

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

C.B., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT
AGENCY, Bluemont, VA, Employer**)

**Docket No. 08-2268
Issued: May 22, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 11, 2008 appellant filed a timely appeal from the June 19, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's use of headphones at work beginning June 21, 2004 caused an injury. On appeal, appellant argues that the medical evidence supports a causal relationship between her illness and her workplace.

FACTUAL HISTORY

On March 1, 2005 appellant, then a 46-year-old program specialist, filed an occupational disease claim alleging that her electrical sensitivity illness was causally related to her federal employment:

“The new job task of wearing headphones to take applicant calls began the same day my symptoms began. The more consecutive days I wore headphones the worse I felt. Soon I began feeling ill whenever I was working, even without taking calls. I realized it was an environmental problem and began to seek medical help. My symptoms became worse at work and I felt better when I was away from work. By the time I left work in September, I felt ill no matter where I was.”

On December 17, 2004 Dr. Nicola M. Tauraso, a Board-certified pediatrician and member of the American Academy of Environmental Medicine, reported that appellant suffered from an extreme sensitivity to high-frequency microwaves. He gave appellant credit for researching her illness. Dr. Tauraso stated that she was able to determine that her home had low but abnormal levels of high-frequency microwaves, which she was able to tolerate. But after her exposure to considerably higher levels at work, Dr. Tauraso explained, appellant’s sensitivity came to the surface and made her sensitive to previously tolerable levels.¹ He concluded that appellant could not return to work under those conditions and added that a compensation board should seriously consider the extent to which her environment caused her current illness.

The employer acknowledged that appellant answered telephones and worked with computers in the course of her employment. The employer was unaware, however, of any tests performed in her work area.

On June 28, 2005 Dr. William J. Rea, a Board-certified thoracic surgeon and Fellow of the American Academy of Environmental Medicine, related appellant’s history of using a telephone headset in June 2004 and immediately experiencing symptoms. He described her symptoms and findings on physical examination. Dr. Rea reported many diagnostic findings, including electromagnetic field (EMF) testing, which revealed sensitivity to 60 hertz with associated autonomous nervous system dysfunction. He diagnosed EMF sensitivity, immune deregulation and autonomic nervous system dysfunction. It was Dr. Rea’s opinion that appellant had a significant chemical and electromagnetic exposure at work resulting in multi-organ system dysfunction. He explained:

“Many patients exhibit health problems and experience symptoms when exposed to electrical stimuli. This is due in part to the patient’s bodily responses to antigens.

¹ Dr. Tauraso reported “readings” taken from appellant’s place of employment on December 13, 2004. Four readings ranged from 296 at Desk #2 to 636 at Desk #1.

“The body functions through cellular and intracellular changes in electrical parameters. Electrical impulses originate in the sino-atrial node of the heart and initiate heart muscle contraction. Cells assimilate and excrete through osmotic changes created by differences in electrical potential. The brain communicates and functions through electrical impulses carried from one nerve synapse to another.

“This intricate function of the body can be affected by exposure to coherent [EMF] created by power transmission and usage. In sensitive individuals, exposure to exceedingly low frequencies can create disruption in homeostasis.

“Individuals who in the past may have experienced chronic or low level electromagnetic exposure or acute high level exposure may exhibit symptoms resembling a feeling of shock, muscle spasms or seizures. Other who have sensitivities to pollen, molds and foods may experience symptoms related to the problems of electrical stimulation such as a change in the pulse rate.

“The treatment for this condition involves environmental controls, avoidance of unnecessary or excess electromagnetic stimulation and management of inhalant and food sensitivities.”

Dr. Rea reported that appellant was totally disabled by her sensitivities and would be unable to engage in any type of sustained work-like activities for the foreseeable future.

In a decision dated September 28, 2005, the Office denied appellant’s claim for compensation. It found that the claimed events occurred as alleged but that exposure alone was not sufficient to establish a work-related medical condition. The Office found that the medical evidence did not contain a specific diagnosis resulting from the occupational exposure.

Appellant requested reconsideration. She submitted information about Dr. Rea’s clinic and his biography, as well as research from books, articles and other published information on the subject of electromagnetic sensitivity and electrical pollution.

The Office denied reconsideration on November 1, 2006. Because its delay in acting on appellant’s request denied her an opportunity to appeal the merits of her case to the Board, the Board set aside the Office’s November 1, 2006 decision and remanded the case for a merit review and an appropriate final decision.²

Nancy A. Didriksen, Ph.D., a clinical psychologist, evaluated appellant in April 2005. She described the clinical interview and mental status examination, appellant’s presenting complaints and history. Appellant attributed extreme fatigue and headaches to mixing automobile resin for DuPont for nine years. She stated that a coworker forcefully pushed her on the left shoulder, resulting in whiplash and neck injury and excruciating pain approximately one week prior to the start of her sensitivity symptoms. Dr. Didriksen offered a principal diagnosis of cognitive disorder not otherwise specified. She reported that appellant’s neuropsychological

² Docket No. 07-666 (issued July 24, 2007).

test results were quite similar to others exposed to toxic or neurotoxic substances or who were sensitive to EMF. Dr. Didriksen stated that, if appellant were evaluated in her workplace with exposure to many computers, printers and telephones or under more demanding and stressful conditions, it was quite likely that a greater compromise in functioning would have been observed. She stated that appellant should not return to work, as her neurocognitive and psychological functioning would quite likely deteriorate.

