

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of QUETRAILA W. LANGFORD and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Akron, OH

*Docket No. 98-899; Submitted on the Record;
Issued November 19, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that she sustained an injury after being bitten by insects in the performance of duty on or about December 10, 1996 as alleged; and (2) whether appellant has established that her condition of scabies or any other condition is causally related to factors of her federal employment.

On September 23, 1997 appellant, then a 41-year-old former casual clerk for the employing establishment, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she sustained injuries when she was badly bitten on the neck and on the left side of her back by a nest of bugs in the course of her employment on December 10 through 15, 1996. Appellant missed no time from work and left the employing establishment on January 6, 1997 when her work term ended. The employing establishment controverted appellant's claim, contending that appellant did not suffer an injury as alleged. Specifically, an official at the employing establishment noted that he did not recall appellant working for him during this time period nor did he recall any incident involving bugs.

In support of her claim, appellant submitted a narrative in which she indicated that she was badly stung by bugs on her neck and back during the course of her employment.¹

An Office senior claims examiner held a conference call on October 15, 1997 with appellant and the employing establishment's injury compensation specialist, based on "the vague and conflicting information provided with the claim." Pursuant to the notes of the telephone conversation with appellant, she alleged that she was fine in November 1996, but that for a few days in December 1996, while working all day at Machine B, she was badly bitten by bugs, that they were "scabies," that these bugs had gotten into her skin and were breeding in her body and had made her extremely sick for several months. The report of the conference also notes a

¹ It is noted that page two of appellant's narrative statement is missing. It is also noted that this page was also missing when this case was before the Office of Workers' Compensation Programs.

telephone conversation with an injury compensation specialist for the employing establishment, wherein he stated that he had not had a chance to review the payroll records, but that in her recent examination for employment, appellant had significant findings of asthma and scabies, with multiple recommendations about avoiding dust, fumes, smoke, etc. The official said that he would check the matter further.

By letter dated October 15, 1997, the Office requested that appellant submit factual and medical evidence supporting that she contracted scabies as a result of her federal employment. Appellant was allotted 15 days to submit the information.

Appellant filed as further support for her claim her resume, a statement dated October 19, 1997 in which she related her "social history" and an eviction notice dated October 23, 1997.

Appellant submitted medical records from Akron General Medical Center -- Emergency Care Unit regarding her admission on January 11, 1997 for vaginal pain. She was treated by Dr. Stephen Romisher, Board-certified in emergency medicine, who diagnosed herpes simplex. The hospital notes indicate that herpes simplex is an infection caused by a virus. Appellant related a history that she experienced pain in her vaginal region "over the last few days;" that she believed that the pain might be caused by a bug "because she was bit by a bug several days ago;" and that she developed blisters about the vaginal region a few days ago.

Also included was a medical assessment from Pro Comp Care Occupational Health Services dated June 19, 1997. Portions of this document, including the signature, are illegible. This assessment revealed that appellant had asthma, that she continued to smoke and that she had a history of treatment for scabies. This preemployment assessment placed appellant at a low risk to medium risk in employment and noted that appellant would benefit from weight loss and stopping smoking.

By letter dated October 28, 1997, the employing establishment advised the Office that there were no bugs in the area or complaints thereof, that the exterminator did not detect any bugs in December when conducting his monthly building inspection and that no one complained of bugs about the machine appellant operated.

In a decision dated November 5, 1997, the Office denied appellant's claim for compensation benefits on the grounds that she failed to establish "that the claimed exposure to a harmful, hazardous job factor occurred at the time, place or in the manner alleged," and failed to show that she had a diagnosed condition connected to any work factors. The Office concluded, therefore, that appellant failed to establish fact of injury.

