United States Department of Labor
Employees' Compensation Appeals Board

E.K., Appellant	)	
	)	**Docket No. 08-854**
and	)	**Issued: August 22, 2008**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Guaynabo, PR, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2008 appellant filed a timely appeal from February 5, June 6 and December 13, 2007 decisions of the Office of Workers' Compensation Programs, denying her traumatic injury claim. Pursuant to C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained pneumonia on December 5, 2006 in the performance of duty.

FACTUAL HISTORY

On December 21, 2006 appellant, then a 53-year-old customer service representative, filed a traumatic injury claim alleging that on December 5, 2006 she sustained pneumonia while assisting with a training program. She alleged that the training room was extremely cold due to air conditioning. Appellant felt ill at the end of the workday and could not get out of bed the

next day. An emergency room report dated December 7, 2006, indicated that she sustained bronchopneumonia and was hospitalized through December 11, 2006. The employing establishment controverted appellant's claim. It indicated that appellant had bronchitis prior to the December 5, 2006 training and had been feeling better but called in sick December 6, 2006 alleging that she experienced further respiratory problems due to the cold environment in the air-conditioned training room. Appellant stated that "The prior bronchitis, even though recovered, made me more susceptible to a hazardous environment -- such as the one in the job training, where excessive cold temperature and possible gas or fumes presented a real hazard."

In a form report dated January 2, 2007, Dr. Johnny A. Rodriguez Espinoza, a specialist in internal medicine and infectious diseases, diagnosed bronchopneumonia. The history provided by appellant was that she was exposed to cold air conditioning on December 5, 2006, which she believed was the cause of her pneumonia. Dr. Rodriguez did not provide his opinion as to the cause appellant's diagnosed condition.

On January 3, 2007 the Office requested additional information, including a medical report with a diagnosis and medical rationale explaining any causal relationship to appellant's employment on December 5, 2006.

By decision dated February 5, 2007, the Office denied appellant's claim on the grounds that the evidence did not establish that her bronchopneumonia was sustained on December 5, 2006 in the performance of duty.

On February 15, 2007 appellant requested a review of the written record and submitted a January 24, 2007 report in which Dr. Rodriguez stated that her physical examination on December 4, 2006 revealed that her lungs were clear and she could return to work the next day. Dr. Rodriguez indicated that appellant was hospitalized on December 7, 2006 because her prior bronchial condition was aggravated by "prolonged exposure to extreme cold temperature in an enclosed room and possible toxic environment." He stated that she was disabled from December 6 to 20, 2006.

By decision dated June 6, 2007, an Office hearing representative affirmed the February 5, 2007 decision.

On August 15, 2007 appellant requested reconsideration and submitted an August 20, 2007 report in which Dr. Rodriguez stated:

> "[Appellant] informed that on December 5, 2006 she attended work all day. The work training room was extremely cold, less than 60 degrees. [Appellant] arrived to her home feeling ill and the next day, December 6, 2006, was sick. She had fatigue and fever. [Appellant] could n[o]t get out of bed and go to work that morning, the training building was evacuated due to gas escape."
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> "A cause of pneumonia is an adverse occupational environment. Respiratory disease [is] associated with environment, in an airtight building it [is] more likely to contact the disease. Cold temperature, exposure to irritants and fumes are

causes of pneumonia. Respiratory disease is more frequent in winter. A temperature of less than 79 degrees is cold.

"Cold air affects the mucus transport. When this is affected the respiratory system is more susceptible to infection. Cold air increases mucus production. Inhaled particles are cleared less easily. When cold air is breathed and the nose tissue lining swell[,] [t]his causes nasal congestion. The nose mucus increases and is thicker. Cold air can produce nasal congestion and make the body difficult to remove inhaled virus and bacteria. Cold air reaches the lungs and the lungs respond by releasing histamine. You can get sick breathing cold air or toxic material. Also an improperly cleaned air conditioner or contaminated air conditioner can cause pneumonia.

"Pneumonia was [the] result of being exposed to cold temperature … in an enclosed environment.

"[Appellant] was physically well on December 4, 2006. On December 5, 2006 she arrived home ill after being exposed the whole day to very cold temperature and possible fumes. On December 7, 2006 appellant was hospitalized with pneumonia.

