

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARILYN A. CLOSE and DEPARTMENT OF TREASURY,  
CUSTOM SERVICE, Blaine, WA

*Docket No. 00-2454; Submitted on the Record;  
Issued August 28, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that her respiratory condition and flushed face were causally related to her federal employment.

On November 18, 1999 appellant, then a 50-year-old entry specialist, filed a claim for traumatic injury (Form CA-1) alleging that on November 16, 1999 contractors had applied sealant to vinyl floor and scotchguard to rugs in the lunchroom next to her office. She stated that this caused her respiratory problems with a flushed face. On November 18, 1999 appellant sought medical treatment from Dr. Gary McCallum, a Board-certified family practitioner specializing in emergency medicine, who diagnosed chemical bronchitis and sinusitis.

By letter dated December 10, 1999, the Office of Workers' Compensation Program wrote to Dr. McCallum advising that appellant had preexisting conditions and requested that he provide medical evidence along with rationale to determine whether such affects from the industrial exposure to Scotchguard and sealer caused a material change in the underlying conditions or, if no material changes had occurred, whether the symptoms or changes were indicative of a

temporary aggravation and whether such aggravation would have resolved and under what conditions.<sup>1</sup>

In a January 5, 1999 letter, Dr. McCallum stated that appellant has obstructive pulmonary disease with chemical bronchitis related to ammonia exposure at work. He further indicated that appellant related a history of sarcoidosis, but he did not have any documentation or verification of previous sarcoidosis. Dr. McCallum stated that the industrial exposure to the ammonia in the Scotchguard and the sealer caused a chemical bronchitis with some secondary infection and documented obstructive pulmonary disease. He stated that appellant was currently disabled as a result of such condition and has subjective evidence of obstruction on spirometry. Chest x-rays were clear. Dr. McCallum indicated that the ammonia exposure caused a material change with a chemical bronchitis but stated that he could not specify whether this was temporary or permanent. He related that as appellant continues to be significantly symptomatic, an evaluation and treatment with a pulmonary specialist had been scheduled for January 20, 2000.

By decision dated May 10, 2000, the Office denied the claim on the grounds that the medical evidence was insufficient to establish the claim.

The Board finds that appellant has not established that she sustained an injury causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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 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.<sup>3</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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<sup>1</sup> The record reflects that the Office had previously accepted appellant's September 23, 1991 claim for respiratory conditions due to chemical fumes and vapors. In a decision dated December 17, 1997, the Board found that the weight of the medical evidence established that appellant did not have any employment-related disability after November 20, 1991 causally related to her September 23, 1991 exposure to chemical fumes from a sealant. (Docket No. 97-882, issued December 17, 1997). On August 4, 1998 appellant filed an occupational disease claim alleging that her conditions of sarcoidosis, lupus, nausea, sinus problems and other respiratory illnesses were due to exposure to white roc sealant, molds and fungus within her work environment. In a November 30, 1998 decision, the claim was denied on the basis that appellant failed to provide medical evidence establishing a diagnosis of the various conditions claimed as being causally related to her employment. In a March 24, 1999 nonmerit decision, the Office denied reconsideration of its prior decision of November 30, 1998 on the basis that appellant failed to establish a basis for merit review of her case file. Because more than one year has elapsed between the issuance of the Office's decision of March 24, 1999 and July 13, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the March 24, 1999 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *David M. Ibarra*, 48 ECAB 218 (1996).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (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 or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup> Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.<sup>6</sup>

In this case, appellant has established that she was exposed to fumes from Scotchguard and a sealant applied to vinyl flooring and rugs on November 16, 1999. However, appellant has failed to meet her burden of proof in establishing through medical evidence that her condition was caused by employment factors. Causal relationship is a medical issue, which requires a physician to explain how or why he or she believes that the accident, incident, or work factor caused or affected the physical condition and the objective findings that support that conclusion.

Dr. McCallum, appellant's treating physician, saw appellant two days after the industrial exposure and diagnosed chemical bronchitis and sinusitis. In his subsequent letter of January 5, 2000, Dr. McCallum reported that there had been a material change in appellant's preexisting condition, but failed to provide any objective findings to support that statement. He further related that he did not have a complete history regarding appellant's previous sarcoidosis, other than appellant's own history. Moreover, Dr. McCallum failed to provide a discussion on the nature of appellant's preexisting conditions, their natural or traditional course or how such conditions were affected by the exposure to chemicals. It is noted that Dr. McCallum reported that, although the ammonia caused a material change, he did describe the nature of the change to appellant's preexisting condition and not know whether it was temporary or permanent. It is additionally noted that, although appellant was referred for a pulmonologist evaluation, the results of such examination are not of record.

Dr. McCallum's conclusions are insufficient to establish the requisite causal relationship because the physician failed to explain how the industrial exposure to chemicals caused appellant's reaction on November 16, 1999 or affected her preexisting conditions. Dr. McCallum does not provide a specific opinion on causal relationship; rather, he speculates, without a complete and accurate history of appellant's preexisting conditions and without an explanation as to how the underlying conditions were affected by exposure to the chemicals, that there had been a material change to appellant's preexisting condition.<sup>7</sup>

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<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

<sup>7</sup> *Judith J. Montage*, 48 ECAB 292 (1997).

Thus, Dr. McCallum's conclusions are not supported with sufficient medical rationale and explanation to establish a causal relationship between the November 16, 1999 respiratory problem of flushed face and appellant's work environment. Accordingly, the Board finds that appellant has not met her burden of proof and the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated May 10, 2000 is affirmed.<sup>8</sup>

Dated, Washington, DC  
August 28, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> The Board notes that this case record contains evidence which was submitted subsequent to the Office's May 10, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).