

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

**MINDY R. JAMES, Appellant** )  
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)  
**and** )  
)  
**DEPARTMENT OF HOMELAND SECURITY,** )  
**TRANSPORTATION SECURITY** )  
**ADMINISTRATION, Reno, NV,** )  
**Employer** )

**Docket No. 05-577**  
**Issued: June 6, 2005**

*Appearances:*  
*Mindy R. James, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On January 11, 2005 appellant filed a timely appeal from Office of Workers' Compensation Programs' December 7, 2004 merit decision, denying that she sustained an employment-related eye condition. Under 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 met her burden of proof in establishing that her left eye condition was causally related to her employment.

## **FACTUAL HISTORY**

Appellant, a 26-year-old transportation security screener, filed a Form CA-1 claim for benefits on October 14, 2004, alleging that she developed a bacterial infection in her left eye on October 8, 2004.<sup>1</sup>

By letter dated October 28, 2004, the Office advised appellant that additional factual and medical evidence was required to determine whether she was eligible for compensation benefits. The Office asked appellant to submit factual evidence sufficient to establish that she actually experienced the incident or employment factor alleged to have caused the injury. It also requested a medical report from her treating physician containing a diagnosis of the alleged left eye condition and a description of how her injury resulted in the diagnosed condition.

In report dated October 16, 2004, Dr. Quang Bao Vinh, an osteopath, stated that appellant had been admitted for treatment at Washoe Urgent Care Clinic for orbital cellulitis, an infection around the eye. Dr. Vinh recommended rest and advised that appellant could return to work on approximately October 23, 2004 or whenever she felt she was safely able to see and perform work. Dr. Vinh noted on a Form CA-16 authorization for treatment dated October 15, 2004 a description of appellant's orbital cellulitis condition as one producing inflammation of soft tissue and swelling around the left eye, leaving her unable to open her left eye. On the form, when asked whether appellant's condition was caused or aggravated by her employment, Dr. Vinh checked "no" and stated, "condition may have been picked up anywhere; unknown source."

Appellant submitted an October 17, 2004 discharge summary from Washoe Urgent Care Clinic which stated:

"This is a 25-year-old white female, mildly obese, history of asthma, came in with complaint of left eye swelling and erythema and pain. Initially, she had presented to Washoe Urgent Care. [Appellant] was given some antibiotics, told to come back in 24 hours. This did not improve. She was admitted by my colleague overnight.... On examination, there are apparently no signs of abrasion. Following repeat return to the emergency room, [appellant] was admitted for orbital cellulitis."

Appellant was readmitted to the Washoe Clinic on November 10, 2004 with complaints of pain and swelling in the left eye.

In a November 17, 2004 statement, appellant asserted:

"I was working on the C checkpoint when I notice something was wrong with my eye. It was a few hours into my shift when it had started bothering me. That morning, I had been doing hand wand and pat-downs. I had also been doing bag checks. People come through the checkpoint sick. They cough on you or while they are being screened. People [are carrying] very personal, not-so-sanitary belongings. They carry all sorts of medicine and creams. Every time you open a

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<sup>1</sup> Although appellant initially filed this claim as one for traumatic injury, the claim was adjudicated as an occupational disease based on her statement regarding her duties.

bag you encounter something you really would have preferred to avoid. I can't think of a specific incident where I got something in my eye, b[u]t it could have been from any of the tasks I performed that morning. Everything in my work environment could have caused this bacterial eye infection. All day long screeners perform disgusting tasks. I personally have screened people that have been throwing up while I screened them. I have also screened a woman with fecal matter soaking through her pants. I have had to clean urine off of a wheelchair and then had to screen the passenger who had just lost control. People who don't even know they are sick, cough on you, hand you their dirty tissues, and then you have to touch their person. This particular morning, I don't know what I came in contact with, but I do know that if bacteria was going to infect my body, it came from the airport. I do wear gloves with every task I perform. We are not given goggles and I do not believe goggles would prevent this kind of injury. I was fine in the morning while getting ready for work. I had been working for a few hours when I noticed my eye was really bothering [me].... There was a significant amount of pressure from behind my eye and around it. My pupils became very dilated and I started getting a bad headache behind my eye. My eye lid was starting to swell a little bit and I was having trouble focusing on things. I also had a bit of pain in the side of my face going all the way down to my jaw bone.”

Appellant submitted an October 14, 2004 employee incident report from the employing establishment. The report contained a witness statement from a coworker who stated, “On October 8, 2003 at approximately 6:00 a.m. [appellant] told me that the eye was hurting. I looked at her eye and told her that it [was] swollen. I told her it looked bad. [Appellant] complained for the rest of the day about her eye hurting.”

By decision dated December 7, 2004, the Office denied appellant's claim that she sustained an employment-related left eye condition.

### **LEGAL PRECEDENT**

An individual seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *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 is usually rationalized medical 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.<sup>5</sup>

Pursuant to the Office's regulations:

"Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the FECA. The employer therefore should not use a Form CA-16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure."<sup>6</sup>

### ANALYSIS

In the instant case, appellant has submitted a statement in which she alleged that she could not "think of" a single incident in which she got something in her eye, but in which she did detail the employment duties she is required to perform daily which she believes exposed her to an infectious agent and caused her left eye condition. In support of her claim, appellant submitted reports from Dr. Vinh, which describe how she sought treatment on October 10, 2004 at the Washoe Urgent Care Clinic, where she reported complaints of pain, swelling and inflammation around her left eye. Dr. Vinh diagnosed orbital cellulitis, an infection of soft tissue around the eye and recommended rest. He advised that appellant could return to work in approximately one week or whenever she felt she was safely able to see and perform work. In an October 15, 2004 Form CA-16, Dr. Vinh checked a box "no" to indicate that appellant's condition was not caused or aggravated by her employment and stated, "condition may have been picked up anywhere; unknown source."<sup>7</sup> Dr. Vinh did not provide any medical rationale in support of

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<sup>5</sup> *Id.*

<sup>6</sup> 5 C.F.R. § 10.303.

<sup>7</sup> The Board notes that to authorize medical treatment, a CA-16 form must contain the signature and date of the authorizing official. The form of record lacks this identification and date. *See* 20 C.F.R. § 10.300(c).

appellant's contention that her left eye condition was related to factors of employment.<sup>8</sup> Dr. Vinh indicated that appellant experienced pain, swelling and inflammation due to an orbital cellulitis eye condition, but did not support that the findings on physical examination were caused or contributed to by appellant's federal employment. Rather, the physician noted that it could have been contracted from "any source." The other medical reports do not establish that appellant's left eye condition was caused by factors of her employment. The Washoe Urgent Care Clinic reiterated the previous diagnoses and findings on examination, but did not relate appellant's left eye condition to her federal employment. It is well established that the mere fact that a disease or medical condition manifests during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>9</sup> Appellant's belief that her condition was caused or aggravated by her employment is mere surprise and conjecture absent probative medical evidence from physician supporting causal relation.<sup>10</sup>

Appellant did not provide medical opinion which supported that her duties as a transportation screener caused her eye condition. Appellant therefore failed to meet her burden that she sustained the claimed condition in the performance of duty. The Board will affirm the Office's December 7, 2004 decision denying benefits for her claimed left eye condition.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that her claimed left eye condition was causally related to her employment.

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<sup>8</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>9</sup> *See Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>10</sup> *See Calvin E. King*, 51 ECAB 394 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member