

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

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| F.S., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0070 |
| |) | Issued: June 14, 2023 |
| SOCIAL SECURITY ADMINISTRATION, |) | |
| Lumberton, NC, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 15, 2021 appellant filed a timely appeal from an August 9, 2021 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted November 19, 2019 employment exposure(s).

FACTUAL HISTORY

On December 2, 2019 appellant, then a 48-year-old social insurance specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2019 she experienced shortness of breath, coughing, an ache in her chest, light headedness, and loss of voice when

¹ 5 U.S.C. § 8101 *et seq.*

exposed to fumes from paint and other substances used for renovations while in the performance of duty. She stopped work on November 19, 2019 and returned to work on December 2, 2019.²

By development letter dated December 23, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. By a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to respond.

In response, appellant provided a January 21, 2020 statement alleging that on November 19, 2019 she was exposed to paint fumes, as well as dust on her desk and on surfaces in public service areas, while the office she was working in was undergoing renovation. She experienced headaches, dizziness, lightheadedness, shortness of breath, chest pains, loss of voice, and throat problems. Appellant asserted that personnel from the Department of Labor's Occupational Safety and Health Administration (OSHA) issued citations for violations related to the renovations. She contended that home nebulizer treatments and steroid medications prescribed on and after November 19, 2019 had failed to control her symptoms.

In November 19, 2019 emergency room reports, Dr. Jody Lakey, an osteopath Board-certified in emergency medicine, related appellant's history of asthma. Appellant presented with symptoms of chest discomfort, shortness of breath, cough, headache, lightheadedness, and nausea after exposure to paint fumes from an office renovation at work. She was administered nebulizer treatment in the emergency department. On examination after the nebulizer treatment, appellant had no wheezing or respiratory distress and her pulse oxygenation was 100 percent on room air. A chest x-ray demonstrated no acute pathology. Appellant exhibited chest wall tenderness at approximately the seventh rib near the sternal junction. Dr. Lakey opined that appellant's symptoms were "likely reactive airway from allergen [appellant] encountered at work." She prescribed an albuterol inhaler. Dr. Lakey held appellant off work through November 24, 2019.

Appellant also submitted reports dated from December 6, 2019 through January 7, 2020 by Morgan Hicks, a physician assistant, holding her off work through February 6, 2020 due to respiratory conditions sustained after occupational exposure to paint fumes and other substances during office remodeling.

In a January 17, 2020 statement, the employing establishment confirmed that on November 16 and 17, 2019 the office where appellant worked had been painted, two walls demolished, and carpet and cove base molding installed. There were "reports of paint smells on November 18, 2019," which dissipated by the end of the day. The contractor used a plastic barrier during demolition, employee workstations were covered on November 16 and 17, 2019 and the contractor cleaned on November 17 and 19, 2019. Appellant reported for duty on November 19, 2019 approximately 36 hours after the construction had ceased. She stopped work that day and returned on December 2, 2019. Appellant was off work again from December 3 through 5, 2019

² On December 5, 2019 the employing establishment signed an authorization for examination and/or treatment (Form CA-16) related to the November 19, 2019 occupational exposure.

due to breathing problems. She returned to the office briefly on December 6, 2019 then remained off work through December 30, 2019. Appellant continued to report respiratory issues.

The employing establishment provided material safety data sheets for adhesives used in the office renovations.

By decision dated January 31, 2020, OWCP accepted that the claimed occupational exposures had occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed condition and the accepted employment exposure. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 2, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She asserted that, subsequent to the November 19, 2019 occupational exposures, she had been diagnosed with asthma and required steroid medication and nebulizer treatments.

On March 5, 2020 OWCP received a December 20, 2019 OSHA Notice of Unsafe or Unhealthful Working Conditions based on a December 4, 2019 inspection of the employing establishment. OSHA found violations graded as "serious" for failing to inform employees of hazards, failing to provide employees with information on hazardous chemicals present in their work area during renovations, and failing to maintain safety data sheets for oil-based enamel paint, adhesives, and other chemicals.

On March 5, 2020 OWCP received an undated note by Dr. Carmen A. Taype, a Board-certified internist and pulmonologist, who found that appellant's asthma was "triggered by dust and dust mites."

During the telephonic hearing, held on June 8, 2020, appellant explained that she had asthma as a small child, but had not experienced symptoms as an adult until the November 19, 2019 occupational exposure.

By decision dated July 10, 2020, OWCP's hearing representative affirmed the January 31, 2020 decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted occupational exposures.

On July 6, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a January 23, 2020 report, Dr. Taype noted that appellant's respiratory symptoms had been present for three months after renovations at her workplace. Appellant had been "exposed to strong odors and paint. She has family history of asthma." Dr. Taype noted in a February 24, 2020 report that appellant experienced increased symptoms at work, which she attributed to dust exposure. She submitted periodic reports through June 22, 2021, noting appellant's asthma and dust mite allergies, with shortness of breath relieved by inhalers. Dr. Taype diagnosed moderate persistent asthma without complications, shortness of breath, multiple allergies, postnasal drip, and chronic gastro esophageal reflux disease (GERD). She prescribed medications.

In a March 26, 2020 report, Dr. Stephen A. Imbeau, Board-certified in allergy and immunology, noted that appellant “started with breathing issues in November” and had been diagnosed with asthma. He obtained spirometry testing with normal results. Dr. Imbeau diagnosed allergic rhinitis due to pollen, severe persistent asthma, and chronic maxillary sinusitis. He commented that appellant’s situation was complex as she had strong allergies, sinusitis, probable asthma, and possible gastric reflux. Dr. Imbeau ordered allergen testing.

