United States Department of Labor
Employees' Compensation Appeals Board

T.E., Appellant	)	
and	)	**Docket No. 23-0484**
	)	**Issued: September 8, 2023**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS FEDERAL CORECTION INSTITUTION, Estill, SC, Employer	)	

Appearances:
Paul H. Felser, Esq., for the appellant[1]
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 February 23, 2023 appellant, through counsel, filed a timely appeal from a November 10, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted February 23, 2020 employment exposure.

FACTUAL HISTORY

On February 25, 2020 appellant, then a 55-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on February 23, 2020 he developed sore throat, chest pain, clogged lungs and sinuses, and a pounding headache when he inhaled smoke from inmates who were smoking while in the performance of duty. He explained that. Appellant stopped work that day.

On February 24, 2020 the employing establishment issued an authorization for examination and/or treatment (Form CA-16). In an attending physician's report, Part B of the February 24, 2020 Form CA-16, a physician with an illegible signature, noted that appellant inhaled smoke from an unknown substance on February 22, 2020. The physician noted that appellant's influenza test was negative, that his examination was within normal limits, and that he was able to work light duty.[3] The physician noted with a checkmark "Yes" that appellant's condition was caused or aggravated by his employment activity.

In a February 24, 2020 report, Angela Higgs, a nurse practitioner, noted that appellant reported that on February 22, 2020 some inmates were smoking an unknown substance, which he indicated was not cannabis or cigarettes, he developed chest and head symptoms, and he vomited. An assessment of unspecified injury of bilateral lung injury was provided.

In a February 27, 2020 report, which Dr. Kenneth Eugene, a family medical specialist noted appellant's symptoms and findings of dark urine, chest congestion, burning chest pain, and shortness of breath symptoms. A diagnosis of acute upper respiratory infection was provided. Appellant was referred to the pulmonary department for evaluation due to shortness of breath and inhalation exposure concerns.

In a March 4, 2020 work status note, Dr. C. Dickens, a family medical specialist, reported a February 23, 2020 date of injury, noted appellant's symptoms of shortness of breath and burning of the nose, and diagnosed other disorders of lung. Appellant was released to full duty.

In a development letter dated March 13, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to respond. OWCP also requested that the employing establishment provide any treatment notes it had in its possession directly to OWCP.

In a March 4, 2020 report, Dr. Wayne Hodges, a family medical specialist, reported essentially normal examination findings. He diagnosed other disorders of lung and suggested that appellant seek treatment with a pulmonologist.

[3] On February 9, 2020 appellant tested positive for Influenza Flu A with negative x-rays and electrocardiogram (ECG).

In a March 19, 2020 duty status report (Form CA-17), a physician with an illegible signature, noted a February 23, 2020 date of injury and diagnosed shortness of breath and a sinus condition.

By decision dated April 21, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted February 23, 2020 employment incident.

On May 19, 2020 appellant, through counsel, requested a telephonic hearing before OWCP's Branch of Hearings and Review. A hearing was held telephonically on August 3, 2020.

In a March 23, 2020 report, Dr. Maria C. Mascolo, specializing in critical care medicine, reported that a month ago appellant inhaled smoke from an unknown substance that several inmates were smoking. She reported appellant's symptoms and medical treatment, noting that he never smoked, had not experienced any breathing problems, history of asthma or any ongoing medical problems. Dr. Mascolo provided an assessment of moderate persistent reactive airways disease without complication. She stated that she suspected that appellant's symptoms were due to his smoke exposure a little over one month prior.

In a June 23, 2020 report, Dr. Adam P. Campbell, a Board-certified otolaryngologist, reported that appellant never smoked and that he denied recreational drug use. He noted the history of injury and indicated that appellant returned with multiple chemical sensitivity. Dr. Campbell performed a nasal endoscopy and provided assessments of septal deviation, chronic frontal sinusitis, dyspnea, hoarseness, cough, anosmia/hyposmia, inferior turbinate hypertrophy and atypical facial pain.

By decision dated September 4, 2020, OWCP's hearing representative affirmed OWCP's April 21, 2020 decision.,

On August 11, 2021 appellant, through counsel, requested reconsideration.

Evidence received in support of the reconsideration request included a February 28, 2020 chest x-ray report, and a February 28, 2020 work excuse note signed by a registered nurse.

In a February 28, 2020 report, Dr. Jonathan Winstead, a Board-certified otolaryngologist, diagnosed and treated appellant for bronchitis after inhalation of an unspecified chemical at work.

