

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUILLERMO A. ROSE and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

*Docket No. 98-1765; Submitted on the Record;
Issued August 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof in establishing that he sustained bronchitis, sinusitis and allergies in the performance of duty.

On December 19, 1996 appellant, then a 51-year-old custodian, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that his respiratory consisting of bronchitis, sinusitis and allergic reactions to dust and chemical condition, arose from his employment. On the reverse of the form, appellant's supervisor indicated that appellant stopped working on December 18, 1996 and returned to work on December 30, 1996.

In a February 3, 1997 letter, the Office of Workers' Compensation Programs advised appellant that the information submitted in his claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act. The Office advised appellant of the additional medical and factual evidence needed to support his claim.

On March 12, 1997 the Office received appellant's response. Appellant responded to each question asked in the Office's February 3, 1997 letter and forwarded medical records from Dr. Amjad Munim, a Board-certified internist, who recommended that appellant avoid exposure to chemicals and dusty conditions at work because of appellant's respiratory condition. Dr. Munim also noted that appellant was a 1-pack per day cigarette smoker for the previous 30 years and that he had reduced his smoking to 5 cigarettes per day.

By decision dated May 30, 1997, the Office denied appellant's claim. The Office found that appellant had not met the requirements for establishing that he had sustained an injury as alleged.

On June 15, 1997 appellant requested that the Office's hearing representative review the written record and enclosed an unsigned report of Dr. Alirio Rojas, a Board-certified otolaryngologist,¹ who restricted appellant from working "in a very dusty environment due to the fact that pollution inflicts upon him a severe action with significant headaches and asthmatic bronchitis." He recommended further diagnostic testing.

By letter dated October 16, 1997, appellant restated his arguments in support of his appeal and forwarded medical reports from Dr. Rojas and a request for light duty at work, with supporting medical documentation signed by Dr. Rojas. Appellant's request for light duty was denied by his supervisor on April 9, 1997, because there was no work available that met the restrictions imposed by appellant's doctor.

The employing establishment forwarded information on the various cleaners appellant used in the course of his employment and a statement from an employing establishment official, who claimed that appellant was exposed to cleaners for 30 minutes a day and that his normal duties were sweeping floors and emptying trash cans.

By decision dated November 12, 1997, the hearing representative affirmed, with modification, the Office's decision dated May 30, 1997. The hearing representative found that appellant had established the workplace exposure alleged but that appellant failed to establish that his diagnosed condition was causally related to the implicated factors of his federal employment.

On December 10, 1997 appellant requested reconsideration of the November 12, 1997 decision. In support of his claim, appellant submitted a Step 2 grievance decision, which denied appellant's request for light-duty work, a letter dated October 20, 1997 from Dr. Rojas and a medical report from Dr. Donald E. McCoy, an osteopath, dated October 16, 1997.²

In his October 20, 1997 report, Dr. Rojas stated that testing was negative for grasses, molds and trees as the cause of appellant's allergies. He noted that appellant's problem was not a "true" allergy but was "related to irritants or fumes or products of work. Dr. Rojas recommended a different work environment and surgery.

By decision dated March 30, 1998, the Office denied modification of the prior decision. The Office found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decisions, because a causal relationship had not been established between appellant's employment factors and the claimed conditions.

The Board finds that appellant has not met his burden of proof in establishing that he sustained allergies and sinusitis causally related to factors of his federal employment.

¹ On April 18, 1997 appellant filed an appeal with the Board. The appeal was docketed as No. 97-1845. By order dated September 23, 1997, the Board dismissed the appeal upon determining that appellant's claim was also pending before the Office's Branch of Hearings and Review.

² Dr. McCoy's report pertained to appellant's eyes.

An employee seeking benefits under the Act³ has the burden of establishing that 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 within the applicable time limitation period of the Act, 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.⁴ These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 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 claimant 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 claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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 claimant’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 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 claimant.⁶

In the instant case, appellant has not provided rationalized medical opinion evidence supporting a causal relation between his respiratory condition and his work conditions.

As noted above, part of the burden of proof includes the submission of rationalized medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.

In the instant case, Dr. Munim confirmed that appellant suffers from allergies and sinusitis, though he did not offer an opinion regarding a causal relationship.

Further, the medical reports of Dr. Rojas offer conflicting opinions as to the cause of appellant’s malady. Specifically, in Dr. Rojas’ August 27, 1997 report, he diagnosed sensitivity

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Id.*

to trees, grass, molds and dust. Then, on October 20, 1997, he discounted these allergens as the source of appellant's problem and instead stated that appellant does not suffer from an allergy; but that the irritants and fumes he is exposed to at work are responsible for his symptoms and surgery would be necessary to improve appellant's condition. Dr. Rojas offers no rationale or reason for the change in his opinion. Additionally, Dr. Rojas did not identify specific allergens at work that would cause or aggravate appellant's condition, nor did he explain why the condition could not be solely attributable to appellant's former one-pack-a-day cigarette habit. Other medical reports and treatment notes did not address the cause of appellant's respiratory condition.

The decisions of the Office of Workers' Compensation Programs dated March 30, 1998 and November 12, 1997 are hereby affirmed.

Dated, Washington, D.C.
August 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member