

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DREXEL BLACKBURN and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, CA

*Docket No. 03-942; Submitted on the Record;
Issued August 5, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he developed asthma, chronic sinusitis and allergic rhinitis in the performance of duty.

On January 24, 2002 appellant, then a 31-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he developed asthma, chronic sinusitis and allergic rhinitis as a result of breathing dust at the bulk mail center, in which he worked. He stated that he first became aware of his lung condition on May 14, 1996. Accompanying appellant's claim were medical reports from Dr. Caryn Lum, a Board-certified internist, dated April 23, 1998 and May 3, 2002; and a report from Dr. Thomas E. White, a Board-certified otolaryngologist, dated October 1, 2001. In the April 23, 1998 report, Dr. Lum diagnosed asthma, chronic sinusitis and allergic rhinitis and advised that appellant could not work in an area where there were fumes, dusts and allergens. In the May 3, 2002 report, she advised that she had treated appellant since October 2, 1997 for asthma and sinusitis and that he underwent sinus surgery in January 1998 and November 2001. In his October 1, 2001 report, Dr. White noted that appellant had severe allergic problems which led to nasal polypus and infection requiring surgery.

In a letter dated August 23, 2002, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his asthma and allergic conditions and specific employment factors.

In response to the Office's request, appellant submitted additional medical evidence. By report dated September 24, 1998, Dr. Willie Wilson, an internist, advised that appellant could return to his previous light-duty job and that his respiratory condition was permanent and would be aggravated by dusty environments. A computerized tomography of the head dated September 14, 1999 revealed chronic pansinusitis. An operative report dated March 14, 2001 noted appellant underwent a left endoscope polypectomy on that date for nasal polypus.

In his narrative statements, appellant indicated that he was exposed to dust at the employing establishment from pallets of mail; dock stall doors opening; and from the sorter machine. He noted that he used protective gear and that the ventilation ducts were never utilized during his shift. Appellant noted that he had filed a grievance against the employing establishment regarding his working conditions.

The employing establishment submitted a work site dust test dated May 28, 2002 which noted that dust monitoring was conducted at the employing establishment on May 14, 2002. The testing revealed that the eight-hour time weighted average (TMA) was below the occupational health standards administration's permissible exposure level (PEL). By letter dated September 16, 2002, the employing establishment controverted the claim and indicated that the dust measurements at the employing establishment were well within Occupational Safety and Health Administration (OSHA) standards and advised that appellant returned to light duty in the western annex where there was the least amount of mail and overhead conveyors, which might produce added dust. The employing establishment indicated that appellant was offered a dust mask, which he wore for a short period of time and then refused further use and he worked in this area without complaint until a change of schedule for the day shift was disapproved.

On October 23, 2002 the Office issued a decision and denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that his medical condition was caused by employment factors.

In a letter dated November 13, 2002, appellant requested reconsideration and submitted medical reports from Dr. Lum dated November 8, 2002 and Dr. White dated November 26, 2002. In the November 8, 2002 report, Dr. Lum advised that appellant had asthma prior to his work at the employing establishment, but that she had noticed a deterioration of his pulmonary function since 1996, which was permanent and very likely caused by small airway scarring following years of inflammation. She opined that patients with asthma should not be subjected to specific triggers such as allergens and irritants such as dusts and fumes and noted that, although appellant was wearing a dust mask, it was ineffective at filtering out whatever is triggering his asthma. In his report of November 26, 2002, Dr. White advised that he had treated appellant for several years for recurrent sinus infections and polypus related to severe allergies. He stated that because appellant's breathing problems began after he started working at the employing establishment, a causal relationship could be inferred. Dr. White indicated that, although studies of appellant's work environment revealed acceptable levels, this would only apply to people with normal immune responses and concluded that appellant should not be working in this environment.

By letter dated October 16, 2002, the employing establishment provided dust measurements at appellant's work location and noted that he refused to wear protective gear. The employing establishment further advised that the ventilation system in the western annex was set in an automatic mode, turning on and off at specified intervals, contrary to appellant's allegation that the ventilation ducts were inoperable during his shift.

In a decision dated February 7, 2003, the Office issued a decision denying modification of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he developed asthma, chronic sinusitis or allergic rhinitis in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 the 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 and every 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 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 causal relationship is generally 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.⁴ Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵

In the instant case, it is not disputed that appellant was a federal employee. However, he has not submitted sufficient medical evidence to support that his diagnosed condition was caused by the employment factors or conditions.

In her report dated April 23, 1998 and May 3, 2002, Dr. Lum merely indicated that appellant suffered from asthma, chronic sinusitis and allergic rhinitis and could not work in an area where there were fumes, dusts and allergens. In her report of November 8, 2002, she

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

⁵ *Id.*

advised that appellant had asthma prior to his federal employment, but that his pulmonary function had deteriorated since 1996, which Dr. Lum attributed to “small airway scarring following years of inflammation incompletely controlled despite an aggressive medical program,” rather than to his employment duties. Furthermore, her reports are speculative and conjectural regarding the causal relationship between appellant’s condition and his employment duties because she merely stated that it was “possible” that his workplace contains triggers which aggravated his asthma. Additionally, Dr. Lum appeared to be repeating the work conditions as reported by appellant without providing her own opinion regarding whether this or any other exposure caused his disability. The Board has held that speculative and equivocal medical opinions on causal relationship have no probative value.⁶ To the extent that Dr. Lum is providing her own opinion, she did not provide any reasoning or rationale explaining what the causal relationship between appellant’s condition and employment factors.⁷ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸ Dr. Lum’s reports are, therefore, insufficient to meet appellant’s burden of proof.

In his report of October 1, 2001, Dr. White noted that appellant had severe allergic problems which had led to nasal polypus and infection requiring surgery and advised that he should not work in a dusty environment. In his November 26, 2002 report, Dr. White noted that because appellant’s problem began after he begun working in a dusty environment at the employing establishment a causal relationship can be inferred. The Board finds that, although Dr. White supports causal relationship, he provided no medical reasoning or rationale to support his opinion.⁹ Additionally, although he advised that appellant’s breathing condition commenced after he began working at the employing establishment, the record reveals that his breathing condition was present prior to this employment. The Board has held that a medical opinion based on an incomplete history is insufficient to establish causal relationship.¹⁰ Furthermore, the

⁶ See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.* 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

⁷ See *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002); *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003); *Louis T. Blair, Jr.*, 54 ECAB ____ (Docket No. 02-2289, issued January 16, 2003); *Charles W. Downey*, 54 ECAB ____ (Docket No. 02-218, issued February 24, 2003), (where the Board found that 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, 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 established incident or factor of employment).

⁸ *Id.*

⁹ See *Betty J. Smith*, *supra* note 7.

¹⁰ See *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003); *Daniel F. O’Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003) (to establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship); *see also Cowan Mullins*, 8 ECAB 155, 158 (1955).

mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹¹

Appellant also submitted a report from Dr. Wilson dated September 24, 1998, which indicated that he was able to return to work in his previous light-duty job. He noted that appellant's respiratory condition was permanent and would be aggravated by dusty environments. However, he did not provide a rationalized medical opinion explaining the causal relationship of appellant's condition to employment factors.¹²

The Board, therefore, finds that as causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated February 7, 2003 and October 23, 2002 are affirmed.

Dated, Washington, DC
August 5, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹¹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹² *See Betty J. Smith*, *supra* note 7.