

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

R.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 08-1667
Issued: January 27, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 27, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated March 21 and May 16, 2008 denying her traumatic injury claim. Pursuant to 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 established that she sustained an injury on January 21, 2008 in the performance of duty.

FACTUAL HISTORY

On January 25, 2008 appellant, then a 53-year-old casual mail clerk, filed a traumatic injury claim alleging that she developed headache, dizziness, aches, chills and fever and felt faint while in the performance of duty on January 21, 2008. She attributed her symptoms to drinking contaminated water from the breakroom water fountain. Appellant stopped work January 21, 2008 and was taken to the emergency room at Barnes-Jewish Hospital, where she was diagnosed with weakness. In support of her claim, she submitted a certificate to return to work from

Pulmonary Consultants, Inc., medical records from Barnes-Jewish Hospital and a January 26, 2008 narrative statement.

In a January 25, 2008 statement, Evelyn Ransome, a supervisor, indicated she put a “do not drink” sign on the water fountain appellant alleged caused her symptoms. She also called maintenance to see if the water fountain had been tested and was told the water had tested okay.

On February 19, 2008 the Office requested additional information concerning appellant’s claim. It asked that she provide evidence of possible water contamination from the drinking fountain and submit a well-rationalized report from her physician, which explained how her condition was caused or aggravated by her employment and to describe her health on the day in question. The Office also requested information from the employing establishment regarding its drinking water.

In a February 22, 2008 statement, appellant stated coliform bacteria were found in the contaminated water.

In a February 7, 2008 medical report, Dr. Simeon Prager, a Board-certified internist, noted the history of injury and that a recent chest x-ray obtained at Barnes-Jewish Hospital was negative. He found additional studies were needed as appellant had multiple symptoms not easily explained by one obvious diagnosis. On February 14, 2008 Dr. Prager diagnosed asthma exacerbation. He could not say whether or not appellant’s symptoms were related to the water exposure at her place of work on January 21, 2008.

Appellant submitted a March 10, 2008 certificate to return to work and a March 12, 2008 duty status report from a physician with an illegible signature from Pulmonary Consultants, Inc. The physician indicated that appellant had asthma exacerbation and bacterial infection and had been under his care from January 26, 2008. Appellant was released to light-duty work on March 10, 2008.

The employing establishment provided a March 7, 2008 e-mail correspondence from its maintenance manager, Arthur L. Doscher, who advised that the employing establishment had not had any cases of contaminated water within the last five years. Mr. Doscher noted that the water source was common to the entire facility and serviced all the water fountains in the building. He was not aware of anyone else getting sick from the drinking water in the entire facility or from the water fountain in question.

By decision dated March 21, 2008, the Office denied appellant’s claim on the grounds that she failed to establish that an incident occurred in the performance of duty, as alleged. Moreover, appellant did not submit sufficient medical evidence rendering a diagnosis to which the claimed work-related events could be connected.

On April 7, 2008 appellant requested reconsideration of the Office’s March 21, 2008 decision. In an April 16, 2008 statement, she contended that the water had been turned off January 19 and 20, 2008. On January 21, 2008 appellant had been drinking the contaminated water in her water bottle for about four hours before she got sick. She alleged that the

contaminated water had exacerbated her asthma condition and was poisoning her brain.¹ A February 4, 2008 report from Saint Louis County Health indicated that the January 29, 2008 tap water sample submitted by appellant revealed unsatisfactory levels of coliform under the Missouri Standard for Drinking Water. Hospital records submitted indicated that on March 13, 2008 appellant was treated at the Northwest Healthcare emergency room for a headache and on March 27, 2008 she was treated at Christian Hospital Northeast for solvent poisoning with a secondary diagnosis of migraine.

Appellant submitted copies of diagnostic studies, including a February 13, 2008 x-ray report, an April 7, 2008 magnetic resonance imaging (MRI) scan of the brain and April 21, 2008 laboratory testing. In a February 13, 2008 prescription note, Dr. William D. Zweeki, a pulmonary specialist, diagnosed asthma.

In a March 31, 2008 report, Dr. Paisith Piriyawat, a Board-certified neurologist, advised that appellant was seeking her opinion on the association of drinking contaminated water from a faucet at work on January 21, 2008 and her worsening migraine headaches. He noted that appellant related that the water tested positive for coliform bacteria and she had multiple symptoms after drinking such water on January 21, 2008. Dr. Piriyawat opined that the presence of coliform bacteria in the contaminated water could give appellant diarrhea or gastroenteritis. However, he opined that it was unlikely the bacteria would penetrate through the gastrointestinal mucosa to reach the central nervous system and cause acute bacterial meningitis or severe headaches in a host with a normal immune system. Dr. Piriyawat noted that appellant denied having any fever or altered mental status within one to two weeks after drinking the water. He opined that appellant's worsening headaches were not attributable to contaminated water but rather to a level of tension or anxiety from the event. Dr. Piriyawat noted there was no accurate way to prove his opinion.

