United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 24-0707**
	)	**Issued: August 20, 2024**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL, El Paso, TX, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 17, 2024 appellant filed a timely appeal from a May 23, 2024 merit decision of the Office of Workers' Compensation Program (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 his burden of proof to establish a respiratory condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On March 14, 2024 appellant, then a 57-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that on March 9, 2024 he developed shortness of breath, coughing, wheezing, and an exacerbation of asthma due to factors of his federal employment,

[1] 5 U.S.C. § 8101 *et seq*.

including preparing a "new pseudo powder narcotics for training aids." He related that he had an accepted condition for asthma, assigned as OWCP File No. xxxxxx501. Appellant indicated that he first became aware of his condition and realized its relation to his federal employment on March 10, 2024. He stopped work on that day.

In an accompanying statement dated March 14, 2024, appellant related that on March 9, 2024 he was preparing K9 pseudo-narcotic training aids that smelled like powdered heroin and Ecstasy. He indicated that two hours later, while at home, he took asthma medication after he began coughing. Appellant used sick leave from work the next day and sought medical treatment. He was treated with antibiotics and steroids from his physician.

On March 11, 2024 Dr. Jeanette S. Tan, a Board-certified pulmonologist, advised that appellant could return to work on March 17, 2024.

A note from an urgent care center related that appellant was evaluated by a nurse practitioner on March 15, 2024 for bacterial pneumonia and COVID-19 screening.

A report of work status (Form CA-3) noted that appellant returned to his usual employment on March 18, 2024.

In a development letter dated March 21, 2024, OWCP informed appellant of the deficiencies of his claim and advised him the type of evidence needed to establish his claim. It afforded him 60 days to submit the requested evidence. In a separate letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It requested that the evidence be submitted within 30 days.

Subsequently, OWCP received an unsigned March 15, 2024 report from an unidentified health care provider who evaluated appellant for a cough that had begun five days earlier with no known contact with a sick individual. The provider diagnosed bacterial pneumonia.

On March 20, 2024 Dr. Tan advised that appellant's date of exposure was March 9, 2024, when he related that he was exposed to a powdery substance which caused an exacerbation of asthma and reactive airways dysfunction. She advised that his symptoms of shortness of breath and wheezing increased after the exposure and required treatment with corticosteroids and antibiotics. In an office-visit note of even date, Dr. Tan noted that appellant reported shortness of breath and wheezing after exposure to a powder at work. She diagnosed an exacerbation of asthma, acute bronchitis, persistent cough, pneumonia of the right lower lobe, reactive airways dysfunction syndrome after exposure to powder, and allergic rhinitis. Dr. Tan advised that appellant should remain off work until March 27, 2024.

On April 1, 2024 Dr. Sterling Roaf, Jr., Board-certified in preventive medicine, reviewed the case file on behalf of the employing establishment. He provided his review of the history of injury and available medical evidence. Dr. Roaf noted that appellant had experienced shortness of breath, coughing, and wheezing after preparing pseudo-powder narcotics but advised that there was "insufficient evidence to establish the alleged incident or employment factor caused an illness." He asserted that inhalation exposure to pseudo-narcotics would not cause bacterial pneumonia, the March 15, 2024 diagnosis. Dr. Roaf opined that bacterial pneumonia could also exacerbate reactive airway dysfunction and caused an exacerbation of asthma. He noted that the file did not identify the specific agent used for the pseudo-narcotic or provide the safety data sheet.

In a follow-up letter dated May 2, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the March 21, 2024 development letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Subsequently, OWCP received information regarding the substances used to make pseudo-heroin and Ecstasy.

By decision dated May 23, 2024, OWCP denied appellant's occupational disease claim. It found that he had not established that he sustained a medical condition causally related to the accepted work factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 filed within the applicable time limitation period of FECA,[3] that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.[5]

In an occupational disease claim, appellant's burden of proof requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical

[2] *Id*.

[3] *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

[7] *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a respiratory condition causally related to the accepted factors of his federal employment.

In reports dated March 20, 2024, Dr. Tan related that appellant had been exposed to a powdery substance on March 9, 2024 which caused increased shortness of breath and weakness and required treatment with antibiotics and steroids. She diagnosed an exacerbation of asthma, acute bronchitis, persistent cough, pneumonia of the right lower lobe, reactive airways dysfunction syndrome after exposure to powder, and allergic rhinitis and advised that he should not work until March 27, 2024. The Board has held, however, that a medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[9] Dr. Tan failed to explain how the accepted employment exposure worsened the diagnosed conditions. Consequently, her reports are insufficient to establish causal relationship.

On March 11, 2024 Dr. Tan advised that appellant could resume work on March 17, 2024. Her report did not, however, address causation. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] Dr. Tan's report, therefore, is insufficient to meet appellant's burden of proof to establish his claim.

Appellant received treatment for bacterial pneumonia from a nurse practitioner on March 15, 2024. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[11] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[12] Consequently, this evidence is insufficient to meet appellant's burden of proof.

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[8] *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

[9] *L.B.*, Docket No. 23-0961 (issued December 15, 2023); *S.C.*, Docket No. 20-0492 (issued May 6, 2021); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

[10] *See M.M.*, Docket No. 19-0061 (issued November 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *A.Z.*, Docket No. 21-1355 (issued May 19, 2022) (nurse practitioners are not physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[12] *Id*.

The record also contains an unsigned report dated March 15, 2024 from an unidentified health care provider. Reports that are unsigned or that bear illegible signatures lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[13]

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 respiratory condition causally related to the accepted factors of his federal employment.[14]

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[13] *R.K.*, Docket No. 24-0545 (issued June 28, 2024); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572 (1988).

[14] Upon return of the case record, OWCP should consider combining all of appellant's relevant claim files.