United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 23-1073**
	)	**Issued: January 23, 2024**
DEPARTMENT OF THE NAVY, NAVAL STATION NORFOLK SECURITY DEPARTMENT, Norfolk, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 10, 2023 appellant filed a timely appeal from a June 6, 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a pulmonary condition causally related to the accepted November 15, 2021 employment exposure.

[1] 5 U.S.C. § 8101 *et seq*.

[2] On January 11, 2023 the Director of OWCP filed a motion to remand. In light of the Board's disposition of this case, it concludes that the motion to remand filed by the Director of OWCP is moot.

FACTUAL HISTORY

On December 7, 2021 appellant, then a 57-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2021 she was exposed to dust from demolition of a popcorn ceiling, while in the performance of duty. She noted that management ordered that the ceiling be torn down without notifying any of the employees working in the building. Appellant alleged that dust got in her lungs and caused her to have shortness of breath and rapid heartbeat. She also alleged that the dust got in her face and her clothes and caused runny eyes and nose, hoarseness, and irritation in her voice and throat. Appellant stopped work on November 15, 2021. The employing establishment confirmed that she was in the performance of duty at the time of the alleged incident.

In a development letter dated December 7, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

A November 15, 2021 clinical summary, indicated that appellant was seen by a physician assistant who noted that appellant had unspecified asthma with acute exacerbation.

In November 17 and 18, 2021 notes, Dr. Helen Hsu, an emergency medicine specialist related that appellant was seen in the emergency room for shortness of breath. She diagnosed cough and shortness of breath. Dr. Hsu excused appellant from work on November 18 and 19, 2021, and cleared appellant to return to work on November 20, 2021.

In a November 18, 2021 after-visit summary, Dr. Arlene Palting, a family medicine specialist, advised that appellant was seen on November 18, 2021, for mild intermittent asthma. She related that appellant could return to work on December 14, 2021.

In a November 22, 2021 narrative statement, appellant explained that on November 15, 2021 she was exposed to what she initially thought was a cloud of smoke and later determined it was white powdery dust from removal of a popcorn ceiling. She noted that her throat and eyes became irritated, her nose began to run, and her chest began to tighten. Appellant related that she immediately contacted her supervisor, Captain S.P., and informed him that she was exposed to dust and was having difficulty breathing, and also informed Major M., a police captain. She noted that she went to urgent care, was placed on a breathing machine to administer a treatment for her lungs, was referred to a pulmonary specialist, and was placed off work for two days.

OWCP received several reports including industrial hygiene bulk/swipe samples and November 17 and 19, 2021 asbestos reports which revealed that no asbestos was detected.

Captain S.P., a supervisor, confirmed that on November 15, 2021 he was informed by appellant that she was exposed to dust from the tear down of a popcorn ceiling at the employing establishment.

In a December 9, 2021 report, Dr. Nadeem Inayet, Board-certified in critical care and pulmonary disease, noted appellant's history of injury and that she was diagnosed with asthma. He diagnosed severe persistent asthma, and occupational exposure to dust.

In a January 7, 2022 progress note, Dr. Inayet related appellant's history of injury and diagnosed severe persistent asthma and occupational exposure to dust. He noted that a report from the employing establishment was positive for lead and advised that appellant was not to return to work in the area where she was exposed to dust, until that area was clear of debris and dust, but she was cleared to work in an area that did not contain dust.

In an undated attending physician's report (Form CA-20), Dr. Inayet noted that appellant walked into a cloud of dust and he related appellant's diagnosis occupational exposure to dust. He marked the box "Yes" in response to whether he believed her condition was caused or aggravated by an employment activity.

OWCP received several diagnostic test results which revealed the presence of lead. It also received a January 7, 2022 computerized tomography (CT) scan of the chest read by Dr. Andrea Misquitta, Board-certified in diagnostic radiology, which revealed no acute abnormality, and a December 21, 2021 spirometry with bronchodilator test which revealed no obstructive airways disease.

By decision dated January 10, 2022, OWCP denied appellant's claim. It found that she did not submit any medical evidence which contained a diagnosis in connection with the work injury or events. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 7, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated April 8, 2022, OWCP's hearing representative vacated the prior decision and remanded the case to OWCP, finding that the record contained an uncontroverted inference of causal relationship based on the report from Dr. Inayet and that OWCP was obligated to further develop the case record. The OWCP hearing representative determined that OWCP should prepare a detailed statement of accepted facts (SOAF) and refer appellant, the medical record, and the SOAF to a specialist in the appropriate field of medicine to provide a specific diagnosis and advise whether or not the condition was due to the November 15, 2021 incident, either by direct cause, precipitation, acceleration, or aggravation. If a preexisting condition was aggravated, the specialist should be asked to comment on the extent and duration of any disability and to provide medical rationale for all opinions rendered.

OWCP received air sample reports reflecting that lead and silica were found in the samples collected.

