

**United States Department of Labor
Employees' Compensation Appeals Board**

JON D. HALL, SR., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Omaha, NE, Employer**

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**Docket No. 04-2249
Issued: February 9, 2005**

Appearances:
Ron Greek, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 13, 2004 appellant, through his representative, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 23, 2004, denying modification of a June 4, 2003 decision denying his claim for sinusitis and chronic headaches. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury while in the performance of duty.

FACTUAL HISTORY

On April 2, 2003 appellant, then a 57-year-old mail handler, filed an occupational disease claim alleging that his chronic sinusitis and migraine headaches were caused by exposure to paper dust, dirty mailbags and mold and mildew while in the performance of duty. In support of his claim, appellant submitted medical records from the employing establishment. An unsigned

physical fitness inquiry for motor vehicle operators dated March 14, 1998 indicated, among other things, that appellant's vision was limited and he wore corrective lenses. It noted that he had frequent or severe headaches and arthritis, rheumatism and swollen or painful joints. An undated return to work certificate from Dr. Reuben C. Setliff, a Board-certified otolaryngologist, revealed that appellant was absent from work on April 24, 2002 and that he had chronic sinusitis and a headache. Dr. Setliff released appellant to return to work with no restrictions on April 30, 2002. Dr. Setliff's August 12, 2002 return to work certificate indicated that appellant was unable to work on August 7 and 12, 2002, due to sinusitis, a headache and facial pain. Appellant was released to return to work on August 13, 2002. An April 21, 1987 medical report of Dr. Axel C. Ricker, a family practitioner, indicated that appellant smoked one-half pack of cigarettes a day since he was 21 years old.

Appellant submitted a November 26, 2002 letter from Dr. Daniel H. Dietrich, a Board-certified family practitioner, who indicated that appellant had been seen frequently in his office since 1999. Appellant had a 10-year history of extensive treatment for sinus and allergic symptoms. He noted that appellant underwent nasal reconstructive surgery performed by Dr. Paul S. Sherrerd, a Board-certified otolaryngologist, and that he was being treated by Dr. Linda Ford, an allergist and immunologist, for work-induced rhinitis and rhinorrhea. Dr. Dietrich stated that he had been unable to identify the allergen in appellant's environment and noted that he continued to work. Appellant experienced migraine headaches, sleep deprivation and exhaustion. Dr. Dietrich noted that appellant often remained home from work as a result of headache pain. In a January 14, 2003 medical report, Dr. Dietrich indicated that appellant had chronic sinusitis, migraine headaches and dust intolerance and that he was disabled for two to three days per episode due to chronic sinusitis and migraine headaches.

By letter dated April 23, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit detailed information about the employment-related exposure he believed caused his conditions, the duties he performed during any exposure, the length of time of exposure, his exposure to irritants outside federal employment, the development of his conditions, medical treatment, prior pulmonary conditions and allergies and smoking history. It also requested that appellant submit a comprehensive medical report from his treating physician describing his symptoms, results of examinations and tests, diagnosis, treatment, the effect of treatment and a rationalized medical opinion as to whether his condition was employment related.

The employing establishment submitted a description of appellant's job as a mail handler. In a May 7, 2003 letter, the employing establishment stated that appellant was not exposed to chemical or harmful substances and that no chemical or harmful substances had been released in any area in which he worked. The employing establishment noted that there was a minimal level of paper dust generated with the sortation of mail products, stating that its heating/ventilation/air condition (HVAC) system filtered all the air out of the facility and numerous tests had been conducted on air quality with the most extensive test performed in 1997 which showed no harmful chemical or levels of paper dust within the facility.

In a May 20, 2003 narrative statement, appellant noted that he began working for the employing establishment in May 1988. He described his exposure to harmful irritants while working at the employing establishment and activities outside his employment. Appellant did

not have any prior pulmonary conditions but noted that he had bronchitis while he was in the United States Army in the 1960s. He was allergic to penicillin, ultorm accutane and biaxin. Appellant related that he smoked one-half pack of cigarettes a day for 15 years and quit smoking in 1994. Appellant submitted medical treatment notes, covering the period April 15 through February 5, 1988 and December 16, 1991 through June 9, 1997, addressing several medical problems including his sinus condition. An April 8, 1997 treatment note signed by a physician's assistant whose signature is illegible indicated that appellant experienced stress as he had just ended a stressful relationship.

