United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 06-1421**
	)	**Issued: October 13, 2006**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 16, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 19, 2005, finding that she failed to establish that she sustained an injury as alleged. The record also contains an Office decision dated February 13, 2006 denying appellant's request for reconsideration without a merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on September 23, 2003; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 17, 2003 appellant, then a 39-year-old electronics engineer, filed an occupational disease claim alleging that she felt light headed and experienced headaches on the first day of her detail assignment to the seventh floor. She alleged that on the second day, her eyes began to burn. Appellant spoke to other workers on the third day whom she alleged experienced similar problems. She first became aware of her condition on September 23, 2003 and on October 6, 2003, realized it was related to her work.

In a separate statement, appellant alleged that on the first day of her detail she started to feel light headed and her eyes became irritated. When she left work on the first day, she experienced burning eyes and a headache. Appellant took her contacts out and rinsed her eyes because they felt like they were on "fire." She alleged that they cleared up after approximately 20 minutes. On the next day, a coworker indicated that she had similar symptoms but that she thought it was because she was getting older. Appellant called customer service and received the number for the air quality specialist, with whom she met. However, the specialist could not do any testing as there was no funding. Appellant was subsequently moved to a different floor, but had to spend some time, at least one hour a day on the seventh floor. She alleged that the carpet was dirty and the vents had black dirt on them. Appellant noted a water break on the ninth floor several months earlier. She indicated that her eyes, skin, throat, stomach and lungs were affected and that she had to take medication and use an inhaler.

Appellant also submitted an undated pulmonary function laboratory test result, a copy of leave used from October 2 to November 14, 2003, a chest x-ray dated October 8, 2003, read by Dr. Leslie Marshall, a Board-certified radiologist, which revealed no significant abnormality, a November 1, 2003 disability certificate from Dr. John W. Bedeau, a Board-certified gastroenterologist, indicating that appellant was "experiencing symptoms of sick building syndrome" and that she must be moved to a different environment, an October 6, 2003 pulmonary function report and an October 6, 2003 report from Dr. Earl A. Armstrong, Board-certified in internal medicine. In his report, Dr. Armstrong indicated that appellant described "what sounds like sick building syndrome." He noted that appellant worked at the employing establishment for the past several months and had no health problems until she was moved to the seventh floor on September 23, 2003. Her physical examination was unremarkable and her lungs were clear without wheezing. Dr. Armstrong opined that "the patient appears to suffer from exposure to a sick building syndrome." He recommended that an industrial hygienist evaluate the building.

In a letter dated December 10, 2003, the Office requested additional factual and medical evidence from appellant.

The employing establishment controverted the claim. In a May 7, 2004 memorandum, Kim L. Taylor, a Deputy Director, noted that appellant began a one-year detail in September 2003. Two weeks later, she complained of shortness of breath, watery eyes and an irritated throat. Ms. Taylor confirmed observing these symptoms but had not received any other complaints from employees of sickness in the division. She advised that she had not received any environmental testing reports.

By decision dated May 24, 2004, the Office denied appellant's claim. It found that the evidence supported that the claimed events occurred as alleged. However, there was no medical evidence that provided a diagnosis related to appellant's federal employment.

Appellant requested reconsideration of the Office's May 24, 2004 decision on June 17, 2004.

In a May 17, 2005 letter, appellant described the circumstances regarding her work-related exposure. She noted that she was submitting numerous documents including air quality test reports, disability certificates, medical reports and witness statements and listed those reports.

By decision dated December 19, 2005, the Office denied modification of the May 24, 2004 decision. The Office specifically noted that it had received appellant's 10-page statement explaining the specific circumstances of her work-related exposure. However, the Office did not receive a copy of the air quality report that she had referenced. Furthermore, the Office noted that the only medical reports in the record were those which noted the May 24, 2004 decision and an October 8, 2003 chest x-ray.[1]

Appellant requested reconsideration on January 16, 2006. She alleged that she had submitted evidence which did not appear to be in the file, contending that she had sent an express mail package that weighed 1 pound and 12.9 ounces and provided a copy of the receipt. She noted that her package also included another file number because it had the same attachments.[2]

By decision dated February 13, 2006, the Office denied appellant's request for reconsideration finding that she failed to submit either new and relevant evidence or legal contentions not previously considered.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing 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 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.[4] These are the essential

[1] The Office also requested that, if appellant should submit a copy of the air quality report to the Office, she should send a copy of her May 17, 2005 statement to her employer with the report for their comments.

