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

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| **P.V., Appellant** | ) | |
| **and** | ) | **Docket No. 25-0547** |
| | ) | **Issued: June 23, 2025** |
| **DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, SANTA TERESA PORT OF ENTRY, Santa Teresa, NM, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On May 16, 2025, appellant filed a timely appeal from a March 24, 2025 merit decision and an April 28, 2025 nonmerit 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.

### ***ISSUES***

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted employment exposure; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq*.

## ***FACTUAL HISTORY***

On December 24, 2024, appellant, then a 53-year-old customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he developed flu-like symptoms due to exposure to Legionella bacteria in the drinking water at work. He noted that he first became aware of this condition on December 13, 2024, and realized its relation to his federal employment on December 14, 2024. Appellant stopped work on December 23, 2024, and returned to work on December 24, 2024.

In a December 14, 2024 visit-summary note, Dr. Muhammad Jamil, a Board-certified internist, indicated that appellant was seen that day for flu-like symptoms. He diagnosed otalgia, left ear.

An unsigned December 23, 2024 clinical summary report noted a diagnosis of acute cough and that a chest x-ray and sputum culture would be ordered, pending approval, to rule out Legionella bacteria. A note by a nurse practitioner indicated that appellant was seen that day and that he could return to work on December 24, 2024.

In a December 24, 2024 statement, appellant indicated that Legionella bacteria was detected in the drinking water, which impacted the water used for ice from ice machines, washing hands and brushing teeth at the employing establishment. He noted that while water sources were covered on November 27, 2024, the employees were not informed about the Legionella bacteria until December 13, 2024. In December 19 and 23, 2024 emails, appellant requested testing to determine if he had contracted Legionella.

In a January 3, 2025 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded 60 days to submit the necessary evidence. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of his statements. OWCP afforded the employing establishment 30 days to respond.

OWCP subsequently received a January 21, 2025 response from the employing establishment, which included a memorandum confirming that the baseline drinking water quality test conducted on October 29, 2024 contained above normal levels for Legionella and Coliform bacteria in several buildings.

In a January 10, 2025 report, Dr. James Caviness, a Board-certified in occupational medicine and an employing establishment physician, noted that he had not spoken with or examined appellant with regard to the reported "flu-like" symptoms on December 14, 2024. He stated that, around November 27, 2024, the Government Service Agency (GSA) had covered most water sources where Legionella bacteria had been detected. Dr. Caviness opined that appellant's December 13, 2024 flu-like symptoms were not due to Legionella bacteria exposure. He explained that there was no supporting objective medical evidence; the incubation period for Legionella bacteria did not fit with appellant's report of symptoms, which had developed 17 days after

contaminated water sources were covered; and his prescribed medical course was unrelated to treatment of Legionella bacteria.

In a follow-up letter dated February 10, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the January 3, 2025 letter to submit the necessary evidence. OWCP further advised that if the necessary evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received an undated statement from appellant, which further described his exposure to contaminated drinking water.

In a March 24, 2025 statement, appellant asserted that he recently learned the water source was still contaminated. Pictures of the water sources, which he indicated were covered for no use, were provided.

By decision dated March 24, 2025, OWCP denied appellant's occupational disease claim. It found that the implicated exposure to drinking water contaminated with Legionella bacteria had occurred as alleged; however, it denied appellant's claim finding that causal relationship had not been established between his diagnosed medical conditions and the accepted employment exposure.

On April 11, 2025, appellant requested reconsideration and submitted additional evidence.

A March 24, 2025 violation notice from the Occupational Safety and Health Administration (OSHA) documented that on or about December 13, 2024 employees were not provided with potable water in all places of employment, and a document titled "Information About Your Drinking Water."

In a separate statement also dated March 24, 2025, appellant indicated that he was trying to establish exposure to Legionella bacteria from the drinking water. He noted that the water had previously tested positive for high levels of arsenic, noting that his claim filed under OWCP File No. xxxxxx528 had been denied and he had submitted proof of gastrointestinal treatment in that case.

Appellant also provided literature related to evaluating claims that involve exposure to toxic substances and contaminated water; an August 19, 2022 report from a nurse practitioner, which noted slightly elevated arsenic levels; and a copy of a December 7, 2023 development letter addressed to the employing establishment under OWCP File No. xxxxxx528.

Appellant also submitted an April 7, 2025 notice from OSHA, which indicated that the inspection completed on March 24, 2025 revealed that employees were exposed to Legionella bacteria from the water system based on water sampling conducted on December 23, 2024, with test results noting the presence of Coliform and Legionella bacteria. Additionally, the notice reiterated that potable water was not provided in all places of employment for drinking, washing of the person, cooking, washing of foods, washing of cooking or eating utensils, washing of food preparation or processing premises, and personal service rooms.

By decision dated April 28, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

## ***LEGAL PRECEDENT -- ISSUE 1***

An employee seeking benefits under FECA[2] 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,[3] 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.[4] 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.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] 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 factors.[8]

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[2] *Id.*

[3] *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).

[4] *See S.R.,* Docket No. 25-0326 (issued March 11, 2025); *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).

[5] *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).

