

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

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**ELAINE M. JENKINS, Appellant**

**and**

**SOCIAL SECURITY ADMINISTRATION,  
Savannah, GA, Employer**

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**Docket No. 04-1359  
Issued: September 30, 2004**

*Appearances:*  
*Elaine M. Jenkins, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On April 26, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 18, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue on appeal is whether appellant has met her burden of proof in establishing that she developed asthma and bronchitis in the performance of duty.

**FACTUAL HISTORY**

On April 9, 2002 appellant, then a 57-year-old group supervisor, filed an occupational disease claim for compensation (Form CA-2), alleging that she developed asthma and bronchitis as a result of breathing fiber particles present in the workplace. She first became aware of her

lung condition on January 31, 2002. Appellant stopped work on January 31, 2002 and returned on March 4, 2002.<sup>1</sup>

Accompanying appellant's claim were disability certificates from Dr. Thomas J. Hogan, a Board-certified internist, covering January 31 to February 28, 2002. He diagnosed asthma and bronchitis and recommended that appellant not return to her prior work space in the file room. Also submitted was a report from Dr. Stephen L. Morris, a Board-certified internist, dated March 13, 2002, who diagnosed severe exacerbation of underlying asthma characterized by status asthmaticus and underlying bronchiectasis involving both lobes. He noted that a sputum culture suggested evidence of probable fungal induced atopic disease which was contributing to her asthma. Dr. Morris advised that working in a "dusty, moldy environment" was detrimental to appellant's respiratory health. The physician diagnosed atopic disease and underlying asthma and advised that further evaluation of her work area would be necessary to fully exclude the fungal superinfection as a contributing factor to her underlying illness. Dr. Morris suggested that appellant work in an area which was better ventilated. In a statement dated March 21, 2002, she noted that she was hospitalized from January 30 to March 4, 2002 for exacerbation of her chronic bronchitis and asthma. Appellant noted that her workplace was located in an enclosed file room with little or no ventilation and advised that constant exposure to dust and other air pollutants caused an exacerbation of her respiratory disorder.

The employing establishment submitted several statements from Alan L. Bergstrom, chief administrative law judge and appellant's supervisor. He noted on April 17, 2002 that inspections of her work space failed to establish any indicia that the medical condition resulting in appellant's hospitalization and subsequent absence from work related to the duties performed on the employing establishment's premises. Judge Bergstrom advised that in 1995, appellant was assigned to work in an area originally designed to be a courtroom, but was used as a file room. In 1999, this space was used as a hearing room and that in 2000, the room was set up to accommodate a supervisor with seven file cabinets. Judge Bergstrom noted that the work premises were inspected in September 2001 and February 2002 by Occupational Safety and Health Administration (OSHA) contractors, who concluded that the air quality and ventilation was appropriate and that no inappropriate airborne particulates were present. The OSHA contractors found upon physical inspection of appellant's office that all horizontal surfaces, walls, carpeting and ceiling were clean and free from dust, particulates, mold or other growths. Judge Bergstrom noted that the landlord's air conditioning contractor reported that all air filtration vents into the office were clean and free from debris or growths.

In a letter dated June 21, 2002, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office requested that she submit a physician's reasoned opinion addressing the relationship of her asthma and bronchitis conditions and specific employment factors.

By decision dated April 8, 2003, the Office denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

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<sup>1</sup> On March 21, 2002 appellant filed a traumatic injury claim, however, the Office developed the claim as an occupational disease.

In a letter dated May 1, 2003, appellant requested an oral hearing before an Office hearing representative, which was held on December 15, 2003. In a statement dated May 29, 2003, appellant alleged that she was forced to work in a dusty environment. She stated that she was permanently and adversely affected by working in an environment which exacerbated her asthma and bronchitis.

In a decision dated March 18, 2004, the hearing representative affirmed the April 8, 2003 decision. The hearing representative found that appellant did not submit sufficient evidence to establish the existence of specific employment pollutants while the employing establishment indicated that air quality samples did not detect any particulates.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or his claim, including the fact that the individual 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 the 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. 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>2</sup>

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) 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 claimant. The medical evidence required to establish causal relationship is generally 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.<sup>3</sup>

An award of compensation may not be based on surmise, conjecture or speculation. The mere fact that a disease or condition manifests itself or worsens during a period of employment<sup>4</sup>

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

or that work activities produce symptoms revelatory of an underlying condition<sup>5</sup> does not raise an inference of causal relation between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.<sup>6</sup>

### ANALYSIS

The Office denied appellant's claim because it found that she did not establish the first component of fact of injury; whether she actually experienced the employment exposures that allegedly caused an injury. The Office found that appellant did not provide any evidence to support the presence or existence of the specific employment pollutants to which she alleges she was exposed and which she believed caused or contributed to her claimed injury. The Office noted that it provided appellant an opportunity to provide such information, but that such information was not received.

The Board finds that appellant failed to establish how the employment factors caused or contributed to her claimed condition of asthma and bronchitis. She stated that her workplace was located in an enclosed file room with little or no ventilation and advised that constant exposure to dust and other air pollutants caused an exacerbation of her respiratory disorder. Appellant did not provide any evidence to support the presence or existence of specific employment pollutants to which she alleged exposure. The employing establishment advised that the work premises were inspected in September 2001 and February 2002 by OSHA, who concluded that the air quality and ventilation was appropriate and that no inappropriate airborne particulates were present. OSHA found upon physical inspection of appellant's office, all horizontal surfaces, walls, carpeting and ceiling were clean and free from dust, particulates, mold or other growths. Also noted was the report from the air conditioning contractor who found that all air filtration vents into the office were clean and free from debris or growths. As the first component to be established is that the employee actually experienced the employment exposures which is alleged to have occurred, appellant failed to meet her burden of proof as she has submitted insufficient evidence to establish such exposures.

The Board finds that the medical evidence submitted in support of appellant's claim does not explain how specific work factors caused or aggravated her condition. Dr. Hogan diagnosed asthma and bronchitis and recommended that appellant not return to her prior work space in the file room. He did not specifically address how any particular work factors or exposures caused or aggravated appellant's diagnosed conditions. Dr. Morris diagnosed severe exacerbation of underlying asthma characterized by status asthmaticus and underlying bronchiectasis. However, the physician did not explain how appellant's workplace may have aggravated her asthma or bronchitis condition. He merely advised that she suffered from atopic disease and underlying asthma and advised that appellant could not work in a moldy, dusty environment. A medical report that does not contain an opinion on causal relationship is insufficient to meet appellant's

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<sup>5</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>6</sup> *Robert G. Morris*, 48 ECAB 238-39 (1996).

burden of proof.<sup>7</sup> The physician's recommendation that testing be performed of her workplace to rule out an employment cause of her condition renders his opinion as speculative and conjectural to the extent that it can be construed as an opinion regarding the causal relationship.<sup>8</sup> Accordingly, the medical reports of record fail to provide a probative, rationalized opinion that appellant's asthma and bronchitis conditions were caused or aggravated by factors or conditions of her federal employment.

For these reasons, appellant did not meet her burden of proof in establishing that she sustained an injury in the performance of duty.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she developed asthma and bronchitis in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 30, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> See *Michael E. Smith*, 50 ECAB 313, 316 (1999).

<sup>8</sup> See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).