The employing establishment submitted Dr. Dietrich's May 2, 2003 medical report which revealed that appellant was medically unable to perform the essential duties and function of his position as a mail handler. Dr. Dietrich stated that appellant had been granted medical disability by the Department of Veterans Affairs for post-traumatic stress syndrome, chronic depression and hypertension. He noted that appellant had documented persistent chronic sinusitis exacerbated by his work environment and cervical and lumbar back pain that made standing, pushing and pulling difficult if not disabling. Dr. Dietrich opined that appellant was medically disabled from his job as a mail handler. The employing establishment noted in a May 29, 2003 letter that appellant had a history of migraine headaches, sinus problems and smoking before his employment. A health hazard evaluation report prepared by the National Institute for Occupational Safety and Health (NIOSH) found that paper dust levels at its facility were significantly lower than Occupational Safety and Health Administration (OSHA) requirements. The employing establishment contended that appellant was not exposed to fumes or asbestos. It noted that Dr. Dietrich's November 26, 2002 letter indicated that appellant had nasal reconstructive surgery which was either congenital or traumatic and not employment related. The employing establishment submitted a copy of the NIOSH report and a duplicate copy of appellant's March 14, 1998 physical fitness inquiry for motor vehicle operators.

By decision dated June 4, 2003, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty. The Office noted that the NIOSH report did not reveal exposure to microbial contaminants or paper dust but demonstrated insignificant elevations in indoor spore counts and significant concentration of fungi relative to outdoor concentrations. The OSHA study also found no airborne dust concentrations exceeding its limits. The Office found that appellant did not submit evidence that he was allergic to the identified spores or rationalized medical opinion which established that his sinus and allergy conditions were caused by factors of his federal employment.

In a letter dated May 28, 2004, appellant requested reconsideration. He submitted a January 26, 2004 medical report from Dr. Tedoro Segura, a Board-certified allergist, immunologist and internist, who provided a history of appellant's employment at the employing establishment from 1988 to 2003, his job duties, exposure to paper dust, welding fumes, smoke and asbestos. He noted appellant's recent symptoms and reviewed laboratory findings and the NIOSH report. Dr. Segura stated that appellant was frequently absent from work due to rhinitis, sinusitis and headaches. Based on these problems, he stated that appellant had chronic nonallergic rhinitis, chronic sinusitis and chronic headaches that were "likely" permanent but should improve if he was not continually exposed to irritant dust and fumes. He stated that appellant's nasal and sinus problems and headaches impaired his ability to concentrate and function at full capacity. Considering only these impairments, Dr. Segura stated that appellant

likely had remaining capabilities that might allow him to function in a different type of work as long as it did not involve exposure to dust and fumes. He suspected that regardless of the type of work appellant might be able to do in the future, he would continue to miss work intermittently due to his symptoms and the need for treatment. Dr. Segura concluded that it was reasonable “to suspect” that the exposure to paper dust and other irritant particles and fumes at the employing establishment aggravated appellant’s nasal and sinus problems. He noted that it appeared appellant had improved clinically since he was away from that environment.

By letter dated June 14, 2004, the employing establishment noted that the NIOSH report showed that there was no dust problem in its facility and that appellant was not exposed to fumes or asbestos. The employing establishment further noted Dr. Dietrich’s November 26, 2002 letter and stated that appellant had not worked for a year since June 30, 2003.

By decision dated July 23, 2004, the Office denied appellant’s request for modification based on a merit review of his claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his 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 or specific condition for which compensation is claimed is 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

“The term ‘occupational disease’ is defined by the Office’s regulations. Section 10.5(q) defines the term ‘occupational disease’ or ‘illness’ as ‘[a] condition produced by the work environment over a period longer than a ‘single workday or shift.’”⁴

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.

