United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 12-1721**
	)	**Issued: March 5, 2013**
SMITHSONIAN INSTITUTION, NATIONAL GALLERY OF ART, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2012 appellant filed a timely appeal of the August 1, 2012 decision of the Office of Workers' Compensation Programs (OWCP), which denied his traumatic injury claim. 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 the case.[2]

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty.

[1] 5 U.S.C. §§ 8101-8193.

[2] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This does not preclude appellant from requesting reconsideration from OWCP and submitting additional evidence for consideration.

FACTUAL HISTORY

On July 24, 2009 appellant, then a 54-year-old security guard, filed a traumatic injury claim alleging that, on July 23, 2009, he developed an irritation in his eyes due to exposure to a substance at work. He did not stop work.

Appellant submitted a July 27, 2009 Form CA-20, attending physician's report, from Dr. Nicole Moffett, an optometrist, who examined him on that date. Dr. Moffett noted that appellant related being exposed to fumes at work which caused his eyes to burn. She diagnosed eye burn secondary to fumes and noted with a checkmark "yes" that his condition was caused by an employment activity. Appellant reported that fumes appeared suddenly when the electricity went out. Dr. Moffett noted that appellant was disabled from July 23 to 29, 2009.

The employing establishment challenged appellant's claim asserting that his eye condition was not caused by a power outage at the employing establishment. It was noted that a power outage occurred when the District of Columbia electrical power substation was struck by lightning, which temporarily shut down the West Building air handling system. The employing establishment noted that there were multiple visitors and other security personnel present at the same time as appellant but no others claimed any adverse reactions.

On August 27, 2009 OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors. OWCP also requested the employing establishment provide comments from a knowledgeable supervisor as to the accuracy of the factual allegations provided by appellant.

In a decision dated February 4, 2010, OWCP denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that the events occurred as alleged.

On January 7, 2011 appellant requested reconsideration. In statements dated June 22, 2010 to January 28, 2011, he asserted that on July 23, 2009 he was exposed to fumes while at work and sustained an injury to his eyes. Appellant submitted reports from Dr. Moffett dated July 25 and 27, 2009, who noted that he reported being exposed to an odor at work which caused his eyes to burn. Dr. Moffett diagnosed eyes burning secondary to fumes. She noted that, on August 3, 2009, appellant reported his eye condition improved and she diagnosed resolving eye burning. On October 29, 2009 appellant submitted discharge instructions from Dr. Angela Lee, Board-certified in emergency medicine, for muscle spasm. Similarly, on June 4, 2010, he submitted discharge instructions for bronchospasm and chronic obstructive pulmonary disease. Appellant was treated by Dr. Rita Manfredi, Board-certified in emergency medicine, on June 4, 2010 for reactive airway disease and chronic obstructive pulmonary disease. On December 31, 2010 he was treated in the emergency room by Dr. Brandon J. Cole, a Board-certified emergency physician, for asthma and was provided with discharge instructions for asthma and prescribed a nebulizer. In a January 25, 2011 work capacity evaluation Dr. Kevin Culbert, an osteopath, reported that appellant's condition resolved and he could return to work.

In a decision dated June 8, 2011, OWCP denied modification of its prior decision.

On May 9, 2012 appellant requested reconsideration. He was treated by Dr. Melissa B. Daluvoy, a Board-certified ophthalmologist, on September 14, 2010, for a burning sensation in his eyes. Appellant reported being exposed to fumes and odors at work one year prior which irritated his eyes. He reported burning, redness, change in vision and tearing. In a disability certificate dated September 14, 2010, Dr. Daluvoy noted that appellant was treated from September 10 to 14, 2010 and could return to full duty on September 15, 2010. Appellant submitted copies of a civil suit filed against his employer in the District of Columbia for an unsafe work environment. On August 24, 2011 he was treated by Dr. Claude Cowan, an ophthalmologist, who noted that appellant underwent imaging and photos of his eyes without complication. On August 24, 2011 appellant was treated by Dr. Neil Bien, a psychologist, for depression. Dr. Bien diagnosed depression, seizure disorder, chronic airway obstruction and financial difficulties. Appellant submitted a September 23, 2011 prescription for ointment for a skin rash and an inhaler.

On August 1, 2012 OWCP modified its prior decision to find that the employment incident occurred but denied the claim on the grounds that the medical evidence was insufficient to establish that a medical condition was related to his employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. 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.[3]

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Id*.

diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

In the instant case, it is not disputed that appellant worked as a security guard and that on July 23, 2009 a power outage occurred shutting down the West Building air handling system where he worked. It is also not disputed that he was diagnosed with eye burn secondary to fumes. However, appellant did not submit a rationalized medical report from a physician sufficiently explaining how the July 23, 2009 incident caused or aggravated a diagnosed medical condition.

In a July 27, 2009 attending physician's report, Dr. Moffett noted that appellant reported being exposed to fumes at work which caused his eyes to burn. She diagnosed eye burn secondary to fumes and noted with a checkmark "yes" that his condition was caused by an employment activity. Dr. Moffett noted that appellant was disabled from July 23 to 29, 2009. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8] Other reports from Dr. Moffett dated July 25 to August 3, 2009 noted that appellant reported being exposed to an odor at work which caused his eyes to burn. She diagnosed eyes burning secondary to fumes. These reports are also insufficient to establish the claim as Dr. Moffett did not provide medical rationale explaining how airborne irritants caused or aggravated a diagnosed eye condition.[9]

Appellant was treated by Dr. Daluvoy on September 14, 2010 for a burning sensation in his eyes. He reported being exposed to fumes and odors at work one year prior which irritated his eyes. A September 14, 2010 disability certificate prepared by Dr. Daluvoy noted that appellant was treated from September 10 to 14, 2010 and could return to full duty on September 15, 2010. However, her reports are insufficient to establish the claim as the physician appears merely to be repeating the history of injury as reported by appellant without providing her own opinion regarding whether his condition was work related.[10] To the extent that the

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[8] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[9] *Jimmie H. Duckett*, *supra* note 7.

[10] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

physician is providing her own opinion, the physician failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[11]

Appellant provided evidence dated October 29, 2009 from Dr. Lee and discharge instructions for bronchospasm and chronic obstructive pulmonary disease dated June 4, 2010 from Dr. Manfredi. He was treated by Dr. Manfredi on June 4, 2010 for reactive airway disease and chronic obstructive pulmonary disease. Similarly, on December 31, 2010, appellant was treated by Dr. Cole for asthma. In a January 25, 2011 evaluation, Dr. Culbert noted that appellant's condition had resolved. However, these notes are insufficient to establish the claim for an eye condition as these physician's do not address an eye condition and they otherwise failed to specifically address whether his employment activities had caused or aggravated a diagnosed medical condition.[12] Likewise, reports from Dr. Cowan and Dr. Bien do not specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[13] Appellant failed to submit such evidence and FECA therefore properly denied his claim for compensation.

On appeal, appellant asserted that the employing establishment provided an unsafe working environment in which he sustained an eye injury. The Board notes that he failed to submit sufficient evidence to establish that his eye condition was causally related to the accepted work-related incident.

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

[11] *Jimmie H. Duckett, supra* note 7.

[12] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[13] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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