"It is … reasonable to conclude that pneumonia was work incident as a result of exposure to adverse work condition. Condition apparently began during training.

"There [is] no other incident or outside activity that could have caused sickness….

"The adverse work environment is the origin of injury considering all the circumstances. The environment was contributory in weakening [appellant's] body resistance. [Appellant] was more sensitive to the cold temperature and possible seep of toxic fumes due to recent bronchitis. Excessive cold increases the risk that bronchitis aggravates and can lead to pneumonia. [Appellant] had bronchitis from November 27 … to December 1, 2006. Pneumonia can develop if you had bronchitis. Also, inhaling the pollutants that are trapped in confined space can cause breathing problems especially to a person that had bronchitis."

* * *

"[Appellant had bronchitis. She recovered and went to work well and left sick. The adverse work environment, excessive cold and possible fumes caused or aggravated her respiratory condition. The lung condition from December 6 to 20, 2006 was a result of work."

By decision dated December 13, 2007, the Office denied modification of its denial of appellant's claim for pneumonia.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden to establish the essential elements of 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4] An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.[5]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed injury and her employment.[6] To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by her as causing her condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and her medical history, state whether the employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.[7]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton,* 40 ECAB 1143 (1989).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Shirley A. Temple*, 48 ECAB 404 (1997).

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *id*.

[6] *Donald W. Long,* 41 ECAB 142 (1989).

[7] *Id*.

ANALYSIS

The Board finds that the evidence is insufficient to establish that appellant sustained pneumonia on December 5, 2006 in the performance of duty.

Dr. Rodriguez noted that appellant's physical examination on December 4, 2006 revealed that her lungs were clear and she could return to work the next day. He stated that she was physically well on December 4, 2006 but went home ill on December 5, 2006 after being exposed the whole day to very cold temperatures and possible fumes. Dr. Rodriguez opined that she was hospitalized with pneumonia on December 7, 2006 and disabled from December 6 to 20, 2006, because her prior bronchial condition was aggravated by "prolonged exposure to extreme cold temperature in an enclosed room and possible toxic environment." He explained that cold air increases mucus production and nasal congestion which can make it difficult for the lungs to remove inhaled virus and bacteria. Dr. Rodriguez indicated that pneumonia required exposure to an infectious agent but he did not specify any specific agents to which appellant might have been exposed on December 5, 2006 at work. In fact, he indicated only a "possible" exposure to irritants, nor does the record establish the presence of any infectious agent or irritant in the training room on December 5, 2006. Dr. Rodriguez noted that the training building was evacuated on December 6, 2006 due to a gas leak. However, the gas leak occurred the day after appellant claimed that she developed pneumonia and there is no evidence that she was exposed to gas fumes on December 5, 2006. Dr. Rodriguez suggested that an improperly cleaned air conditioner or contaminated air conditioner can cause pneumonia but there is no evidence of a problem with the air-conditioning system where appellant worked on December 5, 2006, which could have caused bacteria or other agents to be released into the air. He stated that it was reasonable to conclude that appellant's pneumonia was a result of exposure to adverse work conditions because she noticed her condition at work and there was no other incident or outside activity that could have caused sickness. However, the Board has held that the opinion of Dr. Rodriguez that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship.[8] He stated that appellant was more sensitive to the cold temperature and possible seep of toxic fumes due to her recent bronchitis and excessive cold increases the risk that bronchitis can lead to pneumonia. However, this rationale seems to conflict with Dr. Rodriguez' statement that appellant had recovered from her bronchitis before December 5, 2006. If appellant was more sensitive to cold and susceptible to developing pneumonia because of her recent bronchitis, then her assertion that she had recovered from her bronchitis and "went to work well and left sick" seems inconsistent. Dr. Rodriguez did not explain why, if she had recovered from her bronchitis and was well, she would be susceptible to developing pneumonia due to her bronchitis. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are generally insufficient to meet an employee's burden of proof.[9] Due to these deficiencies, the reports of Dr. Rodriguez are insufficient to establish that appellant's pneumonia was caused or aggravated by factors of her employment on December 5, 2006.

[8] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

CONCLUSION

The Board finds that appellant failed to establish that her pneumonia was sustained on December 5, 2006 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 13, June 6 and February 5, 2007 are affirmed.

Issued: August 22, 2008
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