

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

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F.G., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, Renton, WA, Employer )

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**Docket No. 09-580  
Issued: September 21, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 28, 2008 appellant filed a timely appeal of the October 14, 2008 decision of the Office of Workers' Compensation Programs in which a hearing representative affirmed the June 12, 2008 denial of his claim for compensation. Pursuant to 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 met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On April 29, 2008 appellant, then a 32-year-old federal air marshal, filed an occupational disease claim alleging that he developed kidney stones and severe abdominal pain on April 24, 2008 on an assigned flight from Seattle, Washington, to Washington, D.C. He did not stop work.

On May 5, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence. It requested a comprehensive medical report from a physician describing the cause of appellant's condition and whether his employment contributed to it.

Appellant submitted a May 20, 2008 statement, noting that on April 24, 2008 he felt abdominal pain during his flight and experienced vomiting and urinated blood. Upon the flight's arrival in Washington, D.C., an ambulance took him to the hospital. Appellant asserted that he developed kidney stones, blood in his urine and associated pain while on duty. He denied having any previous symptoms. Appellant contended that his condition was caused by the pressurized environment, recycled air and body dehydration from being on an aircraft. He had been exposed to such conditions since 2002, flying at least 18 days per month. Appellant noted that his kidney stone condition became symptomatic approximately two hours into the April 24, 2008 flight. He further noted that his urologist informed him the stones had passed after a computerized tomography (CT) scan was performed. Appellant also stated that he had no more symptoms and no further treatment was required.

In an undated statement, Joseph Hirokanak, appellant's coworker, indicated that he worked with him on the April 24, 2008 flight. He noted that about two hours into the flight appellant complained of stomach cramps and told him that he had vomited, and urinated blood. Mr. Hirokanak stated that they informed the cabin crew and had an ambulance and paramedics meet them upon arrival to take appellant to the hospital.

On April 24, 2008 Dr. Karan Lotfi, a Board-certified diagnostic radiologist, noted that a CT scan of appellant's abdomen and pelvis revealed mild right hydronephrosis with one millimeter (mm) intrarenal stone and two mm distal ureter stone as well as fatty liver. An April 25, 2008 hospital report from Dr. Jonathan Gorbach, Board-certified in emergency medicine, diagnosed ureterolithiasis with severe renal colic. In a May 2, 2008 report, Dr. Robert Weissman, a Board-certified urologist, diagnosed right urethral stone. He noted that the stone had passed that day.

In a decision dated June 12, 2008, the Office denied appellant's claim for compensation finding that the medical evidence did not establish that the claimed medical condition was causally related to his work-related exposure.

On June 24, 2008 appellant requested a review of the written record. In a statement of the same date, he reiterated that on April 24, 2008 he was on temporary duty working as a law enforcement officer on a flight from Seattle, Washington, to Washington, D.C. Appellant indicated that his work environment demanded proper hydration. He noted that his job required sitting for long periods of time without getting out of his seat to stretch. Appellant submitted reports from the Federal Aviation Administration (FAA) as well as medical literature on the causes of kidney stones and dehydration of pilots. Additionally, he submitted an excerpt from the Department of Labor, *Handbook for Employing Agency Personnel*.<sup>1</sup>

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<sup>1</sup> In particular, appellant references Chapter 3-4(b)(3) indicating that "employees in travel status are covered 24 hours a day for all reasonable incidents of their TDY (temporary duty)."

In a decision dated October 14, 2008, an Office hearing representative affirmed the June 12, 2008 decision finding that appellant failed to submit rationalized medical evidence that established that a diagnosed condition was causally related to the accepted employment factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing 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 the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>2</sup>

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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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 factors identified by the employee.<sup>4</sup>

### **ANALYSIS**

The record establishes that appellant's position as a federal air marshal requires frequent air travel with sitting for long periods of time. He was performing his regular duties on April 24, 2008 when he became aware of symptoms due to kidney stones. However, he has not provided sufficient medical evidence to establish that his diagnosed condition is causally related to his exposure to frequent air travel.

In a report dated May 2, 2008, Dr. Weissman diagnosed right urethral stone and noted that it had passed that day. However, he did not address whether appellant's condition was

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<sup>2</sup> *J.E.*, 59 ECAB \_\_\_ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

caused or contributed to by his job or whether his employment duties caused or aggravated his diagnosed condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>5</sup> Similarly, Dr. Gorbach's April 25, 2008 report diagnosed uterolithiasis with severe renal colic. He merely provided a diagnosis and did not address the issue of causal relationship. This report is also of diminished probative value.<sup>6</sup> Dr. Lotfi's April 24, 2008 radiological report revealed mild right hydronephrosis with intrarenal stone and distal ureter stone; however, she did not address whether long and sedentary air travel contributed to appellant's diagnosed condition. As noted, medical evidence without an opinion on causal relationship is of diminished probative value.

