

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

R.R., Appellant

and

U.S. POSTAL SERVICE, Chicago, IL, Employer

)
)
)
)
)
)
)

**Docket No. 07-1308
Issued: October 3, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 16, 2007 appellant timely appealed the March 5, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the case.¹

ISSUE

The issue is whether appellant sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On December 14, 2006 appellant, then a 64-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained arthritis in her lower back due to working under air conditioning all day. She first became aware that her illness was related to her employment on August 18, 2006. Appellant submitted two disability certificates from

¹ The record includes medical evidence received after the Office issued the March 5, 2007 decision. The Board cannot consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2004).

Dr. Percy C. May. In the September 5, 2006 certificate, Dr. May stated that appellant was totally incapacitated from August 31, 2006 through an unknown date. In the October 2, 2006 certificate, he stated that appellant was totally incapacitated from August 31 to November 1, 2006. The Office received a December 14, 2006 letter from appellant in support of her claim. The Office also received a December 15, 2006 letter from appellant's supervisor controverting her claim.

On January 5, 2007 the Office informed appellant that the evidence received was not sufficient and that additional medical evidence was needed to support her claim. Appellant did not respond.

On March 5, 2007 the Office denied appellant's claim on the grounds that there was no medical evidence of a diagnosis connected to the events. The Office noted that the evidence supported that the claimed events occurred.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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 or specific condition for which compensation is claimed is causally related to the employment injury.²

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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.³

While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁴

² *Anthony P. Silva*, 55 ECAB 179 (2003).

³ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005).

⁴ *Morris Scanlon*, 11 ECAB 384, 385 (1960).

ANALYSIS

Appellant alleged that she sustained arthritis in her lower back causally related to factors of her federal employment. The Office accepted that the employment events occurred as alleged: that the air conditioning was blowing on appellant. The claim was denied because appellant did not submit medical evidence which established that this factor of employment caused a disease or condition. The Board finds that the medical evidence does not establish that appellant has a diagnosed condition, causally related to air conditioning at her employment.

The medical notes submitted failed to provide a diagnosis and any opinion regarding causal relationship. The September 5 and October 2, 2006 disability certificates from Dr. May stated that appellant was totally incapacitated but failed to diagnose a condition or disease or offer any opinion regarding the cause of her condition. The two certificates were the only medical documents submitted. The burden is on appellant to submit sufficient evidence to establish that she sustained an injury. Without medical evidence of a diagnosed condition or disease causally related to her employment, appellant has failed to demonstrate that she sustained an injury in the performance of duty. The Board finds that appellant has submitted insufficient medical evidence to establish that she sustained a condition caused by her federal employment.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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