

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. PELPHREY and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, BORDER PATROL,
Yuma, AZ

*Docket No. 99-1127; Submitted on the Record;
Issued June 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained strep pharyngitis due to employment-related exposure.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet his burden of proof.

Appellant, a border patrol agent, filed a claim on March 16, 1998 alleging that on February 17, 1998 he developed "strep throat" due to exposure in the performance of duty to an illegal alien with a severe cold or the "flu." He submitted a statement from a witness that several illegal aliens processed at the employing establishment on February 17, 1998 were sick with colds. The witness stated that these persons were coughing while being processed. The Office of Workers' Compensation Programs requested additional factual and medical information on May 11, 1998. By decision dated October 29, 1998, the Office denied appellant's claim as he failed to submit the necessary medical evidence needed to establish a causal relationship between his diagnosed condition and his alleged employment exposure.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.¹ The second component is whether the employment incident caused a personal injury and that generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and

¹ Elaine Pendleton, 40 ECAB 1143 (1989).

medical background, supporting such a causal relationship.² 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³

In this case, the Office accepted that appellant was exposed to persons exhibiting symptoms of a cold and cough on February 17, 1998. However, the Office found that appellant had not submitted sufficient medical evidence to establish his claim.

Appellant submitted a form report dated March 9, 1998 from Dr. Walter Spelsberg, a Board-certified ophthalmologist. He diagnosed acute strep pharyngitis and acute bronchitis. Dr. Spelsberg indicated with a checkmark "yes" that this condition was due to appellant's employment. He did not provide any history of injury or medical explanation in support of this opinion. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the employment is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.⁴

In a treatment note dated June 8, 1998, Dr. Spelsberg noted that appellant believed that his condition was employment related and stated that appellant was exposed on February 17, 1998 by "a very sick worker." He diagnosed strep pharyngitis and acute bronchitis. This note is not sufficient to meet appellant's burden of proof as Dr. Spelsberg did not offer his opinion as to whether appellant's diagnosed condition was due to the alleged exposure. Furthermore, he did not provide an accurate history of injury as appellant attributed his exposure not to a coworker, but to an illegal alien encountered while carrying out his job duties.

As Dr. Spelsberg did not provide a medical report with an accurate history of exposure and a clear opinion on the causal relationship between appellant's diagnosed condition and his employment exposure, appellant has failed to meet his burden of proof and the Office properly denied his claim.

² See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

³ *James Mack*, 43 ECAB 321 (1991).

⁴ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

The October 29, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 8, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member