

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA R. EARLY and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Cincinnati, OH

*Docket No. 98-6; Submitted on the Record;
Issued July 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on May 11, 1997 as alleged.

On May 16, 1997 appellant filed a claim for a headache, bronchial spasm and injuries to her lungs, eyes, mouth and skin which she attributed to fumes from a chemical resin used by contractors working on the floors of the employing establishment. By letter dated June 5, 1997, the Office of Workers' Compensation Programs advised appellant that it needed further information on her exposure and medical condition, and a comprehensive medical report from her treating physician including "the doctor's opinion, with medical reasons, on the cause of your condition. Specifically, if your doctor feels that exposure in your [f]ederal employment contributed to your condition, an explanation of how such exposure should be provided." The Office allotted appellant until July 7, 1997 to submit this information. Also by letter dated June 5, 1997, the Office requested that the employing establishment provide information on the potentially harmful substances to which appellant was exposed, the frequency and duration of appellant's exposure, and the air circulation and ventilation of appellant's work area. In a statement dated July 3, 1997, appellant's supervisor stated that on May 11, 1997 appellant complained of fumes in her work area from sealer lying over concrete.

No additional information was received from appellant by July 11, 1997. On that date the Office issued a decision finding that appellant had not established that she sustained an injury on May 11, 1997, as there was no medical evidence to support a condition caused or aggravated by employment factors and no substantiation of her alleged exposure.

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of

action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.² An employee's statement that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by substantial evidence.³

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁴ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁵ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁶

The Board finds that appellant has not met her burden of proof.

The July 3, 1997 statement from appellant's supervisor is not responsive to the Office's June 5, 1997 request for information on the potentially harmful substances to which appellant was exposed, the frequency and duration of appellant's exposure, and the air circulation and ventilation of appellant's work area. As the employing establishment did not refute appellant's allegation that she was exposed to fumes from a substance used by contractors working on the employing establishment's floors, and there is no compelling reason for disbelieving appellant's allegation, it is sufficient to establish that appellant was exposed to fumes on May 11, 1997,⁷ although, the exact nature of the substance to which she was exposed is not established.⁸

¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

² *Dorothy Kelsey*, 32 ECAB 998 (1981).

³ *Eric J. Koke*, 43 ECAB 638 (1992); *Constance G. Patterson*, 41 ECAB 206 (1989).

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

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁷ *Anna J. Backman*, 30 ECAB 118 at 124 (1978) "[W]hen an employee's allegations are not answered and no

Appellant has not met her burden of proof because she had not submitted, at the time of the Office's July 11, 1997 decision,⁹ any medical evidence. As appellant's burden of proof includes the presentation of rationalized medical opinion evidence on causal relation, she has not met her burden of proof.

The decision of the Office of Workers' Compensation Programs dated July 11, 1997 is affirmed.

Dated, Washington, D.C.
July 22, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

compelling reason exists for disbelieving them, they are sufficient to establish the facts which they are intended to establish)."

⁸ After the Office issued its July 11, 1997 decision, appellant submitted further information on the substance to which she allegedly was exposed on May 11, 1997. However, as the Board's review is limited by 20 C.F.R. § 501.2(c) to "the evidence which was before the Office at the time of its final decision," the Board cannot consider this evidence on appeal.

⁹ After this decision, appellant submitted medical evidence, but as noted in the previous footnote, the Board cannot consider evidence on appeal that was not before the Office at the time it issued its final decision.