[2] Appellant referred to two file Nos. 252036683 and 252036684. However, the Office only addressed her present claim. File No. 252036683 is the claim that is before the Board on the present appeal.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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 causal relationship, generally, 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.[6]

ANALYSIS -- ISSUE 1

The evidence establishes that appellant was assigned to work on the seventh floor of her office building as part of a detail assignment. The Board finds that she has submitted insufficient medical evidence to establish that her sick building syndromes were caused or aggravated by her federal employment.

The medical evidence of record submitted by appellant includes an October 8, 2003 x-ray of the chest, read by Dr. Marshall, who determined that there was no significant radiological abnormality. This report does not provide any support for any diagnosed condition. It is of limited probative value in establishing her claim.

In a November 1, 2003 disability certificate, Dr. Bedeau, opined that appellant was "experiencing symptoms of sick building syndrome." Dr. Bedeau's opinion is of diminished probative value because he did not provide any medical rationale to explain how or why exposures to specific substances at work caused or aggravated her claimed condition. As noted, appellant's burden of proof includes the submission of rationalized medical evidence addressing causal relationship. Dr. Bedeau did not identify any specific chemicals to which she may have been exposed.

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Id.*

In an October 6, 2003 report, Dr. Armstrong, indicated that appellant experienced "what sounds like sick building syndrome." The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship.[7] He also noted that appellant worked at the employing establishment for the past several months and had no health problems until she was moved to the seventh floor on September 23, 2003. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before an event but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[8]

The record contains no rationalized medical opinion explaining the cause of appellant's symptoms. The Office informed appellant of the deficiencies in the medical evidence and what was needed to establish her claim in a letter dated December 10, 2003. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[9] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is no probative medical evidence addressing how appellant's claimed conditions were caused or aggravated by factors of her employment. She has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[11] the Office's regulations provide that a claimant's application for reconsideration must be submitted in writing and set forth arguments or contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[12] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.[13] When a claimant fails to meet one of the above

[7] *Arthur P. Vliet*, 31 ECAB 366 (1979).

[8] *John F. Glynn*, 53 ECAB 562 (2002).

[9] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[10] *Id.*

[11] 5 U.S.C. § 8128(a). Under section 8128(a) of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

[12] 20 C.F.R. §§ 10.609(a) and 10.606(b).

[13] 20 C.F.R. § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[14]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on January 16, 2006. She alleged that the record did not contain evidence that she submitted. The Office in a December 19, 2005 decision, noted that it had received a 10-page statement but no other evidence. Appellant submitted a copy of a receipt for an express mail package weighing 1 pound and 12.9 ounces. The Office advised her that it did not have any other evidence other than what was previously listed and considered. This argument does not advance a relevant legal argument not previously considered by the Office in that it does not establish that relevant evidence was not associated with the claim file nor was there any relevant new evidence submitted with the reconsideration request. While it generally supports that appellant sent information to the Office, it does not establish that any particular documents were submitted. The underlying issue in this case is whether appellant met her burden of proof to establish that she sustained an occupational disease while in the performance of duty. The Office found that the initial evidence supported that the claimed events occurred as alleged, however, it found that she had not submitted sufficient medical evidence to establish her claim. The record does not establish that appellant submitted any relevant and pertinent new medical evidence.

Appellant did not submit evidence or argument showing that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office. It properly denied her reconsideration request.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board further finds that the Office properly denied appellant's request for reconsideration.

[14] 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 13, 2006 and December 19, 2005 are affirmed.

Issued: October 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board