[6] *See S.R., supra* note 4; *P.L.,* Docket No. 19-1750 (issued March 26, 2020); *R.G.,* Docket No. 19-0233 (issued July 16, 2019); *L.M.,* Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett, id.*

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

[8] *See S.R., supra* note 4; *D.C.,* Docket No. 19-1093 (issued June 25, 2020); *see L.B.,* Docket No. 18-0533 (issued August 27, 2018).

## ***ANALYSIS -- ISSUE 1***

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted a visit summary, which noted that Dr. Jamil saw him on December 14, 2024 and diagnosed otalgia, left ear. Dr. Jamil, however, did not offer an opinion on causal relationship. 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.[9] As such, this visit summary note is of no probative value and is insufficient to establish the claim.

An unsigned December 23, 2024 clinical summary report noted a diagnosis of acute cough and that a chest x-ray and sputum culture would be ordered, pending approval, to rule out Legionella bacteria. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[10] Therefore, this evidence is also insufficient to establish the claim.

Appellant also submitted a note from a nurse practitioner. However, certain health care providers such as nurses, physician assistants, and physical therapists are not considered physicians under FECA and, therefore, are not competent to provide a medical opinion.[11] As such, this evidence is of no probative value and is insufficient to establish appellant's claim.

In a January 10, 2025 report, Dr. Caviness opined that appellant's December 13, 2024 flu-like symptoms were not due to Legionella bacteria exposure. He explained that there was no supporting objective medical evidence; the incubation period for Legionella bacteria did not fit with appellant's report of symptoms, which had developed 17 days after contaminated water sources were covered; and his prescribed medical course was unrelated to treatment of Legionella

[9] *See R.J.,* Docket No. 24-0885 (issued September 30, 2024); *G.M.,* Docket No. 24-0388 (issued May 28, 2024); *C.R.,* Docket No. 23-0330 (issued July 28, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *S.J.,* Docket No. 19-0696 (issued August 23, 2019); *M.C.,* Docket No. 18-0951 (issued January 7, 2019); *L.B., id*.; *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

[10] *See O.R.,* Docket No. 25-0400 (issued May 21, 2025); *V.T.,* Docket No. 22-1036 (issued February 13, 2025); *J.E.,* Docket No. 22-0683 (issued November 10, 2022); *M.A.,* Docket No. 19-1551 (issued April 30, 2020); *Merton J. Sills,* 39 ECAB 572, 575 (1988).

[11] 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. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.3a(1) (May 2023); *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 R.B.,* Docket No. 25-0361 (issued April 23, 2025) (nurse practitioners are not considered physicians under FECA and, therefore, are not competent to provide a medical opinion); *B.D.,* Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.,* Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

bacteria. This evidence does not support causal relationship. As such, it is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted employment factors, the Board finds that appellant has not met his burden of proof.[12]

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.

## ***LEGAL PRECEDENT -- ISSUE 2***

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.[13]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[14]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[15] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[16] If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[17]

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[12] *R.J., supra* note 9.

[13] 5 U.S.C. § 8128(a); *see L.C.,* Docket No. 25-0444 (issued April 23, 2025); *L.D.,* Docket No. 18-1468 (issued February 11, 2019); *V.P.,* Docket No. 17-1287 (issued October 10, 2017); *D.L.,* Docket No. 09-1549 (issued February 23, 2010); *W.C.,* 59 ECAB 372 (2008).

[14] 20 C.F.R. § 10.606(b)(3); *see M.S.,* Docket No. 18-1041 (issued October 25, 2018); *L.G.,* Docket No. 09-1517 (issued March 3, 2010); *C.N.,* Docket No. 08-1569 (issued December 9, 2008).

[15] 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations,* Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

[16] *Id.* at § 10.608(a); *see D.C.,* Docket No. 19-0873 (issued January 27, 2020); *M.S.,* 59 ECAB 231 (2007).

[17] *Id.* at § 10.608(b); *see T.V.,* Docket No. 19-1504 (issued January 23, 2020); *E.R.,* Docket No. 09-1655 (issued March 18, 2010).

## ***ANALYSIS -- ISSUE 2***

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Accompanying appellant's April 11, 2025 request for reconsideration was a separate statement dated March 24, 2025, wherein appellant indicated that he was attempting to establish exposure to Legionella bacteria from the drinking water. He noted that the water had previously tested positive for high levels of arsenic, noting that his claim filed under OWCP File No. xxxxxx528 had been denied and that he had submitted proof of gastrointestinal treatment in that case. However, appellant neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant also submitted OSHA notices dated March 24 and April 7, 2025; an August 19, 2022 nurse practitioner report; and literature related to evaluating claims that involve exposure to toxic substances and contaminated water. However, the underlying issue of causal relationship is medical in nature and requires probative medical evidence.[18] Therefore, this evidence is irrelevant and does not constitute a basis for reopening the merits of a case.[19] Therefore, appellant is not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).[20]

The Board, accordingly, finds that as appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

[18] *Supra* note 7.

[19] *W.P.,* Docket No. 25-0367 (issued April 4, 2025); *P.G.,* Docket No. 24-0404 (issued September17, 2024); *C.C.,* Docket No. 22-1240 (issued June 27, 2023); *D.P.,* Docket No. 13-1849 (issued December 19, 2013); *Edward Matthew Diekemper,* 31 ECAB 224, 225 (1979).

[20] *See L.C.,* Docket No. 25-0444 (issued April 23, 2025).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the March 24 and April 28, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 23, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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