

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSE R. MEDINA and U.S. POSTAL SERVICE,  
POST OFFICE, San Juan, PR

*Docket No. 99-641; Submitted on the Record;  
Issued July 10, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

On August 12, 1998 appellant, then a 39-year-old postal distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he suffered from nasal congestion, sinusitis and eye irritations as a result of his employment. He alleged that there was construction on the upper floor above him and that there was a large amount of dust, smoke and odors. Appellant indicated that he first became aware of the disease on April 9, 1998 and realized that it was caused or aggravated by his employment on July 20, 1998. He stopped work on July 22, 1998 and returned to work on July 27, 1998.

Accompanying the claim, appellant submitted an undated disability certificate from Dr. Vivian Urdaz, an otolaryngologist, who diagnosed otitis media and acute rhinopharyngitis. She advised that appellant had been treated from July 22 to 24, 1998 and could return to work on July 25, 1998.

In a letter dated August 25, 1998, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit detailed information concerning his exposure at work or any factual verification that he was exposed to dust and smoke at work. The Office also requested that appellant submit medical evidence explaining how the reported employment factors caused the claimed injury.

The Office also requested information from appellant's employer on that same date.

In an October 30, 1998 decision, the Office found that appellant failed to establish that the claimed condition was causally related to his employment.

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

An employee seeking benefits under the Federal Employee's Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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 or specific condition for which compensation is 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>

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 the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>4</sup>

In the present case, the employing establishment has not disputed that appellant may have been exposed to dust, smoke and odors at work. However, he failed to submit medical evidence establishing that any disease or condition was causally related to any such employment exposure.<sup>5</sup>

The only medical evidence submitted by appellant was a disability certificate from Dr. Urdaz, indicating appellant was under her care from July 22 to 24 1998 and he could return to work on July 25, 1998. She did not provide any medical opinion that there was a causal

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>4</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994); *Victor J. Woodhams* 41 ECAB 345 (1989).

<sup>5</sup> On appeal, the Board notes that appellant submitted new evidence. The Board cannot consider this evidence as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

connection between appellant's condition and any specific workplace factors.<sup>6</sup> Dr. Urdaz did not provide a medical reason or reasons that would suggest that appellant's medical condition was caused or aggravated by his workplace. As noted above, part of appellant's burden of proof includes the submission of medical evidence supporting that specific employment factors caused or aggravated a particular medical condition.

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 his employment is sufficient to establish a causal relationship.<sup>7</sup> Causal relationship must be established by rationalized medical opinion evidence.

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

The decision of the Office of Workers' Compensation Programs dated October 30, 1998 is hereby affirmed.

Dated, Washington, D.C.  
July 10, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Victor J. Woodhams, supra note 3.*

<sup>7</sup> *Id.*