezing, an extreme sore throat, shortness of breath, and chest pressure after sanding paint and concrete inside the cells while in the performance of duty. He explained that he inhaled a large amount of paint and silica dust and that, when he sneezes, coughs, or blows his nose, he notices blood and a gray and black discharge. Appellant stopped work on March 7, 2022.

In support of his claim, appellant submitted a March 4, 2022 authorization for examination and/or treatment (Form CA-16). In Part B of the Form CA-16, attending physician's report, dated March 7, 2022, Jessica Fuentes, a nurse practitioner, related that he was injured after sanding jail cells and may have inhaled particles, resulting in bloody sputum when coughing and blowing his nose. She diagnosed a cough and checked a box marked "Yes" to indicate that the condition was caused or aggravated by the employment activity described.

In March 7, 2022 notes, Ms. Fuentes diagnosed an acute cough and provided work restrictions. She noted that appellant presented with a three-week history of cough, mild shortness of breath, and bloody sputum and nasal drainage, and that he reported being injured while sanding jail cells even though he wore a respirator mask. In a referral of even date, Ms. Fuentes referred him to an ear, nose, and throat specialist.

A March 7, 2022 x-ray report of appellant's chest revealed no significant abnormality.

In March 14, 2022 work status notes, Johnny Mulliniks, a nurse practitioner, performed a physical examination and diagnosed shortness of breath and acute bronchitis. He provided work restrictions and noted that appellant inhaled paint dust at work.

Subsequently, on March 21, 2022 Ms. Fuentes performed a physical examination, diagnosed acute bronchitis, and returned appellant to work with no restrictions.

In a March 22, 2022 report of work status (Form CA-3), the employing establishment related that appellant stopped work on March 11, 2022 and returned full time with no restrictions on March 22, 2022.

In an April 6, 2022 note, Kristin Nation, a nurse practitioner, held appellant off work until April 13, 2022.

In an April 12, 2022 note, Dr. Vijay Patel, Board-certified in pulmonary and internal medicine, held appellant off work until May 2, 2022.

In a June 1, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim

and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received a May 17, 2022 note from Dr. Akshay Bhatnagar, Board-certified in internal medicine and pulmonary medicine, holding appellant off work until June 3, 2022 due to significant respiratory issues.

By decision dated July 7, 2022, OWCP accepted that the February 14, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

In a July 1, 2022 letter, Dr. Patel continued to hold appellant off work due to his ongoing symptoms of shortness of breath dyspnea with exertion, which occurred after his exposure to dust and paint fumes at work. He noted that appellant had physical restrictions limiting his ability to walk, climb ladders, carry weight greater than 15 pounds, or traverse stairs.

In a July 11, 2022 letter, the employing establishment offered appellant a limited light-duty work assignment, which he accepted on August 2, 2022.

On November 13, 2022 appellant requested reconsideration of the July 7, 2022 decision and submitted additional evidence. In his request, he noted that he was injured on February 14, 2022 while working inside a prison cell sanding paint and concrete with a supplied painters-style mask, which exposed him to particulate dust and concrete silica dust. Appellant related that, during the proceeding two weeks, he coughed and sneezed up gray/black residue and coughed up blood for approximately 30 days. He discharged blood while blowing his nose or sneezing, experienced shortness of breath and exhaustion, and was diagnosed with severe bronchitis causing dyspnea. Appellant's symptoms persisted for over 45 days and limited his physical abilities and ability to perform daily tasks, including walking, speaking, and eating.

In a June 6, 2022 note, Dr. Bhatnagar held appellant off work until June 30, 2022 due to significant respiratory issues.

By decision dated December 1, 2022, OWCP denied modification of its July 7, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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,⁴ that an injury was sustained in the performance of duty as alleged, and that

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.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 upon 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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted February 14, 2022 employment incident.

In support of his claim, appellant submitted an April 12, 2022 note and July 1, 2022 letter from Dr. Patel holding him off work. Similarly, in notes dated May 17 and June 6, 2022, Dr. Bhatnagar held appellant off work until June 30, 2022 due to significant respiratory issues. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition.¹⁰ As Dr. Patel and Dr. Bhatnagar did not diagnose a medical condition in these notes, this evidence is insufficient to establish appellant's claim.¹¹

Additionally, appellant submitted an attending physician's report, work status and visit notes, and referral dated March 4, 7, and 21, 2022, in which Ms. Fuentes, a nurse practitioner,

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁰ *A.R.*, Docket No. 19-1560 (issued March 2, 2020); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

¹¹ *Id.*

diagnosed an acute cough and acute bronchitis. OWCP also received March 14 and April 6, 2022 notes from Mr. Mulliniks and Ms. Nation, nurse practitioners, diagnosing shortness of breath and acute bronchitis. However, the Board has long held that certain healthcare providers such as nurse practitioners are not considered “physician[s]” as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹² Accordingly, these notes are insufficient to satisfy appellant’s burden of proof.¹³

The remaining medical evidence of record consists of a March 7, 2022 x-ray report. The Board has held that diagnostic tests, standing alone, lack probative value.¹⁴ Accordingly, this report is also insufficient to meet appellant’s burden of proof.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted February 14, 2022 employment incident, 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 10.607.¹⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted February 14, 2022 employment incident.

¹² Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

¹³ *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

¹⁴ *D.D.*, Docket No. 20-0626 (issued September 14, 2020); *B.M.*, Docket No. 19-1341 (issued August 12, 2020).

¹⁵ The Board notes that the employing establishment issued a Form CA-16, dated March 4, 2022. A 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. See 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2023
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