Subsequent to the issuance of the November 5, 1997 decision, appellant submitted another statement for complaints of pruritus of the skin and hair and a report from Dr. Henry Chen dated October 29, 1997. Dr. Chen stated that he saw appellant on a single occasion on March 31, 1997, that he diagnosed "pediculosis, specifically with scabies and crabs" and that he treated appellant for these disorders. Dr. Chen noted that appellant's infection is acquired through direct contact with another individual who is suffering from the same disorder." He concluded that he was "unable to be more specific at the present time as to the whereabouts or exact place of origin of this patient's infection."

By letter dated November 14, 1997, the Office advised appellant of the necessity to select one of the appeal rights offered at the time of the denial. Appellant requested reconsideration of the Office's decision on November 21, 1997.

On December 16, 1997 the Office denied appellant's claim, finding that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained an injury on or about December 10, 1996, as alleged.

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 an injury was sustained in the performance of the duty alleged and that the specific condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.⁴

In the instant case, there are inconsistencies in appellant's statements as to how she sustained her injuries. For example, appellant indicated on her claim form that on or about December 10 or 15, 1996, she was badly bitten by a nest of bugs while working on "Machine B." However, when she was treated at the Akron General Medical Center on January 11, 1997, almost one month later, she indicated that she was bitten by a bug "several days ago." Furthermore, a senior injury compensation specialist for the employing establishment noted that a review of the files does not reveal any complaint of bugs in the area where appellant worked, nor was there any mention of bugs in the maintenance department reports. Finally, he noted that the employing establishment has a contract with an exterminator that inspects the building on a monthly basis and that the exterminator did not detect any evidence of bugs or bug nests during the month of December. These inconsistencies tend to cast serious doubt as the veracity of appellant's claim.

The Board further finds that appellant has not met her burden of proof in establishing that her scabies or any other condition was sustained in the performance of duty causally related to factors of her federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is alleged; (2) a factual

² 5 U.S.C. §§ 8101-8193.

³ *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Elaine Pendleton*, 40 ECAB 1143, 45 (1989).

⁴ The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. § 10.5(a), (15), (16).

statement 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 employment factors identified by the appellant 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 appellant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the appellant, 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 appellant.⁷

In this case, appellant has not established fact of injury because she has not submitted any medical evidence that would establish that she was injured during the course of her employment with the employing establishment. The only medical reports submitted which were reasonably close in time to the December 1996 alleged occurrence were the records from appellant's January 11, 1997 admission to the Akron Medical Center Emergency Room. Although appellant complained at that time of bug bites "several days ago," no diagnosis of a medical condition resulting from bug bites was listed; rather, appellant was listed as suffering from herpes, which the medical records describe as an infection caused by a virus. Dr. Chen saw appellant approximately 10 months after the alleged bug bites and diagnosed pediculosis. He further noted, in general terms, that this disease was acquired through direct contact with another individual who is suffering from the same disorder. Dr. Chen concluded that he was "unable to be more specific at the present time as to the whereabouts of exact place of origin of this patient's infection." As the Board has held, the fact that the etiology of a condition may be obscure or unknown does not shift the weight to the office to disprove causal relationship.⁸ Neither does the absence of a known etiology for her condition relieve appellant of the burden of establishing causal relationship by the weight of the evidence, which includes affirmative medical opinion based on material facts with supporting rationale.⁹ Therefore, the Board finds that the medical evidence was not sufficient to establish a work-related injury or illness.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Ern Reynolds*, 45 ECAB 690 (1994).

⁷ *Kathy Marshall*, 45 ECAB 827, 832 (1994).

⁸ *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁹ *Id.*

¹⁰ *Victor J. Woodhams*, 41 *supra* note 5.

rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated December 16 and November 5, 1997 are affirmed.¹¹

Dated, Washington, D.C.
November 19, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ Additional evidence was submitted by appellant after the December 16, 1997 decision by the Office. Evidence may not be reviewed for the first time on appeal that was not before the Office at the time it issued the final decision, in this case, December 16, 1997. 20 C.F.R. § 501.2(c); *Donald Jones-Booker*, 47 ECAB 785, 786 n. 2 (1996); *George A. Hirsch*, 47 ECAB 520, 526 n. 9 (1996).