United States Department of Labor
Employees' Compensation Appeals Board

E.L., Appellant	)	
and	)	**Docket No. 21-0587**
	)	**Issued: July 6, 2022**
DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE, Corona, CA, Employer	)	

Appearances:
Stephanie N. Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 3, 2021 appellant, through counsel, filed a timely appeal from a February 12, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 10, 2019 employment incident.

FACTUAL HISTORY

On August 12, 2019 appellant, then a 31-year-old firefighter technician, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2019 he experienced sharp, unbearable chest pain, which radiated into his left arm and back, followed by dizziness, after he had hiked to his assigned location and began working with a smoldering piece of duff while in the performance of duty. He stopped work on August 10, 2019.

OWCP received an unsigned hospital report, noting that appellant was hospitalized from August 10 to 11, 2019. An August 10, 2019 electrocardiogram (ECG) revealed sinus bradycardia, sinus arrhythmia, and early repolarization, but otherwise demonstrated normal results. In an Emergency Medical Service (EMS) note of even date, Sarah Pehrson, an EMS technician conducted a physical examination and diagnosed chest pain.

Dr. Daniel Honneyman, an emergency medicine specialist, diagnosed smoke inhalation and chest pain in treatment reports dated August 10, 2019. He provided differential diagnoses of smoke inhalation and bronchoconstriction versus acute coronary syndrome (ACS) versus pulmonary embolism (PE) versus reflux.

An August 10, 2019 x-ray of the chest revealed no plain radiographic evidence of active cardiopulmonary disease.

In an August 10, 2019 unsigned work status note, an unidentifiable healthcare provider provided work restrictions.

In an August 11, 2019 emergency department report, Brendon A. Coulson, a registered nurse, noted that appellant presented with worsening chest pain.

An ECG of even date revealed sinus bradycardia and early repolarization, but demonstrated otherwise normal results.

In an August 11, 2019 discharge report, Dr. Honneyman diagnosed chest pain and exposure to smoke/flames. In an unsigned report of even date, an unidentifiable healthcare provider diagnosed chest pain and exposure to smoke.

Diagnostic tests of the abdomen, pelvis and chest conducted on August 11, 2019 revealed no acute findings or active cardiopulmonary disease. An August 11, 2019 after-visit summary noted that appellant was seen by Dr. Ryan Ernst, an emergency medicine specialist, and diagnosed with chest pain of uncertain etiology.

In unsigned August 14, 2019 reports, an unidentifiable healthcare provider diagnosed chest pain.

In a September 3, 2019 medical report, Dr. Ernst R. von Schwarz, Board-certified in cardiovascular disease and advanced heart failure and transplant cardiology, conducted a physical examination, reviewed appellant's echocardiogram (echo) and treadmill stress test results, and diagnosed chest pain with bradycardia. He indicated that appellant had abnormal electrocardiographic findings. In a September 3, 2019 duty status report (Form CA-17), an unidentifiable healthcare provider diagnosed chest pain.

In an October 10, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded appellant 30 days to respond.

An undated cardiac ultrasound report revealed no pericardial effusion or pulmonary edema.

In an August 10, 2019 work status report, Dr. Honneyman indicated that appellant could return to work without restrictions on August 12, 2019.

On August 10, 2019 the employing establishment executed an authorization for examination and/or treatment (Form CA-16). In an undated Part B of the Form CA-16, attending physician's report, Dr. Honneyman diagnosed smoke inhalation and chest pain.

Dr. Ernst, in August 11, 2019 medical reports, noted that appellant had a history of peptic ulcer disease and hiatal hernia and presented with chest pain. He diagnosed chest pain of uncertain etiology.

An August 12, 2019 ECG revealed sinus bradycardia and early repolarization, but demonstrated otherwise normal results.

In an August 20, 2019 medical report, Dr. von Schwarz diagnosed chest pain with bradycardia. He noted that appellant had abnormal electrocardiographic findings.

An August 22, 2019 echocardiogram revealed palpitations, chest pain, and abnormal electrocardiographic findings.

In an August 26, 2019 report, Brenda Robinson, a physician assistant, indicated that appellant underwent a treadmill stress test.

In an October 24, 2019 statement, appellant reiterated that he experienced chest pain at work on August 10, 2019 after being exposed to a small piece of smoldering duff. He noted that he was diagnosed with chest pain caused by smoke inhalation and contended that pain should be considered as a diagnosis.

In a November 6, 2019 attending physician's report (Form CA-20), Dr. von Schwarz diagnosed chest pain and checked a box marked "Yes" indicating that his condition was caused or aggravated by the described employment activity.

By decision dated November 21, 2019, OWCP accepted that the August 10, 2019 employment incident occurred as alleged, but denied the claim, finding that the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment

incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

In a November 25, 2019 Form CA-20, Dr. Honneyman noted the accepted August 10, 2019 employment incident and indicated that appellant sustained chest pain from smoke exposure. He checked a box marked "Yes" indicating that his condition was caused or aggravated by the described employment activity.

In a December 1, 2019 statement, appellant contended that OWCP's decision was based on false premises and misrepresented facts.

On December 3, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated February 4, 2020, OWCP's hearing representative affirmed the November 21, 2019 decision.

On January 11, 2021 appellant, through counsel, requested reconsideration.

On August 31, 2020 Dr. Neil Allen, Board-certified in internal medicine, performed a records review and noted that appellant began experiencing tightness and pain in his chest after hiking approximately one mile to his worksite with 65 pounds of gear in smoky conditions. He reviewed his medical records and diagnosed stable angina pectoris. Dr. Allen indicated that appellant was asymptomatic prior to the accepted August 10, 2019 employment incident. He explained that stable angina mostly occurred when the body was placed in a stressful situation, which would require more oxygen. Dr. Allen further explained that appellant was subject to physical stress while extinguishing hot spots in an environment with limited oxygen. He opined that the accepted August 10, 2019 employment incident directly caused his diagnosed angina.

By decision dated February 12, 2021, OWCP denied modification of its February 4, 2020 decision.

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

[3] *Id*.

[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).

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 and 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]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[9]

ANALYSIS

The Board finds that this case is not in posture for decision.

In his August 10, 2019 treatment reports, Dr. Honneyman diagnosed smoke inhalation. Thereafter, in a November 25, 2019 Form CA-20, he noted smoke exposure, which he indicated was caused or aggravated by the described August 10, 2019 employment activity.

In addition, Dr. von Schwarz, in his September 3, 2019 medical report, noted that he conducted a physical examination and reviewed appellant's echo and treadmill stress test results. He diagnosed bradycardia.

Therefore, the Board finds that the evidence of record establishes diagnosed medical conditions of smoke inhalation and bradycardia.

As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal

[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] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

relationship.[10] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[11]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition. The Board further finds, however, that the case is not in posture for decision as to whether his diagnosed conditions are causally related to the accepted August 10, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2021 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: July 6, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[10] *S.A.*, Docket No. 20-1498 (issued March 11, 2021).

[11] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).