

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN EDWARDS STANLEY and DEPARTMENT OF THE ARMY,
U.S. MISSILE COMMAND, Redstone Arsenal, Ala.

*Docket No. 96-1330; Submitted on the Record;
Issued March 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an injury in the performance of duty and (2) whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

On August 5, 1995 appellant, then a 50-year-old research chemist, filed occupational disease claim for compensation (Form CA-2), alleging that on July 18, 1995 she first realized her skin cancer, asbestos and soot poisoning, allergies and stress-induced hyperacidity were due to an accidental asbestos dump which occurred 6 years prior. Appellant also alleged that she has experienced discrimination and harassment since her exposure to asbestos.

In an undated noted from appellant's supervisor, the supervisor noted:

"The employee's work environment was typical to that of other chemist employee's in the laboratory. There is no known record of chemical exposure to the employee other than that contained in the employee's statements. Chemical testing of the office areas in room 160-A, building 7804 was performed on August 3, 1995. A test report dated September 28, 1995 showed no measurable chemical contamination."

In a memorandum dated January 5, 1995, appellant states that her physician has diagnosed hyperacidity which she states is stress induced and a common problem in women.

In a memorandum dated January 23, 1995, appellant states that she is highly allergic due to repeated exposure to dust, soot and chemicals at the employing establishment. Appellant also note that she has hyperacidity due to the stress of her work environment and harassment by Dr. Stephens at public meetings.

In a memorandum dated July 19, 1995, appellant alleges that she has skin cancer related to her exposure to soot and asbestos. Appellant also detailed an alleged exposure to asbestos six

or seven years prior when she alleges there was “an accidental sudden release of asbestos powder from the vents in the building.” Appellant also alleged that she had soot in her face for the approximately 12 years she worked in building 7770 (now 7804).

In a memorandum dated July 24, 1995, appellant alleged sex discrimination, sexual harassment and discriminatory violations of the labor law. Appellant also alleged that there was soot in her vent to which she is allergic.

In a memorandum dated July 31, 1995, appellant gave a statement detailing her belief that her skin cancer is due to her exposure to soot and asbestos in the work environment. Appellant also set forth details of harassment and discrimination conditions at her employment such as shunning by her coworkers, possible direction of the air conditioning into her office, air filters not being changed, frequent ticketing, people entering her office and erasing her computer files, junk mail sent to her home and people following her around.

In a verification of physician visit, diagnosis and treatment dated August 10, 1995, it was checked that appellant had skin cancer related to asbestos and that she was at the Kirkland Clinic on August 10, 1995.

By letter dated January 31, 1996, appellant stated that she was highly allergic to soot due to her 11-year exposure to soot in her face and that her skin cancer is due to her asbestos exposure. Appellant also submitted various enclosures relating to her contention including substances she is allergic to, lists of her publications and various memorandum regarding detailing her allegations of harassment and discrimination.

By letter dated February 9, 1996, the Office requested additional evidence. The Office advised appellant of the information required which included a comprehensive medical report.

In a letter dated March 1, 1996, appellant responded to the Office’s request for additional information. Appellant reiterated her previous allegations, but failed to submit any medical evidence or other evidence in support of her claim.

In a memorandum dated December 18, 1995, appellant requested that her claim be considered without further information from her physicians. Regarding the submission of medical evidence, appellant indicated that:

“My physicians all diagnose verbally to me. Only verbal communication is available to me from all of them. The diagnoses from my physicians is being communicated in writing, using my rank, GS-15-06, former function chief. Their diagnoses are summarized in the CA-2.”

In another memorandum dated December 18, 1995, appellant indicated that the “employee mental diagnosis by Dr. Ferguson was illegal by EEO law.” Appellant also noted that her physician and her private medical team consider her normal mentally and thus any appointment is unnecessary.

By decision dated March 8, 1996, the Office rejected appellant’s claim for compensation.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that he is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.⁴

Because appellant failed to submit any medical opinion evidence to support that her federal employment caused an injury, the Board finds that she failed to submit a *prima facie* claim for compensation. For this reason, the Board affirms the Office's March 8, 1996 decision that appellant has failed to establish that she sustained an injury in the performance of duty.

The Board further finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty as alleged.

Appellant has submitted statements identifying the specific employment factors alleged to have caused or contributed to her condition, but she has submitted no medical evidence to

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

establish the presence or existence of the condition for which she claims compensation and submitted no medical evidence to support a causal relationship between that condition and her federal employment.

On appeal, appellant contends that she does not have a mental problem, but that she has stress-induced hyperacidity and that the employing establishment has the relevant medical data. The burden remains upon appellant to establish her claim through factual and medical evidence, including a medical report by a physician based on a complete factual and medical background and which establishes a causal relationship between the claimed condition and factors of appellant's employment. Because appellant submitted no medical evidence before the Office, the Board finds that appellant has failed to make a *prima facie* case for coverage.

The decision of the Office of Workers' Compensation Programs dated March 8, 1996 is affirmed.

Dated, Washington, D.C.
March 18, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member