In a June 24, 2020 report, Dr. Imbeau noted that appellant had been “bothered by irritants and dust at work.” He obtained normal spirometry results. Dr. Imbeau diagnosed allergic rhinitis with mostly pollen allergy, severe asthma, and chronic sinusitis. He opined that appellant’s allergic sinusitis and rhinitis were not occupationally related, and that, as he had not treated her for asthma, he could not address whether the condition was related to her work. Dr. Imbeau commented that a barium swallow test demonstrated significant reflux, which indicated that she might not have asthma. He provided periodic reports through May 13, 2021 diagnosing severe persistent asthma, allergic rhinitis due to pollen, GERD, and atopic dermatitis.

Appellant also provided an April 24, 2020 report by Barbara Boyce, a certified nursing assistant; a November 20, 2020 report by Debbie Page, a licensed practical nurse and April 4, 2021 emergency department home care instructions for bronchitis and costochondritis.

Appellant also submitted imaging studies. January 23, 2020 and March 22, 2021 chest x-rays were within normal limits, and an April 23, 2020 esophogram demonstrated a tiny sliding hiatal hernia and mild distal gastro esophageal reflux disease (GERD). Appellant also submitted January 27, 2020 laboratory test results.

By decision dated August 9, 2021, OWCP denied modification of the July 10, 2020 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 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,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

³ *Supra* note 1.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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 *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).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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 disability, and the specific employment incident identified by the claimant.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 19, 2019 employment exposure(s).

In support of her claim, appellant submitted Dr. Lakey's November 19, 2019 report in which she noted that appellant had developed chest discomfort, shortness of breath, cough, headache, lightheadedness, and nausea after exposure to paint fumes from the employing establishment's renovations. She diagnosed "likely reactive airway" caused by workplace exposures and found appellant disabled from work through November 24, 2019. Dr. Lakey's opinion that appellant's condition is "likely" reactive airway is speculative in nature. The Board has held that medical opinions that suggest that a condition is "likely" or "possibly" employment related are speculative or equivocal in character have little probative value.¹¹ Therefore, this report is insufficient to establish appellant's claim.

Dr. Taype, in January 23 and February 24, 2020 reports, noted that appellant's respiratory symptoms began after exposure to dust, paint, and strong odors during workplace renovations. In a report dated March 5, 2020 report, she found that appellant's asthma was triggered by dust and dust mites. Dr. Taype's subsequent reports through June 22, 2021 diagnose asthma, shortness of breath, allergies, postnasal drip, and GERD. She thus indicated that dust exposure, including occupational exposure to dust on unspecified dates, triggered appellant's asthma and respiratory symptoms. Dr. Taype, however, failed to provide medical rationale explaining how the November 19, 2019 employment exposure(s) physiologically caused or aggravated any of the

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *D.L.*, Docket No. 21-0325 (issued November 5, 2021); *K.L.*, Docket No. 18-1029 (issued January 9, 2019). See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁹ *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ See *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *Z.B.*, Docket No. 17-1336 (issued January 10, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

diagnosed conditions. 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.¹² As such, the Board finds that her opinion is of limited probative value and insufficient to establish appellant's claim.

Dr. Imbeau, in a March 26, 2020 report, noted that appellant developed respiratory issues in November 2019 and had been diagnosed with asthma, but that her situation was complex as she had multiple allergic, respiratory, and probable gastric conditions. He noted in a June 24, 2020 report that appellant had been "bothered by irritants and dust at work." Dr. Imbeau opined, however, that her allergic rhinitis and sinusitis were not occupationally related, but due to pollen. This opinion negates causal relationship between appellant's diagnosed conditions and the November 19, 2019 employment exposure(s). The Board has held that medical evidence that negates causal relationship is of no probative value.¹³ As such, Dr. Imbeau's opinion is insufficient to establish appellant's claim.

Appellant also provided reports dated from December 6, 2019 through January 7, 2020 by Ms. Hicks, a physician assistant, an April 24, 2020 report by Ms. Boyce, a certified nursing assistant, and a November 20, 2020 report by Ms. Page, a licensed practical nurse. The Board has held that certain healthcare providers such as certified nursing assistants, licensed practical nurses, and physician assistants are not considered physicians as defined under FECA.¹⁴ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

Appellant also submitted January 23, 2020 and March 22, 2021 chest x-rays, an April 23, 2020 esophogram, and January 27, 2020 laboratory test results. The Board, however, has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment exposure(s) caused any of the diagnosed conditions.¹⁵

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted November 19, 2019 employment exposure(s), the Board finds that appellant has not met her burden of proof.

¹² *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *B.P.*, Docket No. 20-0820 (issued July 12, 2022); *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

¹⁴ Section 8102(2) of FECA provides as follows: (2) physician includes 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). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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 M.C.*, Docket No. 20-1266 (issued September 13, 2022) (a physician assistant is not considered a physician as defined under FECA); *J.H.*, Docket No. 21-0876 (issued October 22, 2021) (a certified nursing assistant is not considered a physician as defined under FECA); *A.K.*, Docket No. 20-0003 (issued June 2, 2020) (a licensed practical nurse is not considered a physician as defined under FECA).

¹⁵ *E.C.*, Docket No. 22-0604 (issued September 30, 2022); *J.G.*, Docket No. 21-1334 (issued May 18, 2022); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

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 10.607.¹⁶

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 19, 2019 employment exposure(s).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ The Board notes that the employing establishment issued a Form CA-16, dated October 29, 2020. 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).