United States Department of Labor
Employees' Compensation Appeals Board

IRMA J. FLOOD, Appellant	)	
and	)	**Docket No. 05-1522**
	)	**Issued: April 17, 2006**
DEPARTMENT OF DEFENSE, COMMISSARY AGENCY EASTERN REGIONS, Groton, CT, Employer	)	

Appearances:
Reginald Flood, for the appellant
Miriam D. Ozur, Esq., for the Director

Oral Argument March 1, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 12, 2005 appellant filed a timely appeal from the June 30, 2005 merit decision of the Office of Workers' Compensation Programs, which found the factual and medical evidence insufficient to establish fact of injury. 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 met her burden of proof in establishing that her asthma and multiple allergy conditions were caused or aggravated by factors of her federal employment commencing October 4, 2001.

FACTUAL HISTORY

This matter has previously been before the Board. On October 21, 2001 appellant, then a 44-year-old teller/cashier, filed an occupational disease claim alleging that her asthma and multiple allergy conditions were caused and/or aggravated by factors of her federal employment.

She first became aware of her condition and its relationship to her employment on October 4, 2001. This was developed under Office File No. 01-2007224. The record reflects that on August 15, 2001 appellant, after being off work for her accepted condition of aggravation of dust allergies under Office File No. 01-0379160,[1] returned to work in the cash office and was eventually reassigned to the position of lead sales store checker on December 16, 2001. Appellant last worked for the employing establishment on June 23, 2002, when she was removed for misconduct.

In a May 12, 2005 order, the Board set aside an Office hearing representative's decision of August 15, 2003, which denied appellant's claim on the basis that fact of injury had not been established.[2] The Board directed the Office to combine the files in the current case with appellant's previous claim under Office File No. 01-0379160 as a number of the medical reports contained in Office File No. 01-0379160 pertained to appellant's various respiratory conditions which were due to the same employment exposure as in the current claim filed October 21, 2001.[3] The facts of this case as set forth in the Board's prior decisions are herein incorporated by reference.

On remand, the Office combined the Office File No. 01-0379160 with the current claim. In a February 20, 2002 letter the employing establishment noted that an indoor air quality reevaluation of appellant's work area was free of any conditions which were initially found in December 2000. A copy of the ventilation study was attached. Also of record are reports from appellant's physicians, along with an October 22, 2001 report and charts notes dated October 23 to December 11, 2001 from Peter A. Wheeler, a physician's assistant, copies of physical therapy reports a December 14, 2001 report from Frank Toole, a physician's assistant and a June 4, 2002 note from Gail L. San Juan, an employing establishment family nurse practitioner.

In a January 10, 2001 report, Dr. George A. Sprecace, Board-certified in allergy and immunology, opined that a change from appellant's work exposure to one involving better ventilation and much less exposure to dust and associated dust mites would improve her "clinical condition" and reduce her need for medication.

In an October 4, 2001 report, Dr. John J. Hand, a Board-certified internist, stated that he spoke with Dr. Sprecace, who unequivocally felt that appellant has asthma and multiple allergies which could be responsible for her problems. Dr. Hand noted that there was a conflicting medical determination "plus the patient's medical history that she develops symptoms while at

[1] Under Office File No. 01-0379160, the Office accepted appellant's December 2000 claim for aggravation of dust allergies. Appellant's compensation benefits were terminated on August 6, 2001 after the Office determined that appellant's work-related aggravation had resolved. In a June 10, 2002 decision, an Office hearing representative affirmed the termination and, by decision dated November 26, 2002 (Docket No. 02-1782), the Board affirmed the June 10, 2002 decision finding that the Office met its burden of proof to terminate compensation. Docket No. 02-1782 (issued November 26, 2002).

[2] Docket No. 03-2196 (issued May 12, 2005).

[3] Office File No. 01-0379160 contains no final decisions of the Office issued within a year of the filing of the present appeal such that the Board does not have jurisdiction over any issues arising from such claim. 20 C.F.R. §§ 501.2(c), 501.3(d).

her assigned job." Other reports by Dr. Hand dated October 2, 2001, April 10, 2001 and March 27, 2002, concerned questions pertaining to appellant's job and recommendations to allow her to function better in the work environment.

In a June 6, 2002 report, Dr. Henry B. Freye, Board-certified in allergy and immunology, noted that appellant reported significant chest pain and cough, particularly when working in the grocery store, which was very dusty and involved her eyes. He noted that skin testing to various pollens, inhalants and foods showed significant positive reactions to dust mites, tuna, ragweed, some of the common molds, house dust, tress, dogs and feathers. He opined that appellant was an allergic individual who would benefit from proper environmental mold and humidity controls, a change of jobs, since that appears to be the place where she gets into difficulty and the continuation of her present medications.

