

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMONA L. MURRELL and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brooklyn, NY

*Docket No. 01-214; Submitted on the Record;
Issued August 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained a respiratory condition in the performance of duty.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a respiratory condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of 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 occurred at the time, place and in the manner alleged; 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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

¹ 5 U.S.C. §§ 8101-8193.

² See *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

³ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁴

In February 2000 appellant, then a 36-year-old nursing assistant, filed an occupational disease claim alleging that she sustained exacerbation of her asthma and collapsed lungs conditions “[d]ue to employees smoking in offices on the fifth floor while I work[ed] for [the employing establishment].”⁵ By letter dated March 13, 2000, the Office of Workers’ Compensation Programs requested that appellant submit additional factual and medical evidence in support of her claim.⁶ By decision dated October 11, 2000, the Office denied appellant’s claim on the grounds that appellant did not establish the factual aspect of her claim that she sustained an employment-related respiratory condition. The Office determined that appellant did not establish the occurrence of an injury in the performance of duty at the time, place and in the manner alleged. The Office indicated that she did not respond to its request for additional factual evidence or otherwise provide a sufficient description of the employment factors, which she believed caused her claimed condition. The Office noted that, as appellant had not established the factual aspect of her claim, it was not necessary to consider the medical evidence of record.

Appellant generally alleged that she sustained respiratory problems due to exposure to smoke from coworkers at work. However, she did not provide sufficient evidence to establish that she sustained an injury in the performance of duty at the time, place and in the manner alleged. Appellant did not adequately describe the employment factors, which she believed affected her respiratory condition. The Office provided appellant with the opportunity to provide such additional evidence but she did not do so within the time allotted by the Office prior to the issuance of its October 11, 2000 decision.⁷ Therefore, appellant did not establish the factual

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ Appellant indicated that she first became aware of the claimed condition and realized it was employment related on January 12, 2000. She stopped work on January 12, 2000.

⁶ Appellant had submitted several brief medical notes from January 2000. The Office requested that appellant describe in detail the employment-related exposure which she claimed had contributed to her illness, including the concentration and visibility of the smoke to which she was exposed. The Office asked her to describe how often she was exposed to smoke and generally how long she was exposed to smoke on each occasion; the Office asked her to estimate how many hours per day and days per week she was exposed to smoke. The Office requested that appellant indicate whether she directly inhaled smoke; whether she performed tasks which required exposure to smoke; whether she utilized protective gear; and whether she was exposed to smoke outside work or had a preexisting respiratory condition. The Office also requested that appellant provide a reasoned medical report which related her claimed condition to employment factors and advised her that she had about 30 days from March 13, 2000 to submit the requested evidence.

⁷ Appellant submitted additional medical evidence, but did not respond to the Office’s request for further factual evidence.

aspect of her claim that she sustained an employment-related respiratory condition. Consequently, it was not necessary for the Office to consider the medical evidence of record.⁸

For these reasons, appellant did not meet her burden of proof to establish that she sustained a respiratory condition in the performance of duty.

The October 11, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 21, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁸ Appellant submitted additional factual and medical evidence upon her appeal to the Board, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may resubmit the foregoing new evidence together with a request for reconsideration to the Office.