

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

A.D., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Memphis, TN, Employer**

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**Docket No. 08-894
Issued: October 21, 2008**

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 November 28, 2007 employee timely appealed the September 19, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On January 30, 2007 appellant, then a 54-year-old program support assistant, filed a traumatic injury claim alleging that on January 16, 2007 she sustained a sore throat, frozen feet, chest pains, running eyes, aching muscles and body chills due to being exposed to the extreme cold weather of 26 degrees in the performance of duty. She submitted a January 20, 2007 progress note that stated she had flu-like symptoms but contained no signature or physician's

name. Diagnostic test results dated from September 12, 2005 to November 1, 2006 were also submitted.

In a February 8, 2007 letter, the Office informed appellant that the evidence was currently not sufficient to support her claim and requested additional medical evidence.

Additional information was received. In a March 1, 2007 letter, Dr. Stanley Dowell¹ stated that appellant was seen by him on January 22, 2007 for flu-like symptoms and reported exposure to outdoor allergens and cold air at work on January 16, 2007. He diagnosed upper respiratory tract infections caused by exposure to allergens or a viral infection. Dr. Dowell also stated that appellant was disabled from January 16 to 22, 2007.

In a March 15, 2007 decision, the Office denied appellant's traumatic injury claim finding that the evidence was insufficient to establish that the events occurred as alleged.

On March 31, 2007 appellant requested a review of the written record. Additional information was submitted to support her claim. In a March 31, 2007 statement, appellant described the conditions on January 16, 2007 stating that she was instructed to work in towers to cover for someone and was working in the middle of the floor in front of the door to the outside of the hospital. She stated that there was no blower so the heat was escaping and cold air blowing in with a temperature of 25 degrees outside with a wind chill of 16 degrees. Appellant stated that it was so cold she had to keep her coat on while working. Someone came and turned the heat up but it was not helpful. She stated that she did not feel good when she got home.

In an April 3, 2007 letter, Shelia Simpson, appellant's supervisor, reported that on January 16, 2007 she learned that the area was cold and asked the staff to take frequent short breaks as needed to allow them to warm up. She evaluated the area and directed the staff to work in office cubicles located along the walls that were away from the direct cold and equipped with heat. Ms. Simpson also stated that appellant had scheduled her January 22, 2007 doctor's visit on December 28, 2006.

In a September 19, 2007 decision, the Office accepted that appellant experienced exposure to cold temperatures on January 16, 2007 while working inside the hospital lobby but denied her claim on the grounds that the medical evidence did not establish that appellant sustained a diagnosed medical condition causally related to her work exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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,

¹ Dr. Dowell's specialty or board certification status could not be verified.

² 5 U.S.C. §§ 8101-8193

for which compensation is claimed are causally related to the employment injury.³ 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.⁴

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷

ANALYSIS

Appellant alleged that she sustained a flu-like condition/viral infection due to being exposed to extreme cold weather while in the performance of duty on January 16, 2007. The Office accepted that appellant was exposed to cold temperatures while working inside the hospital lobby on that day. The case turns on whether appellant’s employment caused a disease or condition. The Board finds that the medical evidence does not establish that appellant has a medical condition causally related to her employment. Dr. Dowell diagnosed upper respiratory tract infection and opined that it was caused by exposure to allergens or by a viral infection however, he did not opine that appellant’s condition was due to her employment. To establish causal relationship, appellant must submit a physician’s report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.⁸ While Dr. Dowell did offer an opinion on the cause of appellant’s upper respiratory tract infections, exposure to allergens or a viral infection, he did not explain where she was exposed to allergens or a viral infection nor did he relate this exposure to her employment. Neither the mere fact that a disease or condition manifests itself during a period of

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 4. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant’s specific employment factors. *Id.*

⁸ *D.D.*, 57 ECAB 734 (2006); *Calvin E. King*, 51 ECAB 394 (2000).

employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁹

The Board finds that appellant has failed to meet her burden to demonstrate that she sustained an employment-related injury on January 16, 2007.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 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

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).