

FACTUAL HISTORY

On December 20, 2010 and January 5, 2011 appellant, then a 53-year-old mail processing clerk, filed occupational disease claims alleging that she was exposed to chemical irritants at work that affected her face, eyes and neck. She first became aware of her condition on January 12, 2010 and its relationship to her employment on February 12, 2010. Appellant did not stop work.

By letter dated January 21, 2011, OWCP informed appellant of the evidence needed to develop her claim. It requested a detailed description of her employment-related exposure or contact and how she was exposed. OWCP also requested a physician's opinion supported by a medical explanation as to whether the work-related exposure resulted in a diagnosed condition.

In an undated statement, appellant alleged that she had worked in unsafe conditions for the past several months and asked management, the postal inspection service and the Office of the Inspector General to investigate potential violations without success. On April 21, 2010 she experienced a burning sensation in her eyes, ears, neck and back and believed that she had been exposed to a chemical hazard for the past four months. In a statement dated January 24, 2011,² appellant noted that she had ongoing exposure to chemical irritants for the past 12 months in her work area and locker space. On a January 26, 2001 questionnaire, appellant maintained that since January 2010 she had been exposed to chemical irritants while performing her job duties, including when casing mail. She experienced burning in her eyes, neck, back, hands, shoulders and in her feet when they touched the floor. Sometimes the irritants were so bad, she would have to leave work and go to the doctor.

In treatment notes dated February 12, 2010 to January 26, 2011, Dr. Steven Wolf, Board-certified in internal medicine, noted appellant's complaint of chemical irritants at work that irritated her skin and caused dizziness and headaches. He reported an essentially normal physical examination until December 31, 2010, when he noted an area of patchy hyperpigmentation on the shoulders with inflammatory papules. On January 26, 2011 Dr. Wolf advised that appellant had a skin rash on her shoulders and thighs. He diagnosed contact dermatitis due to chemical products. On February 5, 2011 Dr. Ifenlota Ojiako, Board-certified in family medicine, noted a history that appellant was exposed to chemical products at work. On examination her eyes, ears, nose, throat and skin were normal. Appellant also submitted disability slips from Dr. Wolf and Dr. Raelian Spiekhout, a Board-certified internist. The physicians advised that she should be off work for various periods from January to December 2010 due to irritant exposure at work.

An April 14, 2010 EEO settlement agreement determined that appellant should immediately report any unusual circumstances at work if she felt she was being exposed to an irritant. A September 23, 2010 grievance decision noted that a seven-day suspension for failure to follow directions was rescinded because management did not demonstrate that appellant's complaints regarding an unsafe work area had been abated. In statements dated February 6 and

² Appellant dated the statement January 24, "2010." However, a review of the content of the statement supports that it was actually dated in January 2011.

April 12, 2010, Carolyn Travis, a coworker indicated that she was experiencing ongoing chemical irritation at work.

By decision dated April 6, 2011, OWCP denied the claim. It noted that the claimed employment factor had occurred but that appellant did not establish a medical condition causally related to work events.

Appellant timely requested a hearing. She submitted an April 15, 2011 report from Dr. Wolf who opined that his diagnoses of dermatitis and conjunctivitis were related to work exposure because her complaints occurred only upon exposure at the job. He recommended a change in work location.

In a June 20, 2011 decision, an OWCP hearing representative found that additional evidence should be obtained from the employing establishment before appellant's exposure to irritants at work could be established. She remanded the case to obtain a statement from a knowledgeable supervisor with additional information, including reports of studies and occupational testing.

OWCP requested information from the employing establishment. In a February 18, 2011 letter, Denise A. Cameron, an employing establishment manager, noted that, following appellant's allegations of chemical exposure at work, an investigation was conducted that consisted of employee interviews, a visual inspection of alleged work areas, and a review of former safety and health complaints. The investigation concluded that there was no presence of any chemical exposure or safety hazard. Ms. Cameron noted that the postal inspection service also conducted an investigation which concluded that the claimed incidents were unfounded.

