United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 10-2171**
	)	**Issued: June 3, 2011**
DEPARTMENT OF THE ARMY, MADIGAN ARMY MEDICAL CENTER, Fort Lewis, WA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 24, 2010 appellant filed a timely appeal from a July 22, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on April 28, 2009.

FACTUAL HISTORY

On August 18, 2009 appellant, then a 62-year-old maintenance mechanic, filed a traumatic injury claim alleging that he lost his senses of taste and smell on April 28, 2009.

[1] 5 U.S.C. § 8101 *et seq.*

While he was cleaning a plugged drain line, he dropped an amalgam canister on the floor, which caused the contained liquid to splash on his face. An eyewitness statement corroborated this account. The employing establishment controverted the claim on the grounds that appellant did not file it until approximately four months after the incident. It added that he did not seek medical attention immediately and there was no medical evidence to support an employment-related injury. Appellant did not stop work.

In a May 27, 2009 statement, appellant noted the April 28, 2009 incident in which amalgam liquid splashed on his face and arms when a canister fell on the floor of the dental clinic. He detailed the onset of various symptoms from April 29 to May 16, 2009, including noticeable vocal changes, uncontrollable bronchial coughing, lung and sinus congestion, and sinus drainage. Appellant specified that he lost his smell and taste on May 8, 2009. He also provided an April 28, 2009 accident report.

The Office informed appellant on January 21, 2010 that additional evidence was needed to establish his claim. It gave him 30 days to submit medical reports describing history of injury, symptoms, examination results, diagnosis, and treatment and offering a physician's reasoned opinion as to the etiology of the injury.

In a February 7, 2010 letter, appellant acknowledged that he did not file a claim immediately because he did not anticipate that his loss of taste and smell would become a permanent condition. He stated:

> "The liquid splash may have contained solids, but not seen by the naked eye…. I have no facts that the amalgam splash caused the injury. It may have been the bleach that was used to loosen [the] amalgam solids from the line we were cleaning. One of our previous amalgam distributors told us that using bleach in their separation would cause the mercury to be separated from the amalgams. It may have been the vapors from the mix that may have caused by sickness."

By decision dated March 1, 2010, the Office denied appellant's claim, finding the medical evidence insufficient to establish that the April 28, 2009 employment incident caused or contributed to an injury.

Appellant requested reconsideration on March 22, 2010 and submitted several reports from Dr. David B. Wood, a naturopath. On September 3, 2009 Dr. Wood related that appellant was in an enclosed room at work when he dropped a canister of amalgam waste, which spilled all over his arms and face and "stayed in contact for 30 minutes." He added that appellant continued to work in the contaminated room for six hours. On physical examination, Dr. Wood did not observe any abnormalities of the nose or mouth. He diagnosed anosmia, sinusitis, mercury toxicity and zinc deficiency.[2] In a December 3, 2009 follow-up report, Dr. Wood noted improvement in appellant's condition.

On July 22, 2010 the Office denied modification of the March 1, 2010 decision.

[2] Appellant submitted an October 8, 2009 report from Dr. Wood, which duplicated the findings and diagnoses of the initial September 3, 2009 report.

LEGAL PRECEDENT

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of the Act and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on 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 identified by the claimant.[7]

ANALYSIS

The evidence supports that appellant was cleaning a plugged drain line at work on April 28, 2009 when he dropped an amalgam canister, the liquid contents of which splashed on his face and arms. The Board finds that he did not furnish sufficient medical evidence to establish that this employment incident caused any olfactory or gustatory loss.

Appellant provided several reports from Dr. Wood, a naturopathic physician. Medical opinion, in general, can only be given by a qualified physician.[8] Section 8101(2) of the Act defines a "physician" as "includ[ing] surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners…."[9] The Board has held that a

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *Charley V.B. Harley*, 2 ECAB 208, 211 (1949). *See also* 5 U.S.C. § 8101(2).

[9] 5 U.S.C. § 8101(2).

naturopathic physician is not a "physician" within the meaning of the Act, as the profession is not one of those enumerated in the statute.[10] Hence, Dr. Woods' reports cannot be considered competent medical evidence. Appellant did not submit any medical evidence from a physician explaining how the April 28, 2009 incident caused or aggravated a diagnosed medical condition.

Appellant argues on appeal that the July 22, 2010 merit decision was contrary to fact and law. As noted, he did not provide any qualified medical opinion showing that his federal employment activity caused or aggravated a diagnosed condition. Therefore, appellant failed to establish his *prima facie* claim for compensation.[11]

CONCLUSION

The Board finds that appellant failed to establish that he sustained a traumatic injury in the performance of duty on April 28, 2009.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *Susan M. Biles*, 40 ECAB 420 (1989); *Julie Rechtin*, 34 ECAB 1137 (1983).

[11] *See Donald W. Wenzel*, 56 ECAB 390 (2005).