

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH A. FRANCIS and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 02-329; Submitted on the Record;
Issued October 10, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a pulmonary/respiratory condition due to factors of her employment; and (2) whether appellant sustained a stress condition due to factors of her employment.

Appellant, then a 48-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that on December 4, 2000 she first realized her condition was employment related.¹ In a June 19, 1996 work capability certificate, appellant was diagnosed with hypertension, stress and gastritis.²

In a work capability certificate dated December 27, 2000, Dr. Andre Stuart diagnosed anxiety and stress which he attributed to her extended work hours.

A physician³ diagnosed restrictive airways disease due to environmental dust and released appellant to return to work on May 4, 2001. The physician recommended that the employing establishment "change [the] work environment to cleaner work space -- away from DCR machine."

In a May 21, 2001 work capability certificate, Susan Shaver, CNP, diagnosed asthma and opined that appellant was partially disabled depending on the environment. Ms. Shaver noted that "some [of the] environmental conditions will worsen the allergies and in turn worsen her asthma."

¹ Appellant indicated that she first became aware of her condition on June 12, 1996. In response to the Office of Workers' Compensation Programs' request for additional information, she noted that she first became aware of the causal connection between her condition and her employment in December 2000.

² The physician's signature is illegible.

³ The name appears to be N. Flonker.

By letter dated June 28, 2001, the Office advised appellant as to the type of information required to support a claim for an emotional condition. By letter dated June 28, 2001, the Office requested that appellant submit further information in support of her claim. The Office requested that appellant submit, *inter alia*, a detailed description of her employment-related exposure which she believed caused her illness, with details as to what harmful substance she was exposed and how often. She was also requested to send the Office a description of her job activities that she believed caused the alleged illness.

In response to the June 28, 2001 letter, appellant noted that “everytime (sic) they were blowing out the machine” she would get ill. Regarding her emotional condition, she noted that she was asked to do overtime by one of her supervisors and she told him she could not because she had to pick her child up. She noted that she had “to go to return to work session three times a week for six weeks.

The employing establishment controverted the claim and submitted in support thereof, dust monitoring tests that were taken at appellant’s workplace that showed that there were no hazardous levels of dust in the facility.

By letter dated August 21, 2001, the Office informed appellant that the evidence of record was insufficient to support her claim and advised her as to the type of evidence required to support her claim.

In an August 20, 2001 statement, appellant noted that the area she worked in was very dusty and that the machines were blown out every day by the maintenance crew “and the dust particles were always in the air setting on your clothes, body.” She stated that she was placed on the OCR machine and training for it was not good. Next, appellant alleged that overtime caused her stress. She noted that when she first arrived she worked 10 hours each day 6 days a week. Appellant also noted that there was favoritism and they were short handed.

By decision dated September 20, 2001, the Office denied appellant’s claim, finding that appellant had not met the requirements for establishing that she sustained an injury as alleged for either her claimed respiratory/pulmonary or emotional condition.

The Board finds that appellant has not established a stress condition due to her employment.

To establish appellant’s claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁴ 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. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

⁴ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁶ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷

Appellant has made general allegations of overwork, but these allegations are nonspecific and uncorroborated and therefore do not support a claim for compensation.⁸ Regarding her allegation of overwork, she indicated that she was asked to work overtime by one of her supervisors, without noting a specific date, and she told him she could not because she had to pick her child up. Appellant also noted that she had to work 10 hours a day 6 days a week when she first started. She has submitted no evidence supporting these allegations. Therefore, appellant has failed to establish a compensable factor of employment in this regard.

In summary, appellant has not substantiated any compensable employment factors. For this reason, it is not necessary to address the medical evidence.⁹

Next, the Board finds that this case is not in posture for a decision on the issue of whether appellant sustained a pulmonary/respiratory condition due to her employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹⁰ 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.¹¹ These are

⁵ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 4.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ See *William P. George*, 43 ECAB 1159 (1992).

⁹ *Margaret S. Krzycki*, 43 ECAB 384 (1992).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *James P. Bailey*, 53 ECAB ____ (Docket No. 01-1993, issued April 11, 2002); *Trina Bornejko*, 53 ECAB ____ (Docket No. 01-1118, issued February 27, 2002); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹²

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.¹³

Appellant has attributed her condition to factors of her federal employment. The Office denied appellant's claim on the basis that the employing establishment had submitted report indicating there were no hazardous levels of dust. However, appellant did not claim she was exposed to hazardous levels of dust. She attributed her disability/illness to being present when the employing establishment blew out machines and that the resulting dust aggravated her asthma. The issue of whether or not there were hazardous levels of dust is not dispositive as to whether appellant had identified an employment factor. The issue is whether appellant's asthma was aggravated by alleged exposure to dust caused by blowing out the machines. The Board notes that appellant's physician recommended appellant be allowed to change her "work environment to cleaner work space -- away from the DCR machine." On remand, the Office should develop the medical evidence to determine whether appellant's respiratory condition was aggravated by the dust from blowing out machines at the employing establishment. In addition, the Office should determine when the employing establishment blew out the machines and whether appellant was present during these times.

¹² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

¹³ *Solomon Polen*, 51 ECAB ____ (Docket No. 97-1794, issued March 1, 2000).

The September 20, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed regarding the emotional condition, but remanded for further development as to whether appellant developed a respiratory condition due to factors of her employment.¹⁴

Dated, Washington, DC
October 10, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ Appellant submitted additional evidence to the Board; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.