Appellant submitted a July 21, 2011 statement in which she maintained that the medical evidence showed that she sustained a medical condition due to chemical exposure at work. She stated that she had a very unusual feeling in her hands, neck, back, ears and eyes while casing mail. Appellant suggested that coworkers and management were involved in creating the hazard by bringing irritants into the workplace. She attached disability slips from Dr. Wolf dated June 1 and 8, 2011. Dr. Wolf found that appellant could not work from June 1 to 15, 2011 due to dermatitis caused by a chemical irritant at work. A June 29, 2011 EEO settlement agreement indicated that appellant was temporarily reassigned and that she would immediately notify management if she experienced any unusual circumstances in her work area and within seven days would request a postal safety inspection to include her locker area.

In a September 16, 2011 decision, OWCP denied appellant's claim. It found that the evidence was not sufficient to establish exposure to specific irritants at work as alleged. It noted that, under a second claim adjudicated under file number xxxxxx808, she had alleged chemical exposure, but following an investigation, the employing establishment determined that her allegations were unfounded.³

Appellant timely requested a hearing that was held on March 21, 2012. She testified that she was exposed to chemical irritants beginning in January 2010 that continued to the present.

³ Claim number xxxxxx808 is accepted for tenosynovitis of the right hand and wrist.

The hearing representative explained that the only exposures to be considered under this claim were up to the time her claim was filed. Appellant was advised to provide specific information regarding her claimed exposures. A coworker, Nancy Morrow,⁴ also testified. She maintained that management and coworkers were plotting against them and contaminating the work environment with some type of residue or chemical in retaliation for filing grievances and Equal Employment Opportunity (EEO) claims. They both had the same physical reaction and, although they worked at the same postal station, they worked in different areas. Appellant also alleged that her mail at home was contaminated. She stated that investigations that were performed were not very thorough.

In a February 26, 2012 statement, submitted after the hearing, Ms. Morrow indicated that she had seen appellant with rashes due to a residue substance at the employing establishment and that she also had this reaction. In an April 28, 2012 statement, appellant maintained that since January 2010 she had been continually exposed to a residue substance while casing mail that caused her to break out in skin rashes. She had been told by postal inspectors that the mail had GPS tracking dye on it and maintained that the medical evidence established that she had dermatitis due to chemical exposure at work.

By decision dated June 11, 2012, an OWCP hearing representative affirmed the September 16, 2011 decision. He found that appellant had not clearly described exact dates or specific incidents which she alleged had occurred or provided supporting evidence to establish that she actually experienced work-related chemical exposure.

On October 1, 2012 appellant requested reconsideration. She reiterated her contention that she was exposed to chemical irritants at work. Appellant also alleged being harassed and retaliated against by management. She maintained that the medical evidence established her claim. Appellant submitted a form report of hazard, unsafe condition or practice, signed by her on September 18, 2012, on which she stated that she was subjected to ongoing exposure to chemical substances at work. Alice Chatman, a supervisor, indicated that there were no hazards, and the approving official's action indicated that there was no reasonable ground to determine such a hazard existed.

In a May 29, 2012 report, Dr. Paul Ruestow, a Board-certified internist, advised that appellant was seen that day for chronic complaints which she noted were due to exposure at work and for chronic pain due to employment-related tendinitis of the right wrist. He advised that she should be off work until June 1, 2012. On June 20, 2012 Dr. Wolf reported that appellant was unable to work on June 20, 2012 due to an unspecified illness. On August 3, 2012 he reported that she was unable to work from August 3 to 6, 2012 for diagnoses of elevated blood pressure and chemical exposure at work. On September 29, 2012 Dr. Wolf reported that appellant received treatment in his office on September 29, 2012 for a diagnosis of chemical exposure.

In correspondence dated October 25, 2012, Mary Hughes, an injury compensation specialist at the employing establishment, maintained that appellant had not proven exposure to any chemicals at her workplace. She noted that an investigation done by appellant's supervisor,

⁴ Ms. Morrow indicated that she worked at the same facility but in a different area.

Ms. Chatman, determined that appellant's allegations were unfounded, and that the medical evidence included no test results indicating exposure to chemicals. An October 26, 2012 e-mail from Ms. Chatman advised that several times that year the inspection service had investigated the premises for unknown substances and found nothing.

In a merit decision dated January 3, 2013, OWCP denied modification of the prior decisions, finding that appellant did not provide sufficient evidence to support her claim.

