

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

D.E., Appellant)	
)	
and)	Docket No. 24-0862
)	Issued: October 21, 2024
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On August 23, 2024 appellant, through counsel, filed a timely appeal from an August 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 an emotional/stress-related condition causally related to the accepted December 29, 2023 employment incident.

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.*

FACTUAL HISTORY

On December 31, 2023 appellant, then a 62-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 29, 2023 he sustained stress and headaches while in the performance of duty. He stated that on that date, while refilling his fuel tank at a gas station, D.T., a coworker, confronted him threateningly and sprayed gasoline on him. Appellant indicated that he had two other disagreements with D.T., but he was unsure as to why he was a target. He stopped work on December 29, 2023.

In a statement dated December 29, 2023, D.T. denied spraying gasoline on appellant.

In an after-visit summary dated December 29, 2023, Dr. Brett Alton Walters, a specialist in emergency medicine, diagnosed migraine and inhalation of noxious fumes.

In a development letter dated January 3, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In an e-mail dated January 4, 2024, F.W., a supervisor, noted that the employing establishment had not received a written statement from appellant regarding the incident of December 29, 2023. F.W. noted that there were no witnesses to the incident apart from appellant and D.T.

A computerized tomography (CT) scan of appellant's head/brain obtained on December 29, 2023 demonstrated no acute intracranial process.

In a note dated January 4, 2024, Dr. Margaret Akpan, a Board-certified internist, advised that appellant was unable to return to work from January 4 through 16, 2024.

In a report dated January 16, 2024, Dr. Akpan stated that appellant had last visited her office on January 4, 2024, after a coworker deliberately sprayed him with gasoline while appellant attempted to fill his tank at a gas station on December 29, 2023 at the employing establishment. He complained of severe headache, dizziness, anxiety and stress. Appellant described symptoms of headaches. On psychiatric examination, Dr. Akpan observed extreme anxiety. She diagnosed headache, toxic effect of lacrimogenic gas, other infiltrative disorders of the skin and subcutaneous tissue, dizziness and anxiety disorder displaying apprehension. Dr. Akpan advised that appellant was unable to work through January 23, 2024 and would be released to return to work on January 24, 2024.

Appellant submitted psychiatric notes dated January 19, 21, February 2, and 16, 2024, signed by Eric Yench, a nurse practitioner, who noted appellant's diagnoses of insomnia, adjustment disorder with mixed emotional features, and adjustment disorder with mixed anxiety and depressed mood disorder. OWCP also received February 5 and 19, 2024 progress reports from Kina Esuma, a mental health therapist, wherein appellant's diagnosis was listed as adjustment disorder with mixed emotional features.

In a report dated January 23, 2024, Dr. Akpan followed up with appellant for complaints of continued severe headaches, dizziness, anxiety, and stress. On examination, she observed anxiety and depression. Dr. Akpan diagnosed headache, irritation of the skin of the right leg due

to exposure to sprayed gasoline, dizziness, and anxiety disorder displaying apprehension. On January 23, 2024 she advised that appellant was unable to work through February 6, 2024 and would be released to return to work on February 7, 2024.

On February 7, 2024 appellant returned to full-time regular duty without restrictions. In an attending physician's report (Form CA-20) dated March 1, 2024, Dr. Akpan diagnosed headache, exposure to toxic gas, anxiety disorder with apprehension, and irritation of the skin of the right leg due to exposure to toxicity from gasoline. Appellant claimed that a co-worker had deliberately sprayed him with gasoline while appellant was filling his tank on December 29, 2023. Dr. Akpan stated that appellant became very anxious, apprehensive, and afraid of being attacked again as a result of the December 29, 2023 incident and experienced headaches affected by this mental state.

In a follow-up development letter dated March 18, 2024, OWCP advised that it had conducted an interim review and found that the evidence remained insufficient to establish the factual circumstances of appellant's claim. It informed him that he had 60 days from the January 3, 2024 letter to submit the requested information. No additional evidence was received.

By decision dated March 25, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the factual basis of his claim, as the evidence did not support that he actually experienced the employment incident alleged to have occurred.

On April 9, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 3, 2024. During the hearing, appellant testified that on December 29, 2023 D.T. doused him with gasoline directly from a gas pump while his back was turned. He also testified that he did not have a relationship with D.T. outside of work. However, D.T. had previously attempted to strike appellant with an automated postal center (APC) at work.

By decision dated August 5, 2024, the hearing representative found that the incident of December 29, 2023 occurred as alleged by appellant. However, the hearing representative denied the claim, finding that appellant had not submitted sufficient medical evidence to establish causal relationship between his diagnosed conditions and the accepted December 29, 2023 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation, 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

³ *Supra* note 2.

employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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 incident identified by the employee.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical or emotional condition causally related to the accepted December 29, 2023 employment incident.

OWCP received an after-visit summary dated December 29, 2023 wherein Dr. Walters diagnosed migraine and inhalation of noxious fumes. Appellant submitted notes and reports from Dr. Akpan dated January 4, 16, and 23, 2024. However, these notes and reports did not offer an opinion regarding the cause of appellant's diagnosed conditions. 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.⁹ This evidence is, therefore, insufficient to establish appellant's claim.

In a Form CA-20 dated March 1, 2024, Dr. Akpan diagnosed headache, exposure to toxic gas, anxiety disorder with apprehension, and irritation of the skin of the right leg due to exposure to toxicity from gasoline. Appellant claimed that a coworker had deliberately sprayed him with gasoline while appellant was filling his tank on December 29, 2023. Dr. Akpan stated that

⁴ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *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).

⁸ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *See C.M.*, Docket No. 24-0074 (issued July 12, 2024); *K.J.*, Docket No. 22-0611 (issued January 5, 2024); *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

appellant became very anxious, apprehensive, and afraid of being attacked again as a result of the December 29, 2023 incident and experienced headaches affected by this mental state. However, she did not provide medical rationale explaining how the accepted December 29, 2023 employment incident caused or contributed to the diagnosed emotional conditions. A mere conclusion without the necessary rationale explaining how work activities could result in the diagnosed conditions is insufficient to meet the employee's burden of proof.¹⁰ Thus, this evidence is insufficient to establish the claim.

Appellant also submitted reports from a nurse practitioner and a mental health therapist. Certain healthcare providers such as nurse practitioners and mental health therapists are not considered "physicians" as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹¹

The record contains results of diagnostic testing. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹²

As the medical evidence of record is insufficient to establish causal relationship between an emotional condition and the accepted December 29, 2024 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 a medical or emotional condition causally related to the accepted December 29, 2023 employment incident.

¹⁰ See *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *D.P.*, Docket No. 17-0148 (issued May 18, 2017).

¹¹ Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable 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); *M.F.*, Docket No. 19-1573 (issued March 16, 2020) (nurse practitioners are not considered physicians as defined by FECA); *W.C.*, Docket No. 08-2435 (issued July 15, 2009) (mental health therapists are not considered physicians as defined by FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹² *J.K.*, Docket No. 24-0771 (issued August 21, 2024); *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 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