United States Department of Labor
Employees' Compensation Appeals Board

Y.S., Appellant	)	
and	)	**Docket No. 22-1142**
	)	**Issued: May 11, 2023**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONS COMPLEX, Yazoo City, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 28, 2022 appellant filed a timely appeal from a March 15, 2022 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 a medical condition causally related to the accepted June 15, 2021 employment incident.

FACTUAL HISTORY

On June 17, 2021 appellant, then a 45-year-old special education teacher, filed a traumatic injury claim (Form CA-1) alleging that on June 15, 2021 she developed shortness of breath, chest

[1] 5 U.S.C. § 8101 *et seq*.

tightness, and an exacerbation of asthma when an individual deployed pepper spray in close proximity to her while in the performance of duty. She stopped work on June 15, 2021.

In support of her claim appellant submitted a June 15, 2021 note from Merrie B. Bellipanni, a registered nurse, who treated her in the emergency room and returned her to work on June 21, 2021.

In form reports dated June 22, June 30, July 7, and July 12, 2021, unidentifiable healthcare providers with illegible signatures, reported that on June 15, 2021 appellant inhaled pepper spray deployed by an individual in direct contact with her in the lobby at work. A chest x-ray revealed no abnormalities. The healthcare providers diagnosed chemical pneumonitis and shortness of breath and returned appellant to modified-duty work including avoiding chemical inhalation or contact.

On July 9, 2021 the employing establishment safety administrator, S.W., indicated that on June 15, 2021 appellant sustained a work-related injury. She advised that the employing establishment did not have a position for appellant at that time because her work restrictions provided that she must avoid exposure to Oleoresin Capsicum (OC) aerosol spray or pepper spray. S.W. noted that the employing establishment's policy enacted on June 28, 2021 required all staff to carry government-issued pepper spray.

On July 13, 2021 appellant accepted a temporary limited- light-duty position with the employing establishment as a teacher working eight hours per day with Sunday and Monday as her scheduled days off. The physical requirements were sedentary job duties, alternate sitting, standing, and walking short distances and she was not required to respond to emergencies.

In a development letter dated July 15, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received additional evidence. In a form report dated July 26, 2021, an unidentifiable healthcare provider diagnosed chemical pneumonitis and asthma. Appellant's current treatment plan and work restrictions were continued.

In form reports dated August 3 and 10, 2021, Dr. Stacie Hicks, a family medicine specialist, diagnosed inhalation of toxic substance, pepper spray, shortness of breath, and wheezing. She noted a date of injury of June 15, 2021 and referred appellant to a pulmonologist. Dr. Hicks returned appellant to work with restrictions. She provided discharge instructions for toxic effect of unspecified substance, accidental, shortness of breath, and wheezing.

By decision dated September 2, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed conditions and the accepted June 15, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or condition causally related to the accepted employment incident.

OWCP received additional evidence. Dr. Micah Walker, an emergency medicine specialist, treated appellant in the emergency room on June 15, 2021 for shortness of breath and

exposure to a chemical while at work. Appellant's history was significant for asthma. An x-ray of the chest on even date revealed no acute pathology. Dr. Walker diagnosed asthma with acute exacerbation and chemical exposure. In an after-visit summary of even date he treated appellant for chemical exposure and shortness of breath. Dr. Walker diagnosed asthma with acute exacerbation and chemical exposure and discharged appellant.

On August 10, 2021 Dr. Hicks diagnosed wheezing, shortness of breath, and inhaled toxic substance and referred appellant to a pulmonologist for evaluation and treatment.

In form reports dated August 17 and 24, 2021, an unidentified health care provider diagnosed inhalation and pneumonitis and referred appellant to a pulmonologist. Appellant's current work restrictions were continued.

On September 13, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 12, 2022.

Appellant submitted treatment records dated September 20, October 22, 2021, and February 9, 2022, by Dr. Kimberly D. Bridges, a Board-certified pulmonologist, who treated her for occupational asthma and shortness of breath. She presented for pulmonary evaluation after workplace exposure to pepper spray on June 15, 2021. Appellant reported working as a teacher in a prison where she was exposed to pepper spray in the front lobby of the employing establishment that was deployed by a supervisor in close proximity to her. Immediately after dispersal, she had severe coughing and was treated in the emergency room and diagnosed with chemical pneumonitis. A pulmonary function test and chest x-ray performed on September 20, 2021 were normal. Appellant reported poor asthma control since the incident, which required escalation of maintenance therapy. Dr. Bridges noted that prior to the incident in June, appellant was diagnosed with asthma, but symptoms had been mild for years and she did not require maintenance therapy. She diagnosed history of toxic inhalation exposure, occupational asthma, exposure-related hyper-reactivity, and severe obesity.

By decision dated March 15, 2022, OWCP's hearing representative affirmed the September 2, 2021 decision.

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 timely filed within the applicable time limitation of FECA,[3] 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

[2] *Id.*

[3] *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.[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]

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. 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[6]

The medical evidence required to establish a 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 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 her burden of proof to establish a medical condition causally related to the accepted June 15, 2021 employment incident.

Dr. Walker treated appellant on June 15, 2021 for shortness of breath and exposure to a chemical while at work. He diagnosed asthma with acute exacerbation and chemical exposure. In an after-visit summary of even date, Dr. Walker treated appellant for chemical exposure and shortness of breath and diagnosed asthma with acute exacerbation and chemical exposure. Similarly, in form reports dated August 3 and 10, 2021, Dr. Hicks diagnosed inhalation of toxic substance, pepper spray, shortness of breath, and wheezing. She noted a date of injury of June 15, 2021. Likewise, reports from Dr. Bridges dated September 20, October 22, 2021, and February 9, 2022 noted treatment for occupational asthma and shortness of breath after workplace exposure to pepper spray on June 15, 2021. She diagnosed history of toxic inhalation exposure, occupational asthma, exposure-related hyper-reactivity, and severe obesity. While Drs. Walker, Hicks, and Bridges indicated that appellant's asthma and shortness of breath were work related, they failed to provide medical rationale explaining the basis of their opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or

[4] *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).

[5] *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).

[6] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[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] *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).

aggravated the diagnosed condition, Drs. Walker, Hicks, and Bridges opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.[9]

Appellant submitted form reports from unidentifiable healthcare providers with illegible signatures dated June 22, June 30, July 7, July 12, July 26, August 17, and August 24, 2021. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[10] Therefore, these reports are also insufficient to establish the claim.

Appellant submitted a report from a registered nurse. However, certain healthcare providers such as registered nurses[11] are not considered "physician[s]" as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13]

Appellant also submitted a chest x-ray. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[14] This evidence is therefore insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted June 15, 2021 employment incident, the Board finds that appellant has not met her 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.

[9] *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[10] *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] *B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurse's reports are of no probative medical value as nurses are not physicians under the FECA).

[12] Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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); *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 P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians as defined under FECA).

[13] *Id*.

[14] *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 15, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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