

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

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**CHERRY L. GOODE, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Jacksonville, NC, Employer**

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**Docket No. 03-0231  
Issued: February 12, 2004**

*Appearances:*  
*Cherry L. Goode, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On October 31, 2002 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated July 22, 2002 denying her claim. Under 20 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 has met her burden of proof in establishing that she sustained an injury on December 13, 2001, as alleged.

**FACTUAL HISTORY**

On December 5, 2001 appellant, then a 44-year-old rural carrier, filed a notice of traumatic injury alleging that on December 3, 2001 she experienced an allergic reaction including swelling of her sinuses, tongue, throat, face as well as hives on her arms after exposure to cleaning fumes at the employing establishment. A witness supported that appellant's eyes and

face were red and that she had a rash developing on her arm and that there was a bleach odor in her work area. The Office apparently accepted appellant's claim due to this exposure.<sup>1</sup>

Appellant filed a notice of recurrence of disability on March 27, 2002 alleging that on December 13 through 20, 2001 she was exposed to "ink smells" and began sneezing. Appellant also alleged additional employment exposures on January 10 through 12, 2002 due to coughing-nausea, January 15 through 17, 2002 due to cleaning fumes, January 22 through 28, 2002 due to ink or cleaning fumes, February 5 through 9, 2002 due to ink or cleaner fumes, February 12 through 15, 2002 due to exposure to bleach, February 21 through 23, 2002 due to exposures to air fresheners, February 25 through 28 and March 7 through 27, 2002 due to exposure to magazines. Appellant stopped work on March 14, 2002.

In a letter dated May 1, 2002, the Office informed appellant that as she had additional employment exposures her claim should be adjudicated as a new occupational disease claim rather than a recurrence of disability.<sup>2</sup> In a letter dated May 3, 2002, the Office requested additional factual and medical information in support of appellant's claim for a pulmonary condition and allowed 30 days for a response.

By decision dated July 22, 2002, the Office denied appellant's claim finding that she failed to establish that she sustained an injury on December 13, 2001 as alleged. The Office found that appellant had not submitted sufficient factual information to establish that the employment exposure occurred as alleged. The Office noted that it had received no information in response to its May 3, 2002 request for supporting documentation.<sup>3</sup>

### **LEGAL PRECEDENT**

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

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<sup>1</sup> The record before the Board does not contain an acceptance letter nor a nonfatal summary listing the conditions accepted by the Office due to the December 3, 2001 employment injury. However, appellant's supervisor indicated that she sustained an injury on December 3, 2001 and the Office's May 1, 2002 letter to appellant suggests that the Office accepted appellant's claim for injury on December 3, 2001.

<sup>2</sup> A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury or new exposure to factors causing the original illness. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (May 1997). It does not include a condition which results from a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to causative agent of a previously suffered occupational disease. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(e) (May 1997). Therefore, as appellant alleged additional employment exposures to cleaners, bleach, magazines, ink and air fresheners in the performance of duty each extending more than one work shift or day, the Office properly proceeded to develop her claim as a new occupational disease injury. 20 C.F.R. § 10.5(q).

<sup>3</sup> The Board notes that appellant submitted additional new evidence with her request for appeal. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>4</sup>

### **ANALYSIS**

Appellant has asserted that, following her allegedly accepted employment injury on December 3, 2001, which she asserted resulted in a diagnosis of aggravation of her preexisting conditions of allergies and asthma, she experienced additional chemical exposures on or after December 13, 2001 in the performance of duty resulting in symptoms such as headaches, shortness of breath and asthma. Appellant provided the dates of her exposures to cleaners, air fresheners, magazines and inks. Appellant submitted form reports from a physician, whose signature is not legible, diagnosing allergies and asthma flare-up on December 6, 2001; allergies and allergic rhinitis on December 28, 2001 and asthma exacerbation on March 26, 2002. Therefore appellant has established the presence or existence of a disease, allergies and asthma, and has identified the employment exposures which she felt caused or contributed to her condition. However, appellant's burden of proof requires that she provide medical evidence establishing a causal relationship between her diagnosed condition and her employment exposures.

In the December 28, 2001 and March 26, 2002 form reports, the physician diagnosed asthma and allergic rhinitis as well as exacerbation of asthma. The history of injury provided listed only the December 3, 2001 exposure to cleaning chemicals. The physician did not indicate that any additional employment-related exposures caused or contributed to appellant's diagnosed conditions. As this is the only medical evidence addressing appellant's physical condition after the alleged date of injury, December 13, 2001, appellant has failed to provide any medical evidence supporting her claim that the chemical exposures on or after December 13, 2001 caused or aggravated a medical condition. Without medical evidence providing an accurate history of injury, noting the various exposures and the dates, as well as providing physical findings and diagnoses and opining that appellant's current condition was a result of these exposures, appellant has failed to meet her burden of proof and establish that she developed an additional employment injury as a result of her alleged employment exposures.

### **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof in establishing that her employment exposures resulted in an employment injury on or after December 13, 2001.

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<sup>4</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 22, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: February 12, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member