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

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| **T.K., Appellant** | ) | |
| **and** | ) | **Docket No. 23-1118** |
| | ) | **Issued: February 5, 2024** |
| **DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION CUMBERLAND, Cumberland, MD, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

### *JURISDICTION*

On August 25, 2023 appellant filed a timely appeal from a May 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 February 13, 2023 employment exposure.

### *FACTUAL HISTORY*

On February 14, 2023 appellant, then a 35-year-old warehouse employee, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2023 he was exposed to a powdery

[1] 5 U.S.C. § 8101 *et seq.*

substance inside a book when inspecting mail and packages while in the performance of duty. He noted that the substance came into contact with his hands, and that he experienced heart palpitations, sweating, and visual and auditory hallucinations. Appellant stopped work on the date of injury and returned to work on February 14, 2023.

On February 13, 2023 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to "exposure to white powder hallucinogen."

In a development letter dated February 21, 2023, 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 thereafter received an attending physician's report (Form CA-20) dated February 13, 2023 by Dr. Rayan El Sibai, an emergency medicine physician, who noted that appellant had been exposed to a foreign substance while at work on that date. Dr. El Sibai diagnosed tachycardia and hypertension, and checked a box marked "Yes" indicating that he believed that these conditions were caused or aggravated by an employment activity. He released appellant to return to full-duty work effective February 14, 2023.

By decision dated March 31, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted February 13, 2023 employment exposure.

On April 24, 2023 appellant requested reconsideration of OWCP's March 31, 2023 decision. In support of his request, he submitted a February 13, 2023 emergency room note by Nicole Ross, a physician assistant, who related complaints of dizziness, generalized weakness, chest tightness, and shortness of breath, which he attributed to exposure to an unknown powdery substance on his face and hands while inspecting a book at work one hour prior to his arrival at the emergency department. Ms. Ross performed a physical examination, which was normal, and noted that appellant's laboratory results were unremarkable. She administered intravenous saline, after which he reported feeling much better.

In a memorandum of telephone call (Form CA-110) dated April 25, 2023, appellant indicated that the employing establishment medical staff instructed him to go the emergency room after the February 13, 2023 exposure. He further indicated that the employing establishment security staff advised him that the substance was confirmed to be a known hallucinogen.

In an April 27, 2023 narrative report, Ms. Ross reiterated the findings from her February 13, 2023 evaluation. She opined that appellant's "symptoms of shortness of breath, dizziness, and reporting of seeing shapes when closing eyes is consistent with exposure to foreign substance, possibly hallucinogenic as reported by prison staff."

By decision dated May 18, 2023, OWCP denied modification of its March 31, 2023 decision.

## *LEGAL PRECEDENT*

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,[2] that the claim was timely filed within the applicable time limitation period of FECA, 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.[3] 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.[4]

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 an injury and can be established only by medical evidence.[5]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[6] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 identified by the employee.[7]

## *ANALYSIS*

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted February 13, 2023 employment exposure.

In support of his claim, appellant submitted a Form CA-20, dated February 13, 2023 by Dr. El Sibai, who diagnosed tachycardia and hypertension. Dr. El Sibai checked a box marked "Yes" indicating that he believed that these conditions were caused or aggravated by an

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[2] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[4] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

[5] *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).

[6] *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).

[7] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of an affirmative checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[8] Therefore, Dr. El Sibai's report is insufficient to establish appellant's claim.

Appellant also submitted February 13 and April 27, 2023 notes by Ms. Ross, a physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.[9] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[10] Therefore, these reports are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted February 13, 2023 employment exposure, the Board finds that he 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 February 13, 2023 employment exposure.[11]

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[8] *G.J.*, Docket No. 23-0577 (issued August 28, 2023); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[9] Section 8101(2) of FECA provides that 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). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *C.G.*, Docket No. 20-0957 (issued January 27, 2021) (physician assistants are not considered physicians under FECA); *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).

[10] *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

[11] The Board notes that 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 May 18, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2024
Washington, DC

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

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

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