

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of OLGA M. LOPEZ and DEPARTMENT OF HOUSING & URBAN  
DEVELOPMENT, LIFECARE MANAGEMENT PARTNERS, Hato Rey, PR

*Docket No. 99-1120; Submitted on the Record;  
Issued May 24, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that she developed chronic sinusitis, headaches, otitis media and bilateral external otitis in the performance of duty, causally related to factors of her federal employment.

On June 5, 1998 appellant, then a 41-year-old program assistant, filed a claim alleging that she developed chronic sinusitis, bilateral otitis media, external otitis and headaches due to her office environment. Appellant alleged that her exposure to dust in the office environment while preparations for an impending move were being made, caused immediate sneezing, throat ache, a runny nose, and fever and then produced external otitis and otitis media. Appellant stopped work on June 8, 1998.

In support of her claim appellant submitted a June 9, 1998 report from Dr. Pedro Monroig Quiles, a physician of unlisted specialty, which noted:

“I saw [appellant] at my office on June 9, 1998 because of respiratory symptoms precipitated by dusty environment at her workplace, related to rearranging and movement of furniture. She needs to avoid that kind of exposure.”

Dr. Quiles referred appellant to a Board-certified otolaryngologist, Dr. Palmira R. Martinez Romero for further evaluation.

By letter dated March 26, 1998 to the employing establishment, the administrative officer advised the building maintenance supervisor that maintenance personnel were sweeping and mopping, which put a lot of dust particles in the air and caused several employees to complain that it was affecting their health. The administrative officer suggested that cleaning be performed after work hours and noted that mopping caused a strong odor of chemicals.

Two medical certificates from Dr. Romero dated June 22 and July 6, 1998, were submitted which are largely illegible, but which identify nasal congestion, otitis media and

external otitis. A letter from appellant to her supervisor was also submitted which claimed that she had had a relapse, throat infection, headaches and sinuses. Appellant claimed that she was advised not to report to work because she “would never get cured.”

By letter dated August 7, 1998, the Office of Workers’ Compensation Programs advised appellant that the information of record was insufficient to establish fact of injury and it requested a comprehensive report from her treating physician discussing the exposures and the consequences.<sup>1</sup>

On August 10, 1998 appellant faxed the Office a statement, in which she alleged that three years earlier she was involved with a chlorox spillage which burned her respiratory system and made her sensitive to dust and impaired her defenses. Appellant indicated that she was told by her treating physician that she could not be exposed to odors or chemicals.

By letter dated September 17, 1998, the Office advised appellant that unless she submitted further evidence, her claim would be disallowed. It noted that the medical evidence of record indicated that she had external otitis and advised that it was unclear how this condition resulted from a dusty environment at work. The Office reiterated what evidence was needed to establish her claim.

Appellant faxed the Office a September 28, 1998 Form CA-20 attending physician’s report from Dr. Romero which noted clinical findings of “some nasal congestion and [illegible] [and] ear fullness,” indicated a diagnosis of “acute otitis media,” and contained a box checked “yes” to the question of whether she believed the condition found was caused or aggravated by an employment activity. Dr. Romero noted under the “yes” box, “contamination at work.”

By decision dated December 16, 1998, the Office rejected appellant’s claim finding that the medical evidence of record was insufficient to establish that appellant’s claimed conditions of chronic sinusitis, headaches, otitis media and bilateral external otitis were causally related to her employment, as none of the evidence identified the specific exposure, provided a history of injury, provided findings upon examination, or provided medical rationale explaining causal relationship.

Appellant sought reconsideration, a review of the written record and an appeal to the Board. The Board took jurisdiction of the case effective February 2, 1999, such that Office actions after that time regarding the issue in question are null and void for lack of jurisdiction.

The Board finds that appellant has failed to establish that she developed chronic sinusitis, headaches, otitis media and bilateral external otitis in the performance of duty, causally related to factors of her federal employment.