In an October 17, 2001 report, Dr. Paul M. Greif, a Board-certified internist specializing in pulmonary critical care medicine, reported that appellant complained of chest tightness and severe shortness of breath occurring primarily at work in the base commissary and experienced minimal symptoms away from work. Allergy testing by Dr. Sprecace demonstrated reactivity to dust, grass, leaves, dogs and cats and Dr. Greif noted that appellant had two dogs at home. His impression was asthma, exacerbated by workplace exposure, gastroesophageal reflux disease, morbid obesity, dogs at home. In a November 27, 2001 report, Dr. Greif, provided an assessment of costochondritis and mild asthma. In a January 10, 2002 report, Dr. Greif provided an assessment of allergic rhinitis, noting that appellant developed "pain in my lungs" because of the dust at the cash register area where she worked. In a February 11, 2002 report, Dr. Greif noted that appellant reported she could not work more than four hours because of the shortness of breath caused by the dusty environment in which she works and provided an assessment of asthma by history -- possibly exacerbated by environmental conditions at work. In a June 3, 2002 report, Dr. Greif provided an assessment of asthma, noting that appellant reported chest pressure and shortness of breath which only occurred at work.

In an April 10, 2003 report, Dr. Suzanne J. Klekotka, a Board-certified internist, noted that she had followed appellant since 2002 for chest pain and asthma. She advised that appellant's chest pain was thought to be due to costochondritis, a condition aggravated by movement and provided restrictions on appellant's lifting and carrying and standing.

In a decision dated June 30, 2005, the Office denied appellant's claim for various respiratory conditions commencing October 4, 2001 as the evidence failed to establish that she sustained a medical condition which was caused or affected by her employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees Compensation Act has the burden of establishing the essential elements of 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. 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.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[6]

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] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[9]

ANALYSIS

The Office denied appellant's claim on June 30, 2005, finding the medical evidence insufficient to establish fact of injury. Appellant alleged that her exposure to the dust in her work environment caused or aggravated her allergic and asthmatic conditions. Thus, the question is whether appellant's work environment caused or aggravated her asthma and multiple allergy conditions.

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[4] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004); *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Id.*

[7] *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[9] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

The Board notes that the reports from Mr. Wheeler and Mr. Toole, both physician assistants and Ms. San Juan, a nurse practitioner, are of no probative medical value on the issue of causal relationship. Physician assistants and nurse practitioners are not defined as a "physician" within the meaning of the Act.[10] Similarly, the treatment notes of appellant's physical therapists are of no probative medical value because a physical therapist is not a "physician" under the Act.[11]

The Board notes that Dr. Klekotka's April 10, 2003 report contains no opinion on the causal relationship of appellant's costochondritis condition. Therefore it has limited probative value.[12]

The medical evidence of record fails to provide a discussion on how appellant's work exposures caused or contributed to her diagnosed medical conditions. Appellant submitted a January 10, 2001 report from Dr. Sprecace and a June 6, 2002 report from Dr. Freye, who opined that appellant would benefit from a change in her environment. However, neither physician provided a reasoned medical opinion that appellant's asthma and allergy conditions were in any way caused or aggravated by her work environment.[13] As such, the opinions of Drs. Sprecace and Freye are insufficient to meet appellant's burden of proof.

In an October 4, 2001 report, Dr. Hand, noted that there was a conflicting medical determination and advised that Dr. Sprecace was of the opinion that appellant's asthma and multiple allergies "could be" responsible for her problems. He further noted appellant's history that she developed symptoms while at her job. The Board has held that an opinion on casual relationship based solely on continuing symptoms after a work incident, without supporting rationale and explanation, is of diminished probative value.[14] As such, Dr. Hand's opinion is insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Greif, who noted that appellant's symptoms occurred primarily at work, which appellant reported to be dusty and diagnosed either asthma or allergic rhinitis. In an October 17, 2001 report, Dr. Greif opined that appellant's asthma was exacerbated by workplace exposure and dogs at home. In a February 11, 2002 report, he diagnosed asthma by history, "possibly exacerbated by environmental conditions at work." Dr. Greif's medical opinion is speculative as to the etiology of appellant's asthma and multiple allergy conditions. Dr. Greif stated only that appellant's conditions were "possibly exacerbated by environmental conditions" at work and brought in the possibility of an intervening cause -- dogs at home and he failed to provide any description of the specific environmental exposure

[10] 5 U.S.C. § 8101(2) which defines "physician" as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; *see also Allen C. Hundley*, 53 ECAB 551 (2002); *Joseph N. Fassi*, 42 ECAB 231 (1991).

[11] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994).

[12] *See Michael E. Smith*, *supra* note 5.

[13] *See Leslie C. Moore*, *supra* note 7.

[14] *See Irma J. Flood*, Docket No. 02-1782 (issued November 26, 2002); *see also Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

which allegedly caused or aggravated appellant's claimed conditions of asthma and allergies.[15] Dr. Greif did not provide a reasoned medical opinion explaining how appellant's asthma and allergies were caused or contributed to by her employment.[16] As such, his reports are insufficient to meet appellant's burden of proof.

While appellant attributes her asthma and allergy conditions to her work environment the record contains insufficient medical opinion explaining how her work environment caused and/or aggravated her claimed conditions. In this regard, the Board has held that 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.[17] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.[18] Casual relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is insufficient medical evidence addressing how appellant's claimed medical conditions were caused and/or aggravated by her employment exposure. Appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her claimed medical conditions were caused or aggravated in the performance of duty commencing October 4, 2001.

[15] *See Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[16] *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

[17] *Nicollette R. Kelstrom*, 54 ECAB 570 (2003).

[18] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board