

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY D. SMITH and U.S. POSTAL SERVICE, DAYTON
PROCESSING/DISTRIBUTION CENTER, Dayton, OH

*Docket No. 02-1544; Submitted on the Record;
Issued June 12, 2003*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he experienced an allergic reaction to dust in the performance of duty on October 7, 2000.

On November 29, 2000 appellant, then a 54-year-old mail processor, filed an occupational disease claim (Form CA-2), alleging that exposure to dust at work caused shortness of breath and pain in his lungs. He stated that he first became aware of the condition and related it to his employment on October 7, 2000. The employing establishment stated that appellant stopped work on October 14, 2000.

Accompanying the claim were October 13 and November 28, 2000 attending physician's reports by Dr. Patricia A. Southworth, whose primary practice is internal medicine, gave a history as provided by appellant as exposed to large amounts of dust and asbestos at work, diagnosed shortness of breath and checked "yes" regarding her opinion that appellant's condition was caused or aggravated by his employment activity; an October 6, 2000 medical certificate from the Department of Veterans Affairs indicating that appellant was seen on October 6, 2000 with complaints of lung problems due to exposure to dust at work; a November 29, 2000 duty status report completed by Dr. Southworth,¹ stating that appellant could return to work on October 9, 2000 with restrictions; and a CA-7 form indicating that appellant was on leave without pay from October 11, 2000 to January 31, 2001.

By letter dated February 7, 2001, the Office of Workers' Compensation Programs requested detailed factual and medical information from appellant. Specifically, a description of the room he was working in as it relates to dust exposure, a description of his symptoms, the identification of any witnesses, an explanation as to why he stayed at work all night if he was sick, a description of his current duties and a medical report supporting his claim that he received medical attention on October 8, 2000 as claimed.

¹ The Board notes that the employing establishment's portion of the form was not completed.

By another letter dated February 7, 2000, the Office requested detailed factual information from the employing establishment. Specifically, a description of the office appellant was in, any environmental testing done on the air quality in the office and comments from a Mrs. Peters concerning appellant's behavior on October 7, 2000 and comments from anyone who worked with appellant that night.

By decision dated April 10, 2001, the Office denied appellant's claim finding that the factual evidence of record failed to establish that he experienced the claimed employment factor at the time, place and in the manner alleged.² Therefore, fact of injury was not established.

By letter dated May 7, 2001, appellant requested an oral hearing before an Office hearing representative which was held on January 14, 2002.

Subsequent to the hearing, on February 5, 2002 appellant submitted a February 3, 2000 medical report by Dr. Robert A. Cain, an osteopath, who discusses appellant's medical history from a previous claim.

By decision dated April 22, 2002, an Office hearing representative affirmed the Office's April 10, 2001 decision.³ The hearing representative found that the medical evidence submitted was insufficient to establish that appellant's exposure to dust at work caused or aggravated his lung condition.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 filed within the applicable time limitation 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

² The record supports that no response to its February 7, 2001 letters requesting detailed factual and medical information was received from appellant or the employing establishment.

³ The Board notes that in her decision the hearing representative, although not specifically stated, accepted that the exposure to dust occurred as alleged, but that there is no rationalized medical evidence to support appellant's claim that the employment factor he described caused or aggravated appellant's lung condition.

⁴ 5 U.S.C. § 8101.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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, generally, 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 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.⁷

In the instant case, there is no dispute that appellant has lung conditions/allergies. Although the medical evidence of record reveals a preexisting condition, none of the reports provided a rationalized medical opinion relating appellant's condition to the factor of employment identified by appellant, *i.e.*, exposure to dust at work commencing October 7, 2000. On October 6, 2000 the Department of Veterans Affairs' medical certificate included a statement by appellant that he was exposed to dust on the job and a diagnosis of dust allergies. There is no discussion of a causal relationship between appellant's allergies and exposure to dust. The signature on the medical certificate is illegible making it unclear whether or not it is signed by a physician. The October 6, 2000 medical certificate is insufficient to establish appellant's claim.

The February 3, 2000 report by Dr. Cain, an osteopath, is dated prior to appellant's claimed exposure commencing October 7, 2000. Therefore, the report cannot and does not discuss appellant's exposure commencing that date. The report discusses a prior history of lung conditions and allergies. The February 3, 2000 report is insufficient to establish appellant's claim that commencing October 7, 2000 he was exposed to dust at work which caused an allergic reaction.

⁷ *Id.*

The November 29, 2000 duty status report of a November 15, 2000 examination by Dr. Southworth checked “yes”⁸ that the history of injury given by appellant agreed with that shown in Item 7; however, Item 7 was not completed. A diagnosis of shortness of breath precipitated by work factors was given, without identifying the actual work factors or including rationale to support the diagnosis. Therefore, the November 29, 2000 report is insufficient to establish appellant’s claim.

October 13 and November 28, 2000 attending physician’s reports of Dr. Southworth included a history given by appellant of exposure to large amounts of dust and a diagnosis of shortness of breath precipitated by work factors. Dr. Southworth did not provide an opinion with supporting rationale causally relating appellant’s condition to exposure to large amounts of dust commencing October 7, 2000. Therefore, the October 13 and November 28, 2000 attending physician’s reports are insufficient to establish appellant’s claim.

An award of compensation may not be based on surmise, conjecture or speculation. 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. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office, therefore, properly denied appellant’s claim for compensation.

The decision of the hearing representative of the Office of Workers’ Compensation Programs dated April 22, 2002 is affirmed.

Dated, Washington, DC
June 12, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994) (The Board has held that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish causal relationship. Appellant’s burden included the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.