

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHYLLIS WASHINGTON and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Washington, D.C.

*Docket No. 97-451; Submitted on the Record;  
Issued October 5, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a respiratory condition in the performance of duty on June 19, 1993.

On March 9, 1995 appellant filed a claim alleging that on June 19, 1993, she was exposed to dust and fumes which contributed to a respiratory condition. The record indicates that appellant stopped working on June 19, 1993. In a narrative statement, appellant alleged that there was smoke, fumes, dust and dirt in her work area. Appellant asserted that there were dusty and dirty machines, and she noted "use of chemicals to clean up" without further explanation. Appellant also noted that she had a prior occupational claim from 1984 which was accepted for respiratory problems resulting from airplane fumes at her former work site.

In a letter dated December 15, 1995, an employing establishment compensation specialist indicated that, according to appellant's supervisor, appellant had worked only 30 to 45 minutes at her new work site. The supervisor reported that there had been painting and construction in an adjacent area, but it had been completed by June 19, 1993. In addition, the supervisor had indicated that cleaning materials were not stored on the workroom floor, and postal trucks that produced fumes were located in a docking area separated from the workroom floor by doors. According to the supervisor, appellant was not located near this area.

In a decision dated December 27, 1995, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established an injury in the performance of duty. In a decision dated August 8, 1996, an Office hearing representative affirmed the December 27, 1995 decision.

The Board has reviewed the record and finds that appellant has not established that she sustained a respiratory condition causally related to exposure to work factors on June 19, 1993.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>2</sup> In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.<sup>3</sup>

With respect to the alleged exposure to environmental work factors on June 19, 1993, appellant has stated that she was exposed to smoke and fumes, without providing significant detail. She does not discuss the nature and extent of any smoke in the workplace and the Board is unable to find that exposure to smoke occurred as alleged. According to appellant she was also exposed to fumes, but she does not provide additional explanation or detail except to indicate that cleaning agents were used. The employing establishment reported that cleaning solutions were not kept in the workroom area as of July 1993. There apparently had been some painting in an adjacent area prior to June 19, 1993, but the evidence of record is not sufficient to establish exposure to fumes from cleaning agents, motor vehicles or paint, on June 19, 1993.

At the May 31, 1996 hearing before an Office hearing representative, appellant stated that there was a lot of dust and dirt in the corner where she was assigned to work on June 19, 1993. The employing establishment has not commented on or refuted these allegations, although they had an opportunity to do so. The Board finds that the record supports exposure to some dirt and dust in the performance of duty on June 19, 1993. To establish her claim, however, appellant must submit probative medical evidence on causal relationship between a diagnosed condition and the employment factors. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.<sup>4</sup>

In this case, the record contains several reports from Dr. James A. Mutcherson, Jr., an allergy specialist, dating from September 1, 1993 to December 19, 1995. In the September 1, 1993 report, Dr. Mutcherson stated that work absences from June 19, 1993 were "a direct result of work exposure," but he does not discuss the specific nature of the "work exposure" in this case. The record indicates that appellant had been exposed to some dirt and dust for less than an hour on June 19, 1993. Dr. Mutcherson does not demonstrate familiarity with appellant's workplace or the nature and extent of her actual exposure. He provided a general statement that reintroduction into an allergic environment, "*i.e.*, dense vegetation, dust, smoke, noxious fumes, extremes of temperature, and molds" would lead to an abrupt disintegration of her allergic

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

<sup>3</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>4</sup> *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

health, without explaining how the specific exposure on June 19, 1993 contributed to appellant's respiratory condition. His subsequent reports refer to a "work milieu hostile to [appellant's] allergic health," without providing a complete and accurate history of the exposure.

In the absence of a reasoned medical opinion, based on a complete and accurate history of appellant's exposure to environmental factors at work on June 19, 1993, the Board finds that appellant has not established an injury in the performance of duty on June 19, 1993.

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

Dated, Washington, D.C.  
October 5, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member