The record also contains FAA reports and medical literature on the causes of kidney stones and dehydration of pilots. Although appellant asserted that this literature established a clear link between air travel and kidney stones, none of the medical evidence of record supports this assertion or explains the process by which long and sedentary air travel caused or aggravated his kidney stone condition.<sup>7</sup> Therefore, this literature does not meet appellant's burden of proof. Consequently, the Board finds that he has not submitted sufficient medical evidence to establish that air travel caused or aggravated his kidney stone condition.

On appeal, appellant asserts that the employing establishment has not studied the effects of constant flying, despite the availability of information that would support his claim. He also asserts that his claim is supported by an FAA report concluding that kidney stones are the most common abdominal finding among pilots and that the employing establishment does not restrict the number of hours he must fly. As noted, the issue in this case is medical in nature, whether the medical evidence establishes that appellant's air travel caused or aggravated his claimed kidney stone condition. Appellant has not submitted sufficient medical evidence from his physician to establish causal relationship. There is no evidence that any physicians reviewed the medical and scientific literature submitted by him and explained how any such literature would apply to his claim. Appellant also asserts that he is entitled to compensation as the employing establishment did not controvert his claim. He further advises that his medical reports were not written for the purpose of filing this claim. However, appellant has the burden of proof to submit responsive medical evidence in support of his claim.<sup>8</sup>

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<sup>5</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007).

<sup>6</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>7</sup> See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005) (scientific studies, like medical literature, have probative value only to the extent they are interpreted by a physician rendering an opinion on causal relationship). See also *D.I.*, *supra* note 3 (newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved).

<sup>8</sup> See *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006) (the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

Appellant further asserts that he is entitled to compensation as the Department of Labor's *Handbook for Employing Agency Personnel* states that an employee on travel status and on temporary duty is covered for all medical expenses incurred. However, the Board notes that the fact that an employee was in travel status at the time a disabling condition manifested itself does not raise an inference that the condition was causally related to incidents of the employment as the medical evidence must establish a causal relationship between the condition and factors of employment.<sup>9</sup> As noted, appellant has not submitted such medical evidence.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated October 14 and June 12, 2008 are affirmed.

Issued: September 21, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> *Susan A. Filkins*, 57 ECAB 630 (2006).

Michael E. Groom, Alternate Judge, concurring:

I concur in the holding of the majority that the medical evidence submitted by appellant lacks sufficient rationale on the issue of causal relationship to establish his kidney stone condition as causally related to his occupation as a federal air marshal. I write this concurring opinion to address a matter left unresolved by the Office of Workers' Compensation Programs.

Under normal circumstances, a CA-16 form is the proper form to be used by the employing establishment to refer an employee for examination or treatment at the expense of the Office. It is primarily used when the employee claims a traumatic injury arising from federal employment.<sup>1</sup> There are emergency circumstances; however, under which the Office may approve payment of medical expenses incurred even if the CA-16 form has not been issued and the claim is subsequently denied.<sup>2</sup> I believe the factual circumstances of this case warrant further review by the Office to determine if such emergency circumstances were present.

At the time appellant experienced nausea and urinary bleeding, he was not employed in an office setting. No designated agency official was available to issue a Form CA-16. Rather, appellant was in the course of his duties as a federal air marshal on a flight between, Seattle, Washington, and Washington, D.C. After being notified of his complaints, his flight was met by medical personnel and he was transported to the emergency room at Reston Hospital outside Washington, D.C. It is apparent that the employer authorized appellant's transport to the hospital.

In denying the claim, the Office failed to consider whether emergency circumstances were present.<sup>3</sup> Payment in such claims is to be made on a case-by-case basis. The decision denying appellant's claim merely made reference to the diagnostic studies obtained at Reston Hospital not the circumstances that took him there for treatment. The Office has broad discretionary authority in the administration of the Federal Employees' Compensation Act and must exercise such discretion to achieve the objectives of section 8103.<sup>4</sup> Upon return of the record, the Office should proceed with the development of this issue.

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>1</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a) (October 1990).

<sup>2</sup> *Id.* at Chapter 3.300.3(a)(3).

<sup>3</sup> See *Michael L. Malone*, 49 ECAB 194 (1997); *Thomas W. Keene*, 42 ECAB 623 (1991); *Val D. Wynn*, 40 ECAB 666 (1989).

<sup>4</sup> *Thomas W. Keene*, *supra* note 3.