United States Department of Labor
Employees' Compensation Appeals Board

P.V., Appellant	)	
and	)	**Docket No. 25-0187**
	)	**Issued: March 17, 2025**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL, Santa Teresa, NM, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2024 appellant filed a timely appeal from a June 27, 2024 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the June 27, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment.

FACTUAL HISTORY

On November 8, 2023, appellant, then a 52-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that due to factors of his federal employment he was exposed to higher-than-normal levels of arsenic in the water at the employing establishment. He reported that he had been drinking the contaminated water at the employing establishment since 2003 and that the employing establishment eventually added filters to try to resolve the issue. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on August 19, 2022.

OWCP received a 2020 annual quality water report for the period January 1 through December 31, 2020, which revealed a violation of inorganic contaminants of arsenic allowing for a range of 0 to 36 with the highest-level testing at 19 parts per billion (ppb). The study concluded that the arsenic contamination in the drinking water was above its standard in excess of the maximum contaminant level, 10 ppb, for every quarterly period tested from January 1 through December 31, 2020.

In e-mails dated March 31 through June 3, 2022, J.R., an employing establishment supervisor instructed employees to immediately stop using any water at the employing establishment and to avoid washing hands, washing dishes, and drinking the water. Employees were instructed to use hand sanitizers and to drink bottled water provided by General Services Administration (GSA). J.R. further reported that GSA would be coming to install filters.

In a June 28 2022 e-mail, L.F., an employing establishment supervisor, instructed employees to avoid using the ice machines until filters were installed. On November 8, 2023 L.F. forwarded a June 29, 2022 e-mail received from J.T., a GSA building management specialist, who informed him that the water from the filtration systems dispensers had been cleared for all to consume.

In an August 19, 2022 medical note, Charles A. Vickrey, DNP, a nurse practitioner, reported a minor urinalysis issue with slightly elevated arsenic levels. He noted only a few points elevated.

In a statement dated November 8, 2023, appellant reported that the accompanying report documented his exposure to high levels of arsenic in the drinking water, which included exposure from ice and ice machines, hand washing, and teeth brushing while working at the employing establishment. He noted that he did not know of any negative effects from exposure to higher-than-normal arsenic levels but knew that during the time preceding his lab test, he had long-term exposure to this contaminated water.

In a November 16, 2023 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 appellant 60 days to submit the requested evidence. No additional evidence was received.

In December 6 and 7, 2023 development letters, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding appellant's allegations. It afforded the employing establishment 30 days to respond.

In a follow-up letter dated December 13, 2023, 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 November 16, 2023 letter to submit the requested necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a December 26, 2023 response to OWCP's development letters, appellant reported drinking the contaminated water at the employing establishment since 2003. He indicated that he had laboratory work done, which revealed his arsenic levels were elevated. Appellant further reported that he lived in El Paso, Texas, and had never received letters about quality issues related to his water at home but knew of others who lived in Santa Teresa, New Mexico, who had elevated arsenic levels in their water.

In a January 24, 2024 work capacity evaluation (Form OWCP-5c), appellant's provider diagnosed long-term exposure to arsenic. The signature on the report was illegible.

By decision dated June 27, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 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] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

[5] *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] 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 factor(s).[10]

ANALYSIS

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

In support of his claim, appellant submitted an August 19, 2022 medical note from Mr. Vickery, a nurse practitioner. However, certain healthcare providers such as nurse practitioners are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[11] Consequently, this document is of no probative value and is insufficient to establish appellant's claim.

Appellant also submitted a January 24, 2024 Form OWCP-5c in support of his claim from a medical provider with an illegible signature diagnosing long-term exposure to arsenic. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification

[7] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[10] *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams, supra* note 7.

[11] Section 8101(2) (this subsection defines a physician as 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *see also R.P.*, Docket No. 25-0054 (issued December 9, 2024) (nurse practitioners are not competent to render a medical opinion 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). .

and cannot be considered probative medical evidence because the author cannot be identified as a physician.[12] Thus, this report is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a diagnosed medical condition in connection with the accepted factors of his federal employment, the Board finds that he has not met his burden of proof to establish his claim.[13]

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 diagnosed medical condition in connection with the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[12] *M.H.*, Docket No. 19-0162 (issued July 3, 2019); *see also Z.G.*, 19-0967 (issued October 21, 2019); *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] *R.H.*, Docket No. 25-0188 (issued January 31, 2025).