United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 13-2062**
	)	**Issued: February 5, 2014**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATIONS & CUSTOMS ENFORCEMENT, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 9, 2013 appellant, through her attorney, filed a timely appeal from an April 25, 2013 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.

ISSUE

The issue is whether appellant sustained an injury on June 30, 2011 in the performance of duty.

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated February 5, 2013, the Board affirmed a June 11, 2012 decision finding that appellant had not established that she

[1] 5 U.S.C. § 8101 *et seq.*

sustained food poisoning after eating a burrito at work on June 30, 2011.[2] The Board found that the medical evidence was insufficient to show that she sustained a diagnosed condition caused or aggravated by the accepted employment incident. The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

On February 19, 2013 appellant, through her attorney, requested reconsideration. He contended that the newly submitted December 9, 2011 medical report from Dr. Rudolph Bedford, a Board-certified internist, established that she sustained an injury in the performance of duty. He noted that a claimant is entitled to compensation if work factors aggravated a preexisting condition during the period of the aggravation.

In a report dated December 9, 2011, Dr. Bedford evaluated appellant for "marked abdominal bloating and diarrhea with associated fatigue." He related:

> "[Appellant] was in her usual state of good health until June of 2011 after eating a burrito which she claims was green with what she believes was a fungus. Within 24 hours she began experiencing diarrhea having upwards of [five to six] bowel movements a day along with a gnawing abdominal discomfort which has persisted. She continues to have upper to [four] loose bowel movements daily with marked abdominal bloating."

Dr. Bedford noted that a colonscopy and upper endoscopy were negative but that she "apparently has H. [Helicobactor] Pylori gastritis which has not been treated secondary to an allergic reaction to one of the antibiotics that she took for three days." He opined that appellant had "symptoms consistent with likely bacterial overgrowth secondary to food poisoning." Dr. Bedford stated, "She [has] not been tested for bacterial overgrowth. These symptoms may also be a manifestation of postinfectious irritable bowel like syndrome (dysmotility process). Other thoughts include gastrointestinal symptoms secondary to hypothyroidism." Dr. Bedford indicated that food poisoning increased the risk of developing irritable bowel syndrome and related, "It is thought infection with food borne pathogens alters the function of the gut nervous system, making it more sensitive, while also causing a shift in the immune system that result[s] in increased amounts of inflammatory chemicals. Disturbances in the gut microflora may also play a role." Dr. Bedford recommended further diagnostic studies.

By decision dated April 25, 2013, OWCP denied modification of its February 5, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim, including: that the individual is an "employee of the United States"

[2] Docket No. 12-1956 (issued February 5, 2013). On June 30, 2011 appellant, then a 59-year-old enforcement and removal agent, filed a traumatic injury claim alleging that she experienced nausea and stomach pain on that date after eating a burrito from the employing establishment's snack bar. In decisions dated November 17, 2011 and June 11, 2012, OWCP denied the claim after finding that she did not establish a medical condition due to the accepted employment incident.

[3] 5 U.S.C. § 8101 *et seq.*

within the meaning of FECA; 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.[4] 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.[5]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[7] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[8]

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant,[10] must be one of reasonable medical certainty[11] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

ANALYSIS

On prior appeal the Board found that appellant had not submitted sufficient medical evidence to establish that she sustained a diagnosed condition as a result of eating a burrito at work on June 30, 2011. Appellant requested reconsideration based on the December 9, 2011 report from Dr. Bedford.

On December 9, 2011 Dr. Bedford discussed appellant's history of experiencing diarrhea and abdominal pain and bloating after eating a burrito in June 2011 that was green with a suspected fungus. He noted that objective studies apparently showed H. Pylori gastritis that had

[4] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[5] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[7] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Id.*

[9] *John J. Montoya*, 54 ECAB 306 (2003).

[10] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, *supra* note 7.

[11] *John W. Montoya*, *supra* note 9.

[12] *Judy C. Rogers*, 54 ECAB 693 (2003).

not been completely treated with antibiotics due to an allergic reaction. Dr. Bedford found that appellant had symptoms that were "consistent with likely bacterial overgrowth secondary to food poisoning." He opined that other possibilities included postinfections irritable bowel syndrome or hypothyroidism. Dr. Bedford explained the mechanism by which food poisoning generally increased the risk of irritable bowel syndrome. He did not, however, provide a definite diagnosis or fully explain how eating a burrito on June 30, 2011 caused or aggravated appellant's condition. Without a firm diagnosis supported by medical rationale, the report is of little probative value.[13] Further, while Dr. Bedford described how food poisoning increased the chance of irritable bowel syndrome, his opinion was general in nature rather than specific to appellant, and thus of diminished probative value.[14] In the absence of rationalized medical opinion evidence explaining how the June 30, 2011 work incident resulted in a specific diagnosed condition, appellant has not met her burden of proof to establish an injury.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on June 30, 2011 in the performance of duty.

[13] *See Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

[14] *See D.G.*, Docket No. 11-255 (issued August 10, 2011); *Melvina Jackson*, 38 ECAB 443 (1988) (a medical opinion is of limited probative value when it relies upon statements of general application and is not addressed to the particular circumstances of the case at hand).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board