Appellant's August 25, 2022 pulmonary function test revealed spirometry was normal, no response to bronchodilators; flow volume loop and lung volume was normal, and diffusion capacity was normal.

On September 1, 2022 OWCP referred appellant, along with the case record, the SOAF, and a series of questions to Dr. Naga S. Chigurupati, Board-certified in critical care and sleep medicine, for a second opinion examination.

In an August 25, 2022 report, Dr. Chigurupati noted appellant's history of injury and treatment and opined that appellant could have developed reactive airway disease from the dust exposure. He related that he did not recommend continued use of inhalers after lack of improvement in the symptoms after three months. Dr. Chigurupati advised that her weight could be contributing to the shortness of breath and recommended cardiopulmonary testing.

In an August 29, 2022 addendum, Dr. Chigurupati explained that he could not find any abnormality to explain appellant's symptoms and opined that "objectively there is no evidence of any pulmonary abnormality." He further opined that appellant was not capable of returning to her job as a police officer as she complained of shortness of breath on exertion and that work restrictions/limitations were medically warranted. Dr. Chigurupati explained that after the exposure to dust, it was likely that she developed reactive airway disease, but she should have felt symptomatic relief by the time of his examination. He recommended evaluation by a cardiologist to determine the cause of appellant's continued shortness of breath.

On November 21, 2022 OWCP referred appellant, along with the case record, the SOAF, and a series of questions to Dr. Jasdeep Dalawari, a Board-certified interventional cardiologist, for a second opinion examination.

In a December 5, 2022 Form CA-20, Dr. Inayet diagnosed asthma and chronic cough. He indicated by checking a box marked "Yes" that the conditions were caused or aggravated by employment activity.

In a December 5, 2022 report, Dr. Dalawari noted appellant's history of injury and treatment and physical examination findings. He related diagnoses of dyspnea s/p occupational exposure to dust, reactive airways disease/asthma, and multiple allergies. Dr. Dalawari concluded that appellant's occupational exposure to dust aggravated her underlying reactive airways disease and multiple allergies. He opined that appellant's current disability was not a result of her dust exposure as this had resolved.

By decision dated June 6, 2023, OWCP denied appellant's traumatic injury claim, finding that the medical evidence was insufficient to establish causal relationship between a diagnosed condition and the accepted June 15, 2021 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 any disability or medical condition for which compensation is claimed is causally related to the

[3] *Supra* note 1.

[4] *See Y.S.*, Docket No. 22-1142 (issued May 11, 2023); *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).

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[7]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[8] 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.[9]

ANALYSIS

The Board finds that this case is not in posture for decision.

The Board notes that appellant was referred to two second opinion physicians, Dr. Chigurupati and Dr. Dalawari. In an August 25, 2022 report, Dr. Chigurupati opined that appellant could have developed reactive airway disease from the dust exposure at work. In an August 29, 2022 addendum, Dr. Chigurupati opined that after the exposure to dust, it was likely that appellant developed reactive airway disease. However, he explained that she should have felt symptomatic relief by the time of his examination and again recommended evaluation by a cardiologist to determine the cause of her continued shortness of breath. Dr. Chigurupati also noted that he could not find any abnormality to explain appellant's symptoms.

The initial report from Dr. Chigurupati indicated that appellant could have developed reactive airway disease and his addendum indicated that it was likely that appellant developed reactive airway disease. As such, his reports were speculative and equivocal.[10]

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[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.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *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).

[9] *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).

[10] *B.B.*, Docket No. 21-0284 (issued October 5, 2022); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler,* 45 ECAB 365 (1994).

The Board notes that OWCP followed the recommendation of Dr. Chigurupati that appellant be referred for another second opinion evaluation with a cardiologist. In a December 5, 2022 report, Dr. Dalawari related diagnoses of dyspnea s/p occupational exposure to dust, reactive airways disease/asthma, and multiple allergies. He concluded that appellant's continued shortness of breath was not the result of the accepted dust exposure. However, Dr. Dalawari did not provide medical rationale explaining his conclusion.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.[11] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[12]

Because both Dr. Chigurupati and Dr. Dalawari were serving as OWCP second opinion physicians and they both supported that her medical conditions were causally related to her accepted employment exposure to ceiling dust on November 15, 2021, the Board finds that the case must be remanded to OWCP.[13] OWCP shall request supplemental reports from Drs. Chigurupati and Dalawari, which address, with medical rationale, whether appellant developed diagnosed conditions due to the accepted November 15, 2021 employment incident, and if so the duration of any disability. If Drs. Chigurupati and Dalawari are unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant, together with a SOAF and a series of questions, to another second opinion physician in the appropriate field of medicine for a rationalized opinion as to whether the accepted employment exposure caused or aggravated a diagnosed medical condition. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[11] *See S.H.*, Docket No. 21-1380 (issued September 22, 2023); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

[12] *Id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

[13] *See L.F.*, Docket No. 20-0459 (issued January 27, 2021); *J.T.*, Docket No. 18-1300 (issued March 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 23, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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