

had upper respiratory conditions. Appellant added that she would come in contact with the patients as she obtained their personal information and would hand to and receive back from them pens and paper that were contaminated. In support of her claim, appellant submitted a May 9, 2002 report from Dr. Gerard Kline, an emergency room physician, who stated that he treated appellant for pneumonia and persistent chest pains and weakness.

In a May 15, 2002 email, Dorothy Hess, appellant's supervisor, noted that on April 18, 2002 appellant told her that she was diagnosed with pneumonia and her doctor attributed it to living for 33 years around second-hand smoke. She added that appellant's husband and daughter both smoked. In a May 16, 2002 treatment note, Dr. Kline stated that he treated appellant for cough and shortness of breath and diagnosed pneumonia.

In a July 19, 2002 letter, the Office informed appellant that she needed to submit additional evidence to establish her claim. In response, appellant submitted an April 23, 2002 hospital discharge summary signed by Dr. Vladimir Fabian, who stated that appellant was exposed to a colleague who had a cough for three weeks. He noted that appellant had no history of respiratory problems but she was exposed to cigarette smoke from her husband and daughter and had a history of hypothyroidism and depression. He noted that appellant was in the hospital for six days and diagnosed hospital acquired pneumonia.

In a letter received on August 13, 2002, appellant stated that she got her condition from exposure at work because she was regularly exposed to patients with upper respiratory conditions and she had never experienced this condition in her life. She added that she was off work for a month and was very sick.

In a November 5, 2002 decision, the Office denied appellant's claim finding the medical evidence insufficient.

Appellant requested a hearing and, at a November 19, 2003 hearing, restated why she believed she acquired her condition at work.

In a January 29, 2004 decision, the hearing representative affirmed the November 5, 2002 decision finding the medical evidence insufficient to establish fact of injury.

LEGAL PRECEDENT

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

¹ 5 U.S.C. § 8101 *et seq.*

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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 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

ANALYSIS

The Board finds that appellant has not met her burden to establish that she sustained pneumonia in the performance of her federal duties. Both Dr. Kline and Dr. Fabian diagnosed pneumonia, but neither doctor identified the specific employment factors that caused her condition. The physicians did not offer medical rationale to explain the causal relationship between her condition and her federal employment. Dr. Vladimir Fabian stated that appellant was exposed to a colleague who had a cough for three weeks, but he did not state that the colleague had pneumonia, or identify any disease agent that could have caused pneumonia.

Appellant has not established that she was exposed to pneumonia at work. She stated that she was exposed to the disease at work because many of the veterans she admitted to the hospital had upper respiratory symptoms. Appellant provided no corroborating evidence to support her contention; appellant did not provide any evidence that she was in fact exposed to anyone at work who had pneumonia causative or was in a position to have transmitted the disease to her. The Board also notes that Dr. Fabian indicated that appellant was exposed to smoke at home from her husband and daughter, which was a historical factor in the causation of her condition. Although appellant believes that she acquired her condition at work and what employment factors caused it, her opinion is not probative on the issue as she is not a doctor.

³ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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

Absent evidence that appellant was actually exposed to a pneumonia causing agent at work and rationalized medical opinion evidence that causally relates her condition to her employment, appellant has not met her burden of proof.

CONCLUSION

The Board finds appellant has not met her burden to establish that she sustained an occupational disease in the performance of her federal duties.

ORDER

IT IS HEREBY ORDERED THAT the decision by the Office of Workers' Compensation Programs dated January 29, 2004 is affirmed

Issued: September 1, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member