Appellant thereafter appealed to the Board. In an order dated July 25, 2013, the Board remanded the case to OWCP to combine the record with file number xxxxxx808 that OWCP referenced in the September 16, 2011 decision.⁵

On August 16, 2013 OWCP requested that the employing establishment provide all correspondence and reports of investigation regarding appellant's chemical exposure claim. The employing establishment provided a copy of Ms. Cameron's February 18, 2011 letter. Ms. Cameron advised that, following appellant's allegation of chemical exposure at work, an investigation was conducted that consisted of employee interviews, a visual inspection of alleged work areas, and a review of former safety and health complaints. She noted that the investigation concluded that there was no presence of chemical exposure or any safety hazard. Ms. Cameron stated that the postal inspection service also conducted an investigation that concluded that the claimed incidents were unfounded.

In a merit decision dated November 7, 2013, OWCP denied modification of the prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁶

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."⁷ 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

⁵ Docket No. 13-658 (issued July 25, 2013).

⁶ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁷ 20 C.F.R. § 10.5(ee).

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁸

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ 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 employee.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

Appellant claimed that she sustained medical conditions, including contact dermatitis, caused by exposure to irritants at work beginning in early 2010. She asserted that management and coworkers brought a residue substance and chemicals into the workplace in retaliation for filing grievances and EEO claims. The Board finds that appellant did not submit sufficient factual evidence to establish that the claimed exposures occurred. Appellant submitted no probative evidence describing specific instances of exposure, merely stating that beginning in early 2010 she began to experience a burning sensation in her eyes, ears, neck and back areas and believed this was due to exposure by a chemical irritant while performing her job duties. She failed to submit any evidence regarding the nature or specific character of any chemicals or substances, cleaners, soaps or solvent in her workplace.

While the record contains copies of EEO settlement agreements indicating that appellant should immediately report if she felt she was being exposed to an irritant, these do not support that there was any actual chemical or irritant. In statements dated February 6 and April 12, 2010, Ms. Travis, a coworker, indicated that she experienced ongoing chemical irritation at work. In a February 26, 2012 statement and at the March 21, 2012 hearing, Ms. Morrow indicated that she was having the same reactions to irritants at work. These statements are not of sufficient specificity to establish that appellant was exposed to any particular type of irritant while at work.

On February 18, 2011 Ms. Cameron advised that, following appellant's chemical exposure allegation, an investigation was conducted that consisted of employee interviews, a visual inspection of alleged work areas, and a review of former safety and health complaints.

⁸ *Roy L. Humphrey, supra* note 6.

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The investigation concluded that there was no presence of any chemical exposure or safety hazard. She also noted that the postal inspection service investigated the matter and concluded that the claimed incidents were unfounded. On the September 18, 2012 form report of hazard, unsafe condition or practice, Ms. Chatman, a supervisor, indicated that there were no hazards, and the approving official's action indicated that there was no reasonable ground to determine such a hazard existed. On October 25, 2012 Ms. Hughes advised that an investigation done by Ms. Chatman indicated that appellant's allegations were unfounded, and that the medical evidence included no test results indicating exposure to chemicals. An October 26, 2012 e-mail from Ms. Chatman advised that several times that year the inspection service had investigated unknown substances and found nothing.

A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.¹² An award of compensation may not be based on surmise, conjecture, speculation or upon a claimant's own belief that there is causal relationship between the claimed condition and his or her employment.¹³ Appellant did not submit sufficient evidence in this case to establish the claimed exposure. Where, as here, a claimant did not establish an employment incident alleged to have caused his or her injury, it was not necessary to consider any medical evidence.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that she sustained an occupational disease in the performance of duty.

¹² *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹³ *D.E.*, 58 ECAB 448 (2007).

¹⁴ *S.P.*, 59 ECAB 184 (2007). The Board notes that appellant submitted medical evidence, including reports from Dr. Wolf who diagnosed dermatitis and noted her report that she was exposed to chemicals at work. None of these reports, however, contained a well-rationalized opinion relating any medical condition to the claimed employment exposure or to any specific chemical, irritant, or substance. *See S.B.*, Docket No. 08-2447 (issued November 20, 2009).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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