

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

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A.R., Appellant )  
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 )  
and ) **Docket No. 19-1560**  
 ) **Issued: March 2, 2020**  
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DEPARTMENT OF THE NAVY, FLEET )  
READINESS CENTER SOUTHWEST, )  
San Diego, CA, Employer )  
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Appearances:  
Appellant, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 16, 2019 appellant filed a timely appeal from a March 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the March 15, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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 medical condition causally related to the accepted January 19, 2019 employment incident.

## FACTUAL HISTORY

On January 31, 2019 appellant, then a 66-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on January 19, 2019 he was exposed to hexavalent chromium, cadmium, aluminum, nickel, hydrogen chloride, and sodium hydroxide while in the performance of duty. He noted that he had a dry throat and felt lightheaded as a result of this exposure. Appellant did not stop work.

In a development letter dated February 7, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed. In a separate development letter of even date, OWCP notified the employing establishment of appellant's traumatic injury claim. It requested additional information regarding his inhalation exposure to potentially toxic and hazardous substances. OWCP afforded both parties 30 days to submit the necessary evidence.

Thereafter, OWCP received reports related to the claimed January 19, 2019 employment incident. In a January 19, 2019 report, Dr. Camille Cowne, a Board-certified specialist in emergency medicine, indicated that appellant presented to the emergency room for evaluation of chemical exposure. She related that appellant had worked in a basement for about two to three hours earlier that day. During that time, the ventilation system had stopped and appellant was possibly exposed to inhalants including "cyanide, nickel, and chromium." Dr. Cowne reported that appellant's only complaint was a dry throat. After consulting with poison control and reviewing hematology tests, chemistry panels, and an electrocardiogram (EKG), she found that the patient studies were unremarkable. Dr. Cowne reported that appellant was in the emergency room for several hours and at no time did he have a change in vital signs or symptoms. She noted an impression of inhalation exposure, but provided no diagnosis.

In a January 19, 2019 report, Dr. Michael L. Puckett, a Board-certified diagnostic radiologist, reviewed an x-ray of appellant's chest. He found no airspace opacity, pleural effusion, or pneumothorax. Dr. Puckett opined that there were "[n]o acute findings."

On January 22, 2019 Dr. Michael Bezouska, a Board-certified specialist in occupational medicine, saw appellant for a follow-up appointment. He related appellant's complaints of a "mildly dry" throat. Dr. Bezouska examined appellant and found that his throat and lungs were clear and no skin lesions were seen. He provided an assessment of contact with and suspected exposure to other hazardous metals, contact with and suspected exposure to other hazardous aromatic compounds, dry mouth.<sup>3</sup>

In a February 21, 2019 statement, appellant's supervisor responded to OWCP's development letter. He explained that appellant was working in a basement with tanks holding

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<sup>3</sup> An incidental diagnosis of essential primary hypertension was also provided.

different ambient/hot solutions. Appellant's supervisor indicated that a belt broke, which caused the exhaust system to stop for "a little over an hour." He reported that appellant was immediately sent to urgent care for a checkup when the problem was discovered.

A March 12, 2019 telephone memorandum (Form CA-110) relates that OWCP contacted appellant's supervisor to verify the inhalants that appellant was exposed to. Appellant's supervisor confirmed that chromium, cadmium, aluminum, nickel metal, hydrogen chloride, and sodium hydroxide were in the tanks that appellant was exposed to along with other additional, unspecified chemicals.

By decision dated March 15, 2019, OWCP accepted that the incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish that appellant sustained a diagnosed medical condition. Specifically, it explained that the medical reports submitted did not contain a definitive diagnosis of injury and, thus, the medical component of fact of injury had not been established. OWCP 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<sup>4</sup> has the burden of proof to establish 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 timely filed within the applicable time limitation period of FECA,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>8</sup> The second component is whether the employment incident caused a personal injury.<sup>9</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> 20 C.F.R. § 10.115; *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *R.S.*, *supra* note 5; *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *T.G.*, *supra* note 6; *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> 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 incident identified by the claimant.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 19, 2019 employment incident.

In her January 19, 2019 report, Dr. Cowne noted that appellant's only complaint was a dry throat following "inhalation exposure," but she provided no firm medical diagnosis or objective findings.<sup>12</sup> After reviewing hematology tests, chemistry panels, and an EKG, she found that appellant's patient studies were "unremarkable." The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated a diagnosed condition. The Board finds that as Dr. Cowne's medical report does not diagnose an actual medical condition causing his symptom, her report lacks probative value and is insufficient to establish appellant's claim.<sup>13</sup>

In his January 19, 2019 report, Dr. Puckett reviewed an x-ray of appellant's chest and found no airspace opacity, pleural effusion, or pneumothorax. He reported that there were "[n]o acute findings," and offered no diagnosis. As Dr. Puckett's report provides no medical evidence demonstrating a diagnosis in connection with the accepted employment incident, it is of no probative value.<sup>14</sup>

In his January 22, 2019 report, Dr. Bezouska provided an assessment/diagnosis of contact with and suspected exposure to other hazardous metals and other hazardous aromatic compounds, and dry mouth. The assessment of contact with and suspected exposure to other hazardous metals and aromatic compounds is not a medical diagnosis, but rather an explanation of the manner of injury. While Dr. Bezouska did diagnose appellant with dry throat, dry throat, as previously noted, is a symptom, not a firm diagnosis issue of causal relationship.<sup>15</sup> The Board therefore finds that Dr. Bezouska's report is insufficient to establish appellant's claim.

On appeal appellant requests reimbursement for incurred medical expenses. As explained above, he has not met his burden of proof to establish a medical condition causally related to the

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<sup>10</sup> *M.S.*, *supra* note 7; *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> *R.S.*, *supra* note 5; *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> The Board identified a "sore throat" as a symptom in *M.R.*, Docket No. 13-1131 (December 17, 2013).

<sup>13</sup> *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

<sup>14</sup> *R.S.*, *supra* note 5.

<sup>15</sup> *J.G.*, Docket No. 19-1116 (issued November 25, 2019).

accepted chemical exposure. 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 medical condition causally related to the accepted January 19, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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