¹ 5 U.S.C. §§ 8101-8193.

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

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

⁴ 20 C.F.R. § 10.5(q).

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.⁵

ANALYSIS

There is no dispute that there were spores and dusts identified in appellant's work environment. However, the Board finds that appellant has failed to establish a causal relationship between his claimed conditions and his federal employment.

Appellant submitted an unsigned March 14, 1998 physical fitness inquiry for motor vehicle operators which indicated that he had several conditions including limited eyesight, frequent or severe headaches and arthritis, rheumatism and swollen or painful joints. The March 14, 1998 report is insufficient to establish his claim because it is not clear that it is from a physician and lacks proper identification.⁶

Dr. Setliff's disability certificates which indicated that appellant had sinusitis, headache and facial pain and that he was disabled on April 24 and August 7 and 12, 2002 are insufficient to establish the claim because they failed to address how the diagnosed condition and disability were caused by factors of his federal employment.⁷ There was no discussion of how the diagnosed conditions were caused or aggravated by any dust or spores in his federal employment.

Dr. Ricker's April 21, 1987 medical report predates appellant's alleged occupational exposure in May 1988 when he began working for the employing establishment. Similarly, the medical treatment notes covering the period April 15, 1987 through February 5, 1988 predate the alleged exposure. Therefore, the Board finds that Dr. Ricker's report and treatment notes are not relevant to the issue of whether appellant sustained an injury due to any exposure in his employment.⁸

In a November 26, 2002 letter, Dr. Dietrich stated that appellant experienced from migraine headaches, sleep deprivation and exhaustion and that he, Dr. Sherrerd and Dr. Ford were unable to identify the allergen in his environment. This letter is insufficient to establish the

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (Reports not signed by a physician lack probative value).

⁷ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁸ *Brady L. Fowler*, 44 ECAB 343 (1992).

claim because Dr. Dietrich noted that he was unable to identify the allergen or other factor of the work environment that caused or contributed to appellant's conditions.

In a January 14, 2003 medical report, Dr. Dietrich diagnosed chronic sinusitis, migraine headaches and dust intolerance and opined that appellant was disabled for two to three days per episode due to chronic sinusitis and migraine headaches. The Board notes that Dr. Dietrich did not address whether appellant's diagnosed conditions were causally related to factors of his employment.

Dr. Dietrich's May 2, 2003 report revealed that appellant was disabled from performing his duties as a mail handler. He stated that appellant's documented persistent chronic sinusitis was exacerbated by his work environment and that his cervical and lumbar back pain made standing, pushing and pulling difficult, if not disabling. Dr. Dietrich did not explain how or why appellant's sinusitis was exacerbated by factors of his employment. He did not specify the factors of appellant's work environment that exacerbated his condition. Thus, the Board finds that Dr. Dietrich's report is insufficient to satisfy appellant's burden.

The medical treatment notes covering the period December 16, 1991 through June 9, 1997 from physicians whose signatures are illegible addressed several medical problems including appellant's sinus condition. However, the physicians are not identified and the notes do not provide medical opinion addressing causal relationship.⁹

The April 8, 1997 treatment note from a physician's assistant whose signature is illegible does not constitute competent medical evidence because a physician's assistant is not considered a "physician" under the Act.¹⁰

In a January 26, 2004 medical report, Dr. Segura opined that it was reasonable to "suspect" that appellant's exposure to paper dust and other irritant particles and fumes while working at the employing establishment aggravated his nasal and sinus problems. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹¹ The Board finds that Dr. Segura's opinion is speculative and failed to provide an explanation of how appellant's nasal conditions were aggravated by his work factors.

⁹ See *Merton J. Sills*, *supra* note 6.

¹⁰ See 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002); *Ricky S. Storms*, 52 ECAB 349, 353 (2001).

¹¹ *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

As appellant has failed to submit sufficient rationalized medical evidence establishing that his sinusitis or chronic headaches are causally related to factors of his employment in his position as a mail handler, he did not meet his burden of proof in this case.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member