

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA R. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 02-2354; Submitted on the Record;
Issued May 27, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On April 28, 2000 appellant, then a 51-year-old clerk, filed a claim alleging that she suffered from tuberculosis (TB) as a result of factors of her federal employment.¹ Appellant stated that she was exposed to two coworkers who had TB while working at the employing establishment.² Appellant also stated that her work environment did not have any ventilation and that she shook out dirty mail sacks for reuse in a dark, dank and musty sub-basement. In support of her claim, appellant submitted a narrative statement regarding the onset of her condition and medical treatment, correspondence from the employing establishment concerning a debt she owed, social security documents, several W-2 wage and tax statements and a college transcript.

By letter dated August 15, 2000, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested that appellant submit factual and medical evidence supportive of her claim. By letter of the same date, the Office requested that the employing establishment submit factual evidence regarding appellant's claim.

In response to the Office's letter, appellant submitted medical treatment notes, hospital records, blood test results, x-ray reports and prescriptions.

¹ The record reveals that appellant actually filed a claim alleging that she sustained a recurrence of disability. The Office of Workers' Compensation Programs developed appellant's claim as a new occupational disease claim based on the information contained in her recurrence claim form. Previously, appellant filed an occupational disease claim on November 5, 1980, which was denied by the Office on June 12, 1980. The record, however, does not indicate the nature of appellant's claim.

² Appellant left the employing establishment in August 1977.

Appellant also submitted a report from Dr. Charles Mosee, a neurosurgeon, indicating that he treated her from May 26 through September 1, 1977. Dr. Mosee noted his findings on physical and objective examination regarding appellant's blood pressure, swollen turbinates, sinusitis and anxiety.

In addition, appellant submitted documents indicating that she underwent tuberculin tests on February 15, 1980 and that she was diagnosed with TB in May 1980.

An August 22, 2000 letter from Dr. David L. Chesler, a Board-certified internist, indicated that appellant's tuberculin skin test was positive in May 1980. Dr. Chesler noted a history of appellant's treatment for sinusitis, hypertension, urticaria and urinary tract infections.

By decision dated August 28, 2001, the Office found the evidence of record insufficient to establish that appellant's TB was caused by factors of her employment. In a September 3, 2001 letter, appellant, through her attorney, requested an oral hearing before an Office representative.

In a September 3, 2002 decision, the hearing representative affirmed the Office's decision.

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

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing 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 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 elements of each 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 a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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

In this case, appellant has submitted medical evidence revealing that she suffered from TB. However, this evidence fails to establish that appellant's condition was caused by her exposure to two coworkers who had the same condition and a poor work environment. Dr. Chesler's August 22, 2000 letter provided that appellant's tuberculin skin test was positive in May 1980. This letter, however, does not provide a rationalized medical opinion describing how and why appellant's TB condition was caused by her exposure to two coworkers and poor working conditions.

As appellant has failed to submit rationalized medical evidence establishing that her TB condition was caused by factors of her federal employment, she has failed to satisfy her burden of proof.

The September 3, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 27, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).