

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAVERNE D. FAIR and NATIONAL AERONAUTICS & SPACE
ADMINISTRATION, HEADQUARTERS, Washington, DC

*Docket No. 99-2518; Submitted on the Record;
Issued August 30, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a respiratory, visual or multiple chemical sensitivity condition in the performance of duty.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order¹ on November 26, 1993 in which it affirmed the July 29, 1991 and January 8, 1992 decisions of the Office of Workers' Compensation Programs on the grounds that appellant did not submit sufficient medical evidence to establish that she sustained a respiratory, visual or multiple chemical sensitivity condition in the performance of duty.² The Board determined that the medical evidence submitted by appellant, including reports of Dr. James M. Miller and Dr. Richard A. Nicklas, both Board-certified allergists and immunologists, did not contain adequate medical rationale relating her claimed conditions to employment factors. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

After the Board's November 26, 1993 decision, appellant submitted additional evidence in support of her claim. By decision dated January 30, 1995, the Office affirmed its prior decisions on the grounds that appellant did not submit sufficient medical evidence to establish that she sustained a respiratory, visual or multiple chemical sensitivity condition in the performance of duty. By decisions dated January 31, 1996 and May 11, 1999, the Office affirmed its prior decisions.

¹ Docket No. 92-2070.

² In November 1988 appellant, then a 56-year-old secretary, filed a claim alleging that she sustained respiratory, visual and multiple chemical sensitivity conditions due to poor ventilation and allergens in the workplace. Appellant had stopped work in October 1988.

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

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.⁶

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a respiratory, visual or multiple chemical sensitivity condition in the performance of duty.

Appellant submitted a November 24, 1995 report in which Dr. Grace Ziem, an attending physician specializing in occupational and environmental medicine, indicated that she was exposed to newsprint at work and other allergens. Dr. Ziem stated:

"I feel [appellant] has respiratory, neurologic and immune consequences of her chemical exposure. At this time, it appears probable that her condition was

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

occupational in origin because of the way the symptoms developed and the way in which they improved consistently when away from her exposure in the Mary Switzer Building.”

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Ziem did not provide sufficient medical rationale in support of her conclusion on causal relationship.⁷ She did not provide adequate medical rationale explaining the medical process through which the work environment would have been competent to cause the conditions claimed by appellant. Such medical rationale would be particularly necessary in the present case in that, at the time of Dr. Ziem’s evaluation, appellant had not been exposed to substances in the workplace for more than seven years. Moreover, her opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history.⁸ Dr. Ziem did not adequately discuss the nature of appellant’s exposure to potential harmful substances in the workplace.⁹

Appellant also submitted notes and reports dated between mid 1995 and mid 1998 in which Dr. Ziem discussed her condition and indicated that she had a multiple chemical sensitivity condition. In many of the notes and reports, Dr. Ziem discussed appellant’s special diet regimen which was necessitated by her sensitivity to chemical substances. These notes and reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.¹⁰

In a report dated July 2, 1998, Dr. Roy E. Kerry, an attending Board-certified otolaryngologist, indicated that appellant had “extreme limitations and sensitivity” to various fume exposures and inhalant allergens. He indicated that appellant had “an ongoing exposure in the workplace” and that she remained symptomatic. Dr. Kerry noted that appellant had gone beyond her “total load” of exposure and was “unable to detoxify the many toxic environment exposures which at one time [were] no problem for her.” However, he did not provide adequate medical rationale in support of his opinion on causal relationship. Dr. Kerry did not provide any notable factual or medical history or explain the medical process through which appellant would have gone beyond her “total load” of exposure. Such medical rationale is particularly necessary given the factual circumstances of the present case, *i.e.*, appellant’s limited exposure to potential harmful substances.

⁷ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁸ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

⁹ In September 1988, an environmental study was performed which revealed that appellant’s workplace, room 2014 of the Mary Switzer Building, did not exhibit any abnormal environmental characteristics. The study tested such factors as the adequacy of ventilation and the levels of carbon dioxide, carbon monoxide, airborne microorganisms and other potential allergens.

¹⁰ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

Appellant submitted the findings of diagnostic testing, performed between 1995 and 1998, which evaluated her sensitivity to various substances. She also submitted a February 27, 1994 report in which Dr. Randall R. Pears, an attending Board-certified ophthalmologist, indicated that she had a resolving left eye hemorrhage and a right eye defect which was probably due either to an ischemic event or low tension glaucoma. However, none of these documents contained any opinion indicating that appellant developed a condition due to employment factors. Appellant has not submitted sufficient evidence to establish that she sustained an employment-related respiratory, visual or multiple chemical sensitivity condition.¹¹

The May 11, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 30, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ As previously noted, the Board has determined that the medical evidence submitted by appellant prior to the Board's November 26, 1993 decision was not sufficient to establish her claim.