

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IVY M. CARTER and DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT, Casper, WY

*Docket No. 98-770; Submitted on the Record;  
Issued October 20, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty.

On August 26, 1996 appellant, then a 20-year-old range technician, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from a respiratory infection as a result of her employment. She indicated that she first became aware of her condition on August 4, 1996, and that she realized the following day that it was related to her employment. Appellant attributed her condition to fighting fires, breathing smoke and ash, and camping out on the fire-line. She did not stop work as a result of her condition.

By letter dated September 16, 1996, the Office of Workers' Compensation Programs advised appellant that the information previously submitted was insufficient to render a determination of whether she was eligible for benefits. The Office further advised appellant of the type of factual and medical evidence necessary to establish her eligibility, and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion specifically addressing the factors or incidents in her federal employment that contributed to her claimed condition.

Appellant provided the requested factual information by letter dated October 18, 1996. The Office also received a September 9, 1996 emergency room report from the Wyoming Medical Center. The report was prepared by Dr. Chris Moser, a Board-certified family practitioner, who noted that appellant had complained about a sore throat for over a month, which apparently started when she was fighting fires. Additionally, Dr. Moser indicated that appellant had previously been treated in the emergency room with two courses of antibiotics, which resulted in only minimal improvement. He noted a clinical impression of "pharyngitis" and questioned whether this condition was due to an infection or simply irritation from the fire.

On November 20, 1996 the Office wrote to Dr. Moser requesting that he provide the results of any tests conducted on September 9, 1996. The Office also asked him for an opinion regarding whether appellant's condition required any further treatment and whether the diagnosed pharyngitis was a result of appellant's exposure to smoke in her employment or caused by an infection unrelated to her federal employment.

By decision dated October 16, 1996, the Office denied appellant's claim on the basis that the evidence failed to establish that the claimed condition was causally related to her employment. In an accompanying memorandum, the Office explained that while the record established that the work exposure occurred at the time, place and in the manner alleged, the medical evidence failed to establish that the claimed condition of pharyngitis was causally related to the accepted work exposure. The Office further noted that Dr. Moser had not responded to its November 20, 1996 request to provide a rationalized medical opinion addressing the issue of causal relationship.

On August 12, 1997 appellant filed a request for reconsideration. She also submitted additional medical evidence that was not previously considered by the Office. The relevant evidence submitted on reconsideration consisted of two additional emergency room reports from the Wyoming Medical Center dated August 7 and August 22, 1996. The first report included a diagnosis of pharyngitis, sinusitis and minimal carbon monoxide, and the second report noted a diagnosis of recurrent tonsillitis.

In a September 16, 1997 merit decision, the Office concluded that the evidence submitted in support of reconsideration was insufficient to warrant modification of the prior decision. The Office explained that neither the August 7 nor the August 22, 1996 emergency room report included an opinion regarding the relationship between the diagnosed condition and appellant's employment factors.

Appellant filed a second request for reconsideration on October 21, 1997, accompanied by a September 30, 1997 statement from Jeff Atkinson, appellant's fire-line supervisor. Mr. Atkinson described the working conditions that appellant was exposed to in August 1996 and expressed the opinion that the noted factors contributed to the health and well-being of the personnel involved in wildland fire activities. He also stated that appellant was not sick prior to her August 1996 exposure.

By decision dated November 13, 1997, the Office explained that a merit review of the claim was conducted pursuant to 5 U.S.C. § 8128, but that the evidence submitted in support of reconsideration was insufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office explained that, while Mr. Atkinson's September 30, 1997 statement supported appellant's history of exposure, appellant nonetheless failed to submit the necessary medical evidence to demonstrate a causal relationship between her diagnosed condition and her employment exposure. Appellant subsequently filed an appeal with the Board on January 13, 1998.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 timely filed under the Act, that an injury was sustained in the performance of duty, and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, 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 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 claimant.<sup>4</sup>

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 the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.<sup>5</sup> Causal relationship must be established by rationalized medical opinion evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.<sup>6</sup>

In the instant case, the record does not include any rationalized medical opinion evidence establishing a causal relationship between appellant's claimed condition and her accepted employment exposure. As the Office correctly noted, the August 7 and August 22, 1996 emergency room reports do not address the issue of causal relationship. With respect to Dr. Moser's September 9, 1996 report, he posed the question of whether appellant's diagnosed pharyngitis was caused by infection or simply the result of irritation from the fire. Moreover,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Dr. Moser did not provide any clarification regarding the issue of causal relationship when requested by the Office on November 20, 1996. As previously noted, a physician's opinion must be expressed in terms of a reasonable degree of medical certainty. Inasmuch as appellant failed to submit rationalized medical opinion evidence on the issue of whether there is a causal relationship between her diagnosed condition and the implicated employment factors, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated November 13 and September 16, 1997 are hereby affirmed.

Dated, Washington, D.C.  
October 20, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member