

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EVELYN MENCHER and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Brooklyn, NY

*Docket No. 02-2114; Submitted on the Record;  
Issued December 26, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on December 21, 1998.

On November 23, 2001 appellant, then a 57-year-old secretary, filed a notice of occupational disease and claim compensation (Form CA-2). She alleged that, on November 16, 2001, she had an asthma attack when the building was painted and that she first became aware that it was caused or aggravated by her employment on that same date.

In a statement received by the Office of Workers' Compensation Programs on December 7, 2001, the employing establishment indicated that, on November 16 and 20, 2001, appellant arrived at work on a timely basis but stated that she became ill from the smell of paint in the office, which triggered an asthma attack. They noted that, on November 16, 2001, appellant was at work for an hour, and went to the nurse before a coworker called a car service to take her home and on November 20, 2001, appellant called home and her husband picked her up, before her tour of duty began. The employing establishment stated that appellant returned to work on Monday, November 19, 2001 from her November 16, 2001 episode and on November 21, 2001 from her November 20, 2001 attack.<sup>1</sup>

In a letter dated January 7, 2002, the Office advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit such. Appellant was advised that submitting a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

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<sup>1</sup> The employing establishment also stated that appellant did not provide any medical reports after the above-referenced incidents, that she had two previous asthma attacks due to the same cause and which were subject to workers' compensation claims. They noted that the first occurred September 22 through 24, 1999, and the other occurred November 15 through 17, 2000.

In an undated letter received by the Office on January 18, 2002, appellant indicated that she was exposed to the paint from the smell coming through the vents and she was told that it was from the seventh floor. She indicated that, if she had known about the painting, she would have asked to be in another office building. Appellant explained that this was about the third time in the last few years and noted that the first incident was in 1999 for 3 days for about 20 hours. Appellant indicated that her subsequent exposure was in 2000 and lasted about three days for about the same amount of time, and her last incident was in 2001 from November 16 to 20, 2001 for eight hours. She stated that she did not work any other jobs and did not keep anything that would bring on an attack and she had no hobbies that would do this to her. Appellant indicated that she had asthma plus food allergies and seasonal allergies and she had attacks from paint and some odors like perfume and foods. Appellant indicated that she never smoked and that she had other compensation cases from 1999 to 2000 that contained her medical reports from the hospital and doctors.

By decision dated June 20, 2002, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an asthma attack in the performance of duty.

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<sup>2</sup> 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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.<sup>5</sup>

In the present case, the Office found that the evidence received was sufficient to establish that appellant was exposed to fumes at work as claimed.

However, the Board finds that appellant has not established that the November 16, 2001 employment incident resulted in an injury. Appellant did not submit any medical evidence to establish that she sustained an asthma attack in the performance of duty. For example, appellant did not submit a single medical report relating her claimed condition to employment factors. As appellant has not submitted the requisite medical evidence needed to establish her claim, she has failed to meet her burden of proof.

For the above-noted reasons, appellant has not established that she sustained an injury in the performance of duty.

The June 20, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
December 26, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).