

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESSIE J. BAKER and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 02-1054; Submitted on the Record;
Issued January 10, 2003*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an asbestos-related condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs, properly denied appellant's request for reconsideration.

On October 9, 2000 appellant, a 51-year-old distribution clerk, filed an occupational disease claim alleging that she sustained an asbestos-related condition due to exposure at work. Appellant noted that she first became aware of her condition and that it was caused or aggravated by her employment on October 6, 2000. She notified her supervisor on the same date.

In support of her claim, appellant submitted a statement dated October 9, 2000 indicating that her disease or illness began shortly after May 1997 when the employing establishment was being renovated. She stated that she was exposed to asbestos eight hours a day, five to six days a week from May to September 1997.

By letter dated February 7, 2001, the Office requested detailed factual and medical information from appellant and the employing establishment; additional information was required to support her claim and requested a detailed description of the employment factors to which appellant attributed to her condition.

In response to the Office's request, the employing establishment indicated that it did not concur with appellant's claim. The employing establishment stated that appellant was never exposed to asbestos at the work site and submitted an abatement of asbestos at the workplace performed between June 2 to September 8, 1997.

In support of her claim, appellant submitted a letter dated March 2, 2001 in which she alleged that she had no knowledge of being exposed to asbestos prior to her current employment. She stated that since her alleged exposure she had "an increase in coughing, the coughing up of more mucus and more recently the coughing up of blood ... shortness of breath and increased fatigue ... weakness." She noted that her most recent x-ray was clear.

By decision dated April 4, 2001, the Office denied appellant's claim for failure to submit sufficient evidence necessary to support her claim.

In a December 10, 2001 letter, received by the Office on January 16, 2002, appellant requested reconsideration; however, she did not submit any new or additional evidence in support of this request.

By decision dated February 14, 2002, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly determined that appellant failed to meet her burden of proof in establishing that she sustained an asbestos-related condition in the performance of duty on October 16, 2000 as alleged.

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 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.² These are the essential elements of each 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 a causal relationship is rationalized medical opinion evidence. 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

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

³ *See Delores C. Ellyett*, 44 ECAB 992, 994 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁵

In the instant case, appellant has alleged that she sustained an occupational asbestos-related condition causally related to her federal employment. However, she did not submit any medical evidence in support of her claim. Appellant has not established that she sustained the alleged asbestos-related medical condition and appellant has not established that the alleged work factors caused or contributed to any medical condition.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for a merit review under 5 U.S.C. § 8128(a).

Under section 8128(a) of the Act,⁶ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁷ which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a specific point of law, or

“(ii) Advancing a relevant legal argument not previously considered by the Office, or

“(iii) Constituting relevant and pertinent new evidence not previously considered by the Office.”

Section 10.608(b) provides that any application for review of the merits of the claim which fails to meet at least one of the standards described in section 10.606(b)(2) will be denied by the Office without reopening the case for a review of the merits.⁸

In support of her reconsideration request, appellant did not submit any new or additional evidence relevant to her claim. Therefore, the Office properly denied appellant's request for a review on the merits.

⁵ *Alberta S. Williamson*, 47 ECAB 569 (1996).

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 8128(a).

⁸ 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated February 14, 2002 and April 4, 2001 are hereby affirmed.⁹

Dated, Washington, DC
January 10, 2003

Michael J. Walsh
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁹ The Board notes that reference number 30 is not relevant to appellant's claim.