On December 7, 2007 Dr. Rea reviewed appellant's diagnoses, symptoms, significant physical examination findings and diagnostic findings. He stated, "I have continued to monitor this patient's symptoms through [tele]phone. It is my medical opinion that exposure to chemicals and electromagnetic frequencies at the workplace combined with the possible brain injury sustained from a coworker's assault contributed to her current medical condition."

On May 21, 2008 appellant continued to contend that the wearing of headphones at work caused her sudden hypersensitivity to electricity. She stated that the brain injury she sustained three days earlier at the hands of a coworker contributed to the degree and type of illness she experienced. Dr. Rea provided a diagnosis of toxic encephalopathy, immune deregulation, allergic rhinitis, chemical sensitivity and autonomous nervous system dysfunction.

In a decision dated June 19, 2008, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that the medical evidence appellant submitted was not rationalized. Although the physicians provided a general reference to the workplace, there was nothing definitive, supported by medical rationale, explaining how work-related factors caused or contributed to appellant's diagnosed medical conditions.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁴

Causal relationship is a medical issue⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical

³ 5 U.S.C. § 8102(a).

⁴ *Abe E. Scott*, 45 ECAB 164 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

certainty⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship, as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved.⁹

ANALYSIS

Appellant alleges that the new task of wearing headphones to take applicant calls at work beginning June 21, 2004 immediately caused symptoms of electrical sensitivity. The employer acknowledged that appellant answered telephones in the course of her employment. The Office found that the evidence established the incident which appellant alleged was the cause of her illness. The question remains whether appellant's use of headphones at work caused her an injury.

Appellant submitted research from books, articles and other published information on the subject of electromagnetic sensitivity and electrical pollution. But this information has no evidentiary value in establishing her entitlement to compensation. The information is general and is irrelevant to whether wearing headphones at work beginning June 21, 2004 caused any of appellant's complaints.

Appellant did submit several narrative medical reports directly addressing the issue. Dr. Tauraso, the Board-certified pediatrician specializing in environmental medicine, reported that appellant suffered from an extreme sensitivity to high-frequency microwaves. He stated that it was her exposure to considerably higher levels at work that caused her sensitivity to come to the surface. This opinion is not persuasive for several reasons. Dr. Tauraso did not provide even rudimentary factual background concerning the December 13, 2004 "readings" from appellant's workplace. He did not report who took them or what qualifications that person possessed. Dr. Tauraso did not explain how they were taken. He did not mention the instruments used or what they measured. Notably, none of the "readings" appear to come from the acted headphones appellant used beginning June 21, 2004. Appellant directly identified these specific headphones as the immediate cause of her illness. Dr. Tauraso did not explain how high-frequency microwaves are able to affect the body's organ systems and how he was able to determine that high-frequency microwaves at appellant's workplace caused her illness. The Board has held that medical conclusions unsupported by facts and rationale are of little probative value.¹⁰ Without sound medical reasoning, Dr. Tauraso's report does not rise above speculation.

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

Dr. Rea, the Board-certified thoracic surgeon and Fellow at the American Academy of Environmental Medicine, noted the history of appellant's headset use at work and her reported symptoms. He offered detailed findings and test results and ultimately diagnosed toxic encephalopathy, immune deregulation, allergic rhinitis, chemical sensitivity and autonomous nervous system dysfunction. Dr. Rea explained that exposure to electrical stimuli or coherent EMFs can disrupt the body's homeostasis and cause health problems. He alluded to the body's response to antigens but did not otherwise explain how electrical stimuli or a coherent EMF could cause the medical conditions he diagnosed or how he could tell that it was appellant's exposure at work that caused these conditions. Dr. Rea concluded that appellant had a significant chemical and electromagnetic exposure at work resulting in multi-organ dysfunction.

The Office has not accepted a significant chemical or electromagnetic exposure at work. Dr. Rea's opinion rests on a premise that is not established by the evidence. At best he may be basing his opinion upon appellant's description of her work environment but not on objective evidence obtained from the workplace. In his December 7, 2007 report, Dr. Rea suggested that this alleged electrical exposure combined with a possible brain injury caused by a coworker's assault to cause appellant's medical condition. However, the record does not contain evidence of an assault or a medical diagnosis of brain damage. For these reason, Dr. Rea's diagnoses and opinion lack probative value.

The only other medical narrative opinion addressing the issue of causal relationship comes from Dr. Didriksen, the clinical psychologist. She diagnosed a cognitive disorder not otherwise specified, but explained how workplace contaminants or environmental incitants may cause a cognitive disorder. Dr. Didriksen noted that appellant's neuropsychological test results were quite similar to others who were exposed to toxic or neurotoxic substances or who were sensitive to EMFs. However, the Office has not accepted that appellant was exposed to toxic or neurotoxic substances in the course of her federal employment. The extent of appellant's exposure, if any, to EMFs is not established. Dr. Didriksen is offering speculative comments outside her field of clinical psychology. For these reasons, the Board finds that her opinion has little probative value.

The Office currently accepts that appellant wore headphones to take applicant calls beginning June 21, 2004. Without a well-reasoned medical opinion logically explaining, to a reasonable degree of medical certainty, how wearing a telephone headset to take calls caused a diagnosed medical or psychological condition, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty. The Board will affirm the Office's June 19, 2008 decision denying benefits.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her use of headphones at work beginning June 21, 2004 caused an injury.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2009
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