A January 17, 2008 memorandum from the maintenance department of the employing establishment indicated that the water booster pumps were turned off Saturday evening, January 19, 2008 through mid-day January 21, 2008.

A May 7, 2008 report of the employing establishment's Office of Inspector General indicated that an onsite evaluation of the employing establishment's water supply and the methodology used to control the water purity at the facility uncovered no abnormalities in the facility's water treatment or delivery systems and no complaints were noted with respect to the water quality at the facility. Adrian Bowers, maintenance supervisor, denied that the water appellant ingested at the questioned water fountain was contaminated or otherwise compromised for several reasons: the employing establishment's water system was self-contained; the water did not have contact with any potential outside contamination sources such as gas, sewer or utility lines; the water was screened at the fountain for contaminants with a high quality filter and water backflow prevention devices; the pumps that required maintenance were not on the same water line as the water fountain; the water was tested yearly using Environmental Protection Agency and State of Missouri water testing standards; the same water was supplied to the nearby Anheuser-Busch brewery that required very high water purity standards; the sample submitted by

¹ The record indicates appellant has an April 5, 2005 injury which was accepted for contusion of the forehead.

appellant did not abide by established water testing protocols or sampling procedures because the sample results were inconclusive as to the source of the sample; and the presence of coliform bacteria did not indicate that the water was unsafe to consume, and all drinking water had trace amounts of bacteria.

By decision dated May 16, 2008, the Office denied modification of the March 21, 2008 decision.

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 filed within the applicable time limitation; that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged or whether the alleged injury was in the performance of duty⁷ nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an injury within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and the circumstances and her subsequent course of action.⁸ Such circumstances as late notification of injury, lack of

² 5 U.S.C. §§ 8101-8193.

³ *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *See Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established his or her claim.⁹

ANALYSIS

The Office denied appellant's traumatic injury claim on the grounds that she did not establish that the water fountain incident occurred on January 21, 2008 as alleged. Appellant stated that she became ill after ingesting contaminated water from an employing establishment water fountain. She also attributed an exacerbation of her asthma and migraine headaches to the alleged contaminated water. Appellant sought medical attention the same day and submitted evidence of unsatisfactory coliform levels from a sample of the water she collected. However, she did not submit any evidence from witnesses or medical records substantiating that the water she drank on January 21, 2008 was in fact contaminated. Appellant stated that she drank from her water bottle for several hours on January 21, 2008 before she became ill.

The evidence from employing establishment personnel with immediate knowledge of the drinking water does not support appellant's contention that the water at her work site was contaminated. Upon being informed of appellant's illness, Ms. Ransome called the maintenance department and was advised that the drinking water had tested okay. The employing establishment's Office of Inspector General advised that there were no abnormalities found in either the water treatment or delivery systems and that there were no complaints with respect to the water quality at the facility. The employing establishment noted that the source of appellant's water sample could not be confirmed. Mr. Doscher noted that the employing establishment had not had any cases of contaminated water within the prior five years and that he was not aware of anyone else becoming ill after drinking water from the water fountains at the facility. He explained that the employing establishment's water system was self-contained and the pumps required for maintenance were not on the same water line as the water fountain from which appellant drank. Mr. Bowers stated that the presence of coliform bacteria did not establish that the water was unsafe to consume and that appellant's water sample did not abide by established water testing protocols or sampling procedures. Appellant has not provided any statement or evidence to clarify these discrepancies between her assertions of water contamination and the evidence from the employing establishment supporting that there was no such contamination. Her belief that her condition was caused by contaminated water at her workplace is not sufficient to establish causal relation.¹⁰

Due to the unexplained inconsistencies between appellant's statements and the evidence provided by the employing establishment as to whether the drinking water on January 21, 2008 was contaminated, the Board finds that she has not established her exposure to contaminated water occurred as alleged. Therefore, she has not established the employment incident alleged to have caused her claimed condition and it is not necessary to consider the medical evidence.¹¹

⁹ See *Constance G. Patterson*, 42 ECAB 206 (1989).

¹⁰ See *Luis M. Villanueva*, 54 ECAB 666 (2003).

¹¹ *Bonnie A. Contreras*, 57 ECAB 364 (2006).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on January 21, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 16 and March 21, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 27, 2009
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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