In cases of occupational disease or illness, as alleged in this case an employee must establish fact of injury by submitting: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition

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<sup>1</sup> By letter dated August 10, 1998, the Office noted that appellant had three previous claims from 1996 for respiratory problems, and considered consolidating them with the instant claim.

alleged; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; 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,<sup>2</sup> or, stated differently, that the implicated conditions or factors of employment caused an “injury” as defined in the Federal Employees’ Compensation Act<sup>3</sup> and its regulations.<sup>4</sup> An award of compensation may not be based on surmise, conjecture, speculation, or appellant’s belief of causal relationship.<sup>5</sup> A person who claims benefits has the burden of establishing the essential elements of his or her claim.<sup>6</sup> Appellant must establish that she sustained an injury in the performance of duty and that her disability resulted from such injury.<sup>7</sup> As part of this burden, appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>8</sup> Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant.<sup>9</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>10</sup> Neither the fact that the condition became apparent during a period of employment nor appellant’s belief that the employment caused or aggravated his or her condition is sufficient to establish causal relationship.<sup>11</sup>

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<sup>2</sup> *George A. Ross*, 43 ECAB 346 (1991); *James D. Carter*, 43 ECAB 113 (1991).

<sup>3</sup> 5 U.S.C. §§ 8101-8193 (1974).

<sup>4</sup> *Cf. Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989) (the employee must submit, among other things, medical evidence establishing that the employment factors identified by the employee proximately caused the condition for which compensation is claimed). 5 U.S.C. § 8101(1)(5) defines “injury” in relevant part as follows: “‘injury’ includes, in addition to injury by accident, a disease proximately caused by employment.” 20 C.F.R. § 10.5(a)(16) defines “occupational disease or illness” as follows: “[A] condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment.”

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537-39 (1953).

<sup>6</sup> *Nathaniel Milton*, 37 ECAB 712, 722 (1986); *Paul D. Weiss*, 36 ECAB 720-21 (1985).

<sup>7</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>8</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>9</sup> *Id.*

<sup>10</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>11</sup> *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192-93 (1952).

In the present case, Dr. Quiles noted that appellant presented with “respiratory symptoms precipitated by dusty environment at her workplace, related to rearranging and movement of furniture.” However, the Board notes that he did not specifically identify what respiratory symptoms were involved, which would be very necessary and relevant, considering appellant was not claiming pulmonary problems, and Dr. Quiles did not address her other complaints of otitis media, bilateral external otitis and chemical exposures and sensitization, such that his report is not highly probative of her claim and is, therefore, insufficient to meet appellant’s burden of proof.

Dr. Romero’s medical certificates are also of very little probative value, as they merely identify nasal congestion, otitis media and external otitis, but neglect to discuss causation or implicate any specific factors of appellant’s employment. Consequently, these certificates are insufficient to establish appellant’s claim. Dr. Romero’s CA-20 form report is additionally of reduced probative value as she merely checked “yes” to a question on causal relation with factors of appellant’s employment and noted only “contamination at work” as a supportive explanation.<sup>12</sup>

The Board has frequently explained that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish causal relationship.<sup>13</sup> Appellant’s burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning. As Dr. Romero did no more than check “yes” to a form question, accompanied only by a cryptic comment regarding unspecified contamination at work, her opinion on causal relationship is of little probative value and is insufficient to discharge appellant’s burden of proof to establish her claim.

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.<sup>14</sup> Given these factors, and considering the absence of specifics, analyses and rationale in both Drs. Quiles’ and Romero’s reports, the Board finds that the Office properly determined that the medical evidence of record failed to establish that appellant developed chronic sinusitis, headaches, otitis media and bilateral external otitis in the performance of duty, causally related to factors of her federal employment.

Accordingly, the decision of the Office of Workers’ Compensation Programs dated December 16, 1998 is hereby affirmed.

Dated, Washington, D.C.  
May 24, 2000

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<sup>12</sup> Contamination by what chemical or compound was not identified.

<sup>13</sup> *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>14</sup> *James Mack*, 43 ECAB 321 (1991); *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988); *Naomi A. Lilly*, 10 ECAB 560 (1959).

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member