U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY M. GOODWIN and U.S. POSTAL SERVICE,
MEDGAR WILEY EVERS POSTAL FACILITY, Jackson, MS

Docket No. 02-1969; Submitted on the Record;
Issued December 13, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied her February 15, 2002 request for an oral hearing before an Office hearing representative.

On June 10, 2001 appellant, then a 47-year-old small parcel bundle sorter clerk, filed a claim asserting that her allergic rhinitis was a result of her federal employment. She attributed her condition to sick building syndrome, or unsanitary environmental conditions at work, including dust, poor air circulation, bacteria and molds.

In support of her claim, appellant submitted a medical report from 1995, diagnosing chronic allergic rhinitis, a deviated left nasal septum, rule out chronic maxillary sinusitis and chronic eustachian tube salpingitis. She submitted a medical report from April 19, 1999, diagnosing rhinosinusitis and allergy laryngitis. A January 16, 2001 report diagnosed allergic rhinitis secondary to "? sick building syndrome." A February 21, 2001 treatment note related that appellant complained of severe hoarseness for approximately one year and that she only had the problem when she was in contact with her work environment. A March 23, 2001 note diagnosed chemical allergy laryngitis. Appellant was prescribed a change in location away from mailhandling.

The employing establishment submitted a December 11, 1995 quality control/quality assurance summary on nuisance dust.

On July 3, 2001 the Office advised appellant that the medical evidence was not sufficient because it did not specify the workplace allergens causing or aggravating her condition:

"Please provide an additional report that specifically discusses the following --

> Results of specific allergy tests and the type of substance and level in the workplace that is causing your condition. You should obtain copies of air

quality tests from your [a]gency so that your physician can address the specific amounts and type of particles found in the building to your allergy test results. This should include [his] medical reasoning as to how and why the work substance is causing the reaction and address nonwork allergens that may also contribute to this same condition."

The employing establishment submitted the results of an industrial hygiene investigation performed on May 3 and 4, 2001 at appellant's duty station.

Appellant submitted a March 28, 2001 report from Dr. Mickey P. Wallace, a Board-certified otolaryngologist, stated:

"[Appellant] is a 46[-]year[-]old female with severe hoarseness for the last year. She was seen on February 21 and March 23 of this year. On her initial visit, she brought a cassette tape with her which describes her symptoms perfectly. She states she has no problem with breathing or with hoarseness except when she is in contact with her work environment, specifically, the area of 'mailhandling.' She states in the office-type environment at the workplace, she does not have this problem. Based on her history and the tape that I heard, she has associated chest tightness, epiphora and hoarseness when she is at work. This seems to resolve over six to eight hours away from work.

"On the cassette tape she brought, her voice is very high-pitched with a spastic sound to it. There is no mass or adenopathy in her nodes. She was not hoarse at the time I saw her initially. She gives some history of allergy testing by [Dr.] Tom Lewis in the past which were 'negative.' She has not received any help from her medications with the exception of occasional Decadron. Steroids were tried orally and by injection and she did have some improvement in her voice and chest tightness. However, she still has very poor vocal function at work and it gets better when she's not at work.

"To sum this all up, she seems to have a chemical allergic laryngitis. It [i]s my recommendation that she needs to change her job location away from the area of mailhandling. I do not think there is any medication that will solve this problem for her as far as I understand it."

On June 25, 2001 Dr. Wallace stated:

"Included is a copy of a letter concerning [appellant] and her hoarseness, shortness of breath. This, according to my information from the patient and cassette recording of voice at work, is allergic work environment related.

"She needs an environment change at work or different job. Excessive work time or hours is not wise and contraindicated."

In a decision dated January 14, 2002, the Office denied appellant's claim on the grounds that the medical evidence did not associate a specific chemical, gas or substance located in the postal building that was causing appellant's condition. The Office noted that diagnostic testing

was negative for allergies and that the diagnosis of chemical allergic laryngitis was based solely on appellant's explanation to the physician and her voice tape recording.

In a letter postmarked February 15, 2002, appellant requested an oral hearing before an Office hearing representative.

In a decision dated April 15, 2002, an Office hearing representative denied appellant's request on the grounds that it was untimely and that she was not entitled to an oral hearing as a matter of right. The hearing representative denied a discretionary hearing on the grounds that appellant could address the issue in her case equally well through the reconsideration process.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[2]

The Office does not dispute appellant's exposure to environmental factors at work, insofar as those factors are described by the December 11, 1995, quality control/quality assurance summary on nuisance dust and the industrial hygiene investigation performed on May 3 and 4, 2001. To this extent the record establishes that appellant experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The Office denied appellant's claim because the medical evidence failed to establish that such event, incident or exposure caused an injury.

Causal relationship is a medical issue[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty[5]

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

To support her claim, appellant submitted a medical opinion from her otolaryngologist, Dr. Wallace. Although he concluded that appellant "seems to have a chemical allergic laryngitis" related to her work environment, his opinion is of diminished probative value. Dr. Wallace gave no indication that he reviewed the environmental surveys of appellant's workplace. The factual basis for his conclusion comes solely from the history that appellant related to him and from the audiotape of appellant's voice. While these can be valid sources of information, Dr. Wallace's opinion must be regarded as too vague and speculative, without reference to the environmental surveys and without identifying any particular chemical agent, to establish the critical element of causal relationship. Only where the conditions of the employment include recognizable causal agents, which medical science recognizes as efficient producers of disease, can causal relation between disease and the employment be made to appear.[7] Without a medical opinion that is based on her established environmental exposure and that soundly explains how her diagnosed condition arose from a recognizable causal agent, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

The Board also finds that the Office properly denied appellant's February 15, 2002 request for an oral hearing before an Office hearing representative.

Section 8124(b)(1) of the Act provides:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[8]

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.[9] The Office has discretion, however, to grant or deny a request that is made after this 30-day period.[10] In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[11]

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[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] *Charley V.B. Harley*, 2 ECAB 208-09 (1949), *cited with approval in John W. Pope, Ph.D.*, 29 ECAB 643, 651 (1978).

[8] 5 U.S.C. § 8124(b)(1).

[9] 20 C.F.R. § 10.616(a).

[10] *Herbert C. Holley*, 33 ECAB 140 (1981).

[11] *Rudolph Bermann*, 26 ECAB 354 (1975).

Because appellant made her February 15, 2002 request for a hearing more than 30 days after the Office's January 14, 2002 decision, she is not entitled to a hearing as a matter of right.[12] The Office hearing representative nonetheless considered the matter and correctly advised appellant that she could address the issue in her case equally well through the reconsideration process.[13] The Board finds that the Office did not abuse its discretion in denying the untimely request for a hearing.[14]

The April 15 and January 14, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 13, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[12] Appellant asserts on appeal that she did not receive the Office's January 14, 2002 decision, until about January 21, 2002. She did not explain how this prevented her from requesting a hearing within 30 days of the date of the decision, or by February 13, 2002.

[13] Appellant has one year from the date of the Board's opinion to submit to the Office, with a request for reconsideration, the medical opinion evidence necessary to establish causal relationship.

[14] The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).