In an undated narrative report, Dr. Campbell noted that he treated appellant following a February 23, 2020 exposure at work where an inmate was burning an unknown substance. He discussed appellant's symptoms and opined that "I believe that this smoke exposure and inhalation may have been the exposure which could have sensitized [appellant] to develop a chemical sensitivity. I believe that he has developed multiple chemical sensitivity, also known as idiopathic environmental intolerance." Dr. Campbell explained that sensitization occurs after multiple low dose exposures to a substance or after an acute exposure and that during the sensitization phase patients may complain of a multitude of possible symptoms. Based on appellant's account of his exposure and when symptoms began, Dr. Campbell opined that "it appears that his condition may have been caused or exacerbated by the inhalation of smoke due to the burning of an unknown substance by an inmate while at work." He indicated that it was not known what the substance was and further indicated that appellant may have been developing a sensitivity due to chronic

exposure at subtoxic doses and that the more acute exposure could have exacerbated his condition, noting that there was no test for this, and it was unknown whether this was a temporary or permanent condition. Dr. Campbell further noted that appellant had indicated that inmates were often found burning different substances and that he has been exposed to this smoke previously. He opined that appellant could work in an environment which did not aggravate his chemical sensitivity to smoke, certain fragrances, and other chemicals such as cleaning solutions.

OWCP also received an August 30, 2020 memorandum from the employing establishment's health unit, which confirmed that in past years there were multiple incidents where staff found themselves responding to medical emergencies in smoke filled rooms where an inmate was suspected to be under the influence of an unknown substance. The memorandum also noted that appellant's February 23, 2020 smoke exposure was such an incident.

By decision dated November 9, 2021, OWCP denied modification of its September 4, 2020 decision.

On November 8, 2022 appellant, through counsel, requested reconsideration.

OWCP received a June 1, 2020 progress report from Dr. Mascolo and a duplicate copy of Dr. Campbell's undated narrative report.

By decision dated November 10, 2022, OWCP denied modification of its November 9, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

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 and place, and in the manner alleged. The second component is

[4] *Id.*

[5] *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).

[6] *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).

[7] *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).

whether the employment incident caused a personal injury and can be established only by medical evidence.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[10] 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 incident.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted February 23, 2020 employment exposure.

Appellant submitted multiple medical reports from Dr. Campbell who indicated that he treated appellant following a February 23, 2020 employment incident during which he was exposed to an inmate who was burning an unknown substance. In his June 23, 2020 report, Dr. Campbell reported that appellant never smoked and denied recreational drug use and that he returned with multiple chemical sensitivity. Following a nasal endoscopy, Dr. Campbell provided assessments of septal deviation, chronic frontal sinusitis, dyspnea, hoarseness, cough, anosmia/hyposmia, inferior turbinate hypertrophy and atypical facial pain. He did not, however, provide an opinion on whether the accepted employment incident caused or contributed to the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] In his undated narrative report, Dr. Campbell discussed appellant's symptoms and diagnosed multiple chemical sensitivity also known as idiopathic environmental intolerance. He opined that the February 23, 2020 smoke exposure and inhalation "may have been" the exposure which "could have" sensitized appellant to develop a chemical sensitivity. He further opined that it appeared that appellant's condition may have been caused or exacerbated by the inhalation of smoke due to the burning of an unknown substance by an inmate while at work. The Board has held that medical opinions that are speculative or equivocal in nature are of diminished probative value.[13] Dr. Campbell's opinions, therefore, are insufficient to meet appellant's burden of proof.

[8] *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).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *Id*.

[12] *R.P.*, Docket No. 20-0891 (issued September 20, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *A.D.*, Docket No. 21-0510 (issued September 29, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

OWCP also received several reports from Dr. Mascolo, which noted a proper history of injury and reported on appellant's symptoms, noting that he never smoked, did not have a history of breathing problems, asthma, or any other ongoing medical problems. In a March 23, 2020 report, Dr. Mascolo provided an assessment of moderate persistent reactive airways disease without complication. However, her opinion that she "suspected" that appellant's symptoms are due to his smoke exposure a little over a month ago is speculative and equivocal in nature.[14] Dr. Mascolo's opinion, therefore, is insufficient to meet appellant's burden of proof.

The medical reports from Drs. Eugene, Dickens, Hodges, and Winstead failed to provide an opinion on causal relationship between appellant's accepted February 23, 2020 employment injury and his diagnosed conditions.[15] Thus these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted a February 24, 2020 attending physician's report from a physician with an illegible signature. The Board has held that a report that bears an illegible signature cannot be considered probative medical evidence because it lacks proper identification.[16] Thus, this report is of no probative value.

OWCP also received a February 24, 2020 report from a nurse practitioner. Certain healthcare providers such as nurses and nurse practitioners, however, are not considered "physician[s]" as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted February 23, 2020 employment exposure, 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.

[14] *See A.I.*, Docket No. 22-1023 (issued February 28, 2023); *D.D.*, Docket No. 21-1029 (issued February 22, 2022).

[15] *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *K.C.*, Docket No. 18-1330 (issued March 11, 2019); *R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). 5 U.S.C. § 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See K.C.*, Docket No. 18-1330 (issued March 11, 2019); *see also Roy L. Humphrey*, 57 ECAB 238 (2005).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted February 23, 2020 employment exposure.[18]

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 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

[18] The Board notes that the employing establishment issued a Form CA-16 authorization for examination or treatment. 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).