United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 20-0797**
	)	**Issued: August 5, 2021**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, FLOYD BENNETT FIELD, Brooklyn, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 27, 2020 appellant filed a timely appeal from a January 28, 2020 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 has met her burden of proof to establish exposure to a chemical odor in the performance of duty on August 29, 2019, as alleged.

FACTUAL HISTORY

On September 16, 2019 appellant, then a 79-year-old park ranger, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2019 at approximately 11:00 a.m. her preexisting

[1] 5 U.S.C. § 8101 *et seq.*

upper respiratory condition was triggered as a result of exposure to a chemical smell in her office while in the performance of duty.[2] She explained that this exposure caused excessive coughing and wheezing. On the reverse side of the claim form her supervisor acknowledged that appellant was in the performance of duty when the injury occurred. Appellant stopped work on August 30, 2019.

Appellant submitted September 4, 2019 hospital discharge instructions, which noted that she was admitted to the hospital on August 31, 2019 and seen by Dr. Rabih Maroun, a Board-certified pulmonologist. It provided instructions for treatment of chronic obstructive pulmonary disease (COPD) exacerbation.

In a September 27, 2019 letter, Dr. Betty Parisis, a family medicine specialist, noted that appellant was seen on September 11, 2019 following her September 4, 2019 discharge from the hospital. She indicated that appellant was initially admitted to the hospital for recurrence of her COPD, which was triggered by overexposure to a chemical smell at work on August 29, 2019. Dr. Parisis noted that appellant had been receiving recurring emergency treatments for exacerbation of her COPD since March 5, 2015. She indicated that she could return to work on October 1, 2019 on a trial basis.

In an October 2, 2019 letter, the employing establishment indicated that appellant refused its offer of an alternative work assignment and "walked out" without a sufficient cause.

In an October 15, 2019 development letter, OWCP advised appellant that, when her claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and; therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of her claim. It had now reopened appellant's claim for consideration of the merits and informed appellant t of the deficiencies of her claim. OWCP advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. It afforded appellant 30 days to respond. No further evidence was received.

By decision dated November 15, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the August 29, 2019 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 25, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an August 28, 2019 e-mail, appellant notified the employing establishment that she had to leave the office that day because of a paint smell, which caused excessive coughing. She explained that she did not want this to lead to another upper respiratory problem. In an August 29,

[2] Appellant has a previously accepted traumatic injury for temporary aggravation of upper respiratory tract hypersensitivity reaction under OWCP File No. xxxxxx427. She also previously filed a traumatic injury claim on February 20, 2019 for an asthma attack under OWCP File No. xxxxxx006. OWCP had administratively approved payment of a limited amount of medical expenses without formally adjudicating the merits of that claim.

2019 e-mail, appellant notified the employing establishment that she was still coughing and wheezing due to overexposure to the paint. She asserted that she could not return to work and requested teleworking.

By decision dated January 28, 2020, OWCP's hearing representative affirmed OWCP's November 15, 2019 decision. She additionally ordered that OWCP administratively combine the present case with appellant's previous claims under OWCP File Nos. xxxxxx427 and xxxxxx006 as they also involved upper respiratory conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,[4] 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.[5] 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.[6]

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 or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[8] The employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain

[3] *Supra* note 1.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the August 29, 2019 employment exposure occurred in the performance of duty, as alleged.

Appellant filed a traumatic injury claim alleging that her preexisting upper respiratory condition was triggered on the alleged date of injury as a result of exposure to a chemical smell in her office while in the performance of duty. The record also establishes that appellant promptly reported the onset of respiratory symptoms to the employing establishment in e-mails dated August 28 and 29, 2019 in which she asserted that she was exposed to a chemical smell at work which caused to cough excessively. Additionally, appellant sought prompt medical care, first with Dr. Maroun on August 31, 2019, who diagnosed COPD exacerbation. She subsequently sought care with Dr. Parisis on September 11, 2019. Dr. Parisis, in her September 27, 2019 letter, confirmed that appellant had been admitted to the hospital for recurrence of her COPD exacerbation, which was triggered by overexposure to a chemical smell at work on August 29, 2019.

Appellant has provided a single account of the mechanism of injury, specifically that she was exposed to a chemical smell at work, which has not been refuted by any evidence in the record.[10] As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[11] Further, the employing establishment acknowledged that appellant was injured in the performance of duty and concurred with her account of her injury. The Board has held that the employing establishment's acknowledgment that the injury occurred in the performance of duty is sufficient, if consistent with the surrounding facts and circumstances, to establish that the exposure occurred, as alleged, and in the performance of duty.[12] The Board, thus, finds that given the above-referenced evidence, appellant has established with specificity that the August 29, 2019 exposure occurred at the given time, place, and in the manner alleged.

As appellant has established that the August 29, 2019 employment exposure factually occurred in the performance of duty, the question becomes whether this exposure caused an injury.[13] Causal relationship is a medical issue and the evidence required to establish causal

[9] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[10] *See S.W.*, Docket No. 19-0653 (issued November 21, 2019).

[11] *Supra* note 9.

[12] *D.M.*, Docket No. 20-0314 (issued June 30, 2020).

[13] *S.W., supra* note 10.

relationship is rationalized medical opinion evidence.[14] The Board will, therefore, remand the case for consideration of the medical evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish a condition causally related to the accepted August 28, 2019 employment exposure.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the August 29, 2019 employment exposure occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established an injury causally related to the accepted August 29, 2019 employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the January 28 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 5, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[14] *A.C.*, Docket No. 18-0096 (issued January 21, 2020).