

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

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<b>S.W., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 24-0302</b>
	)	<b>Issued: July 26, 2024</b>
<b>DEPARTMENT OF THE ARMY, ALEXANDER T.</b>	)	
<b>AUGUSTA MILITARY MEDICAL CENTER,</b>	)	
<b>Fort Belvoir, VA, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*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 February 2, 2024 appellant filed a timely appeal from a January 25, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). Appellant asserted that oral argument should be granted because the medical evidence supported his claim. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the Board finds that the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish cavitory pneumonia causally related to the accepted February 22, 2023 employment incident.

## **FACTUAL HISTORY**

On March 16, 2023 appellant, then a 51-year-old physician, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 2023 he developed pneumonia with parapneumonic condition while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In a development letter dated March 29, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. An attending physician's report (Form CA-20) was also provided. OWCP afforded appellant 60 days to respond.

In a narrative statement received on March 30, 2023, appellant reiterated his injury and treatment history to date. He indicated that his illness began on February 22, 2023 and he was admitted to the hospital on that same date.

OWCP subsequently received additional medical evidence. On February 22, 2023 appellant was treated in an emergency department by Dr. Wosenyelew M. Tedla, a Board-certified internist, for a cough and severe left side pleuritic chest pain. X-ray and computerized tomography (CT) scans revealed cavitory pneumonia with reactive left hilar lymphadenopathy, as well as modest pleural effusion on the left side. Dr. Tedla diagnosed cavitory pneumonia, most likely bacterial in etiology; pleuritic chest pain; and pleural effusion.

In a Form CA-20 dated March 30, 2023, Dr. Tedla recounted appellant's history of injury and diagnosed cavitory pneumonia with effusion, based on findings of shortness of breath and an x-ray and CT scan showing cavitory pneumonia. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity. Dr. Tedla further opined that appellant "could" have contracted pneumonia from the patient he treated.

In a letter dated February 25, 2023, Dr. Tedla noted that appellant had been admitted to the hospital from February 22 through 25, 2023 and recommended a period of 14 days of convalescence after discharge.

On March 9, 2023 Dr. Jawad Khan, a Board-certified internist, reviewed appellant's abnormal CT scan of the chest and assessed pneumonia on the left side and pleural effusion.

On March 9, 2023 Dr. Sarfraz A. Choudhary, a Board-certified internist and infectious disease specialist, obtained a history of appellant experiencing an onset dry cough, sharp and throbbing pain on the left side, fever, chills, generalized malaise, and fatigue on February 22, 2023. On examination, he found decreased breath at the left base. Dr. Choudhary diagnosed pneumonia with parapneumonic effusion and noted other diagnoses including hyperlipidemia.

In a March 9, 2023 work status note, Dr. Choudhary held appellant off work until March 26, 2023.

A work status note dated March 25, 2023 and signed by Margaret Hamm, a certified nurse practitioner, advised appellant to return to work after April 9, 2023.

In a letter dated April 26, 2023, the employing establishment controverted appellant's claim.

In a follow-up development letter dated April 28, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that she had 60 days from the March 29, 2023 letter to submit the requested supporting evidence.

Appellant subsequently submitted a narrative statement dated May 25, 2023. He indicated that he had treated a pneumonia patient with a bacterial lung infection from February 20 to 22, 2023, and that he was admitted to the hospital on February 22, 2023. Appellant indicated that the patient's aspiration pneumonia developed into a bacterial infection, noting that the patient was given antibiotics for this reason. He argued that he could not disclose the "exact details" of the patient's health records to Dr. Tedla for the CA-20 form report pursuant to the Health Insurance Portability Accountability Act (HIPAA), but he noted that he was diagnosed with cavity lesion pneumonia and that this type of respiratory infection is spread through direct exposure.

By decision dated May 30, 2023, OWCP denied appellant's traumatic injury claim, finding that he had not established that his diagnosed condition of cavitary pneumonia was causally related to the accepted employment incident.

On June 23, 2023 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on November 7, 2023. Appellant related that he could not give much detail about the patient that he had treated due to HIPAA policy but noted that his employer could provide additional information. He related that he began treating a patient on a Monday and was admitted to the hospital two days later. Appellant questioned why the employing establishment had advised that the patient did not have infectious pneumonia, noting that he was being treated with IV antibiotics for a bacterial infection and that times from exposure to onset of illnesses varied by individual. He related that the direct contact was the most common cause of respiratory infection as it was a droplet or airborne disease.

By decision dated January 25, 2024, OWCP's hearing representative affirmed OWCP's May 30, 2023 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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, 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>4</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>5</sup>

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. The first component is whether the employee 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.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

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<sup>3</sup> *Id.*

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

<sup>5</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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).

<sup>6</sup> *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).

<sup>7</sup> *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *R.P., id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish cavitory pneumonia causally related to the accepted February 22, 2023 employment incident.

On February 22, 2023 appellant was treated in an emergency department by Dr. Tedla, who diagnosed cavitory pneumonia, pleuritic chest pain, and pleural effusion. In a letter dated February 25, 2023, Dr. Tedla noted that appellant had been admitted to the hospital from February 22 through 25, 2023 and recommended a period of 14 days of convalescence after discharge. However, he did not address the cause of the diagnosed condition in these notes. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>11</sup> This evidence is thus insufficient to establish the claim.

In an attending physician's report (Form CA-20) dated March 30, 2023, Dr. Tedla checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity, opining that appellant "could" have contracted pneumonia from the patient he treated. While he indicated by checking a box marked "Yes" that the diagnosed condition was causally related to the employment activity describe, he did not specifically explain how the employment incident itself physiologically caused the condition. Dr. Tedla only mentioned that the condition "could" have been caused by the employment incident. The Board has held that reports that address causal relationship only by checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, are of diminished probative value.<sup>12</sup> Further, the Board has held that medical opinions that suggest a condition was likely or possibly caused by work activities are speculative and equivocal, and have limited probative value.<sup>13</sup> This report, therefore, is insufficient to establish the claim.

On March 9, 2023 appellant was treated by Dr. Khan, who reviewed appellant's abnormal CT scan of the chest and assessed pneumonia on the left side and pleural effusion. However, Dr. Kahn did not provide an opinion on causal relationship. Thus, his opinion is of no probative value and is insufficient to establish the claim.<sup>14</sup>

On March 9, 2023 appellant was treated by Dr. Choudhary, who diagnosed pneumonia with parapneumonic effusion and hyperlipidemia. In a work status note of even date, Dr. Choudhary held appellant off work until March 26, 2023. No opinions on causal relationship were provided

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<sup>11</sup> See *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> See *J.O.*, Docket No. 22-0240 (issued June 8, 2022); *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *D.A.*, Docket No. 20-0951 (issued November 6, 2020); *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>13</sup> *B.B.*, Docket No. 21-0284 (issued October 5, 2022); *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

<sup>14</sup> *Supra* note 11.

in these notes. As stated above, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>15</sup>

In a March 25, 2023 work status note, Ms. Hamm advised appellant to return to work after April 9, 2023. However, the Board has held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.<sup>16</sup> This report is, therefore, of no probative value and is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a cavitary pneumonia condition and the accepted February 22, 2023 employment incident, the Board finds that appellant has not met his burden of proof.

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 cavitary pneumonia causally related to the accepted February 22, 2023 employment incident.

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<sup>15</sup> *Id.*

<sup>16</sup> 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *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); *see also C.S., supra* note 14 (nurse practitioners are not considered physicians as defined under FECA); *A.F.*, Docket No. 22-1135 (issued January 5, 2023) (physician assistants are not considered physicians as defined under FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2024  
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