United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 06-749**
	)	**Issued: August 15, 2006**
DEPARTMENT OF THE TREASURY, BUREAU OF ENGRAVING & PRINTING, Forth Worth, TX, Employer	)	

Appearances:
Rosalind Kelly, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 10, 2006 appellant filed a timely appeal from the January 19, 2006 merit decision of the Office of Workers' Compensation Programs, which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On August 27, 2004 appellant, then a 45-year-old management analyst, filed a claim alleging that she sustained an injury in the performance of duty from her exposure to fumes at work:

> "I have constantly been aggravated by fumes since starting at [the employing establishment] have tolerated the escalating headaches, [blood pressure],

dizziness, fatigue, construction done in atrium near my [office] and I walked thru the area to get to my office the fumes most of time very strong."

Appellant was last exposed to the implicated employment factors on March 9, 2004, the date she stopped work.

On July 20, 2004 Dr. William J. Rea, a specialist in environmental medicine, reported that he first saw appellant on April 13, 2003 with complaints of high blood pressure in or near her work facility, dizziness, breathing problems, light-headedness, rashes, blurred vision and nausea. Appellant reported that she had been ill since 1994, when she began work at the employing establishment. She claimed sensitivity to chemicals in her workplace. Dr. Rea noted that appellant's medical records showed that she had tested positive for sensitivities to formaldehyde, Treasury ink, phenol, histamine, serotonin and candida. He noted a 1996 report from Dr. Ernest H. Byers, who stated: "This patient is extremely sensitive to organic solvents particularly [f]ormaldehyde. This is related to her work injury and she is free of symptoms when not exposed." Dr. Rea offered the following discussion:

"[Appellant's] medical history, physical findings and objective clinical data show that she has had significant exposure to chemicals in the workplace. Skin testing has confirmed her sensitivities to many of the chemicals she regularly encounters in the workplace. Testing to identify sensitivities to these chemicals provoked both a skin whealing response and a number of [her] presenting symptoms. These findings are consistent with the patient's history of symptom provocation while at work and with the clinical findings of her previous treating physicians. Both a Heart Rate Variability and Pupilography test revealed findings of [a]utonomous [n]ervous [d]ysfunction. A Thermography test was likewise abnormal showing paradox in many of the body's major organ systems."

Dr. Rea diagnosed immune deregulation, hypertension, reactive airway disease, autonomic nervous system dysfunction and chemical sensitivity secondary to solvent exposure. He added that appellant's diagnoses should also include contact dermatitis/eczema by history. Dr. Rea noted that, when appellant was evaluated on April 13, 2004, approximately five weeks after she discontinued working, she did not have active symptoms of contact dermatitis/eczema; however, records from her previous physicians and the health unit at her workplace clearly documented the occurrence of these symptoms following exposure. He noted the results of intradermal skin testing to identify sensitivities to the chemicals in appellant's workplace. Dr. Rea stated: "My opinion remains, based upon a reasonable degree of medical certainty, that [appellant's] current medical condition is a direct result of her exposure to chemicals in the workplace and is directly related to her original injury of October 18, 1994."

In an April 15, 2004 report, Dr. Rea explained how sensitivities develop:

"Convincing data from [appellant's] medical history reveals significant chemical sensitivities. I have an extensive background in treating many patients with chemical exposure and chemical sensitivities. Frequently, they become extremely

sensitive when exposed to very low levels of incitants once their ability to cope with chemicals has been weakened by long-term or acute traumatic exposures. These types of exposure can also lead to immune and multi-organ system dysfunction."

On June 2, 2004 Dr. Rea further explained the nature of sensitivities:

"This patient can suffer disabling physical and neurological symptoms upon exposure to inciting agents at levels which are 'tolerated' by the general healthy population. Symptoms will vary with the severity, type and duration of incitant exposure and can range from nuisance to uncomfortable to incapacitating to life threatening. Avoidance is the most important aspect in the treatment of this patient's medical condition and it is necessary to take great care to minimize incriminating environmental exposures. This patient must rigidly avoid public buildings or any physical environment where incitant exposure may occur."

The employing establishment submitted an indoor air quality survey taken at the employing establishment on April 5, 2004. Carbon dioxide, temperature and relative humidity measurements were all within the criteria recommended by the American Society of Refrigeration and Air-Conditioning Engineers. Indoor carbon monoxide levels were maintained well below the exposure criteria established by the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). No hydrocarbons were detected.

Davida H. Guy appellant's supervisor controverted the claim, noting her disagreement with appellant's depiction of chemical exposure at work. She stated:

"There has been no exposure to fumes or chemicals…. [Appellant] has not had contact with solvents or exposure to chemicals since October 18, 1994…. Since April 16, 1995 [her] duties have been administrative, primarily sedentary and performed in an office setting within the administrative area which is separate from the production floor…. In fact, there was no contact or exposure to chemicals in the performance of her duties in any of these positions, to include her current position of Management Analyst…. Furthermore, there is no exposure to fumes from production in or around any of [her] office areas. The air handling systems are designed to keep any fumes or dust created by the printing process within the production floor. The production area has its own independent air handling equipment that is kept in a negative pressure. The rest of the facility, which includes [appellant's] offices, is kept in a positive pressure so anytime the production doors are opened air is drawn into the production area and not out of the production area. This keeps all the production related odors out of the rest of the [administrative area]."

Ms. Guy observed that the health clinic notes from 1994 through 2004 did not verify complaints of dizziness, difficulty breathing, fatigue or rashes. She also noted that appellant had never reported these conditions to her. Ms. Guy again controverted the claimed exposure:

> "There is no factual evidence that [appellant's] alleged occupational disease is caused by contact or exposure to various chemicals, solvents, fumes and dust from currency inks or from construction. There is no construction or fumes in or around [her] office as alleged. On September 30, 2003 temporary plywood walls were erected from the ceiling to the floor across the southwest wall of the agency's atrium in order to begin a remodeling project. The temporary plywood wall is insulated with fiberglass and sealed to keep all dust and fumes from the remodeling project outside of the facility during the construction of the new offices and auditorium. [Appellant's] office is located on the north side of the administration building. There is at least 100 feet and [three] walls between her office and the temporary walls and the construction project.
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> "[Appellant] is not exposed nor does she have contact with fumes or chemicals in the performance of her duties. [She] alleges she was exposed to fumes [five] days per week for [eight to nine] hours per day. Air monitoring test results, within and surrounding the parameters of [her] office areas, were below the limit of detection for hydrocarbon vapors…. There were no unusual odors present during the survey…. Furthermore, from July 1992 through January 2004, the US Public Health Service and NIOSH have conducted numerous personal and area sampling for [f]ormaldehyde. All measurements in the production area were below OSHA action level and measurements in the administrative areas were below the limit of detection. Therefore, since there are no sources of formaldehyde in the administrative areas (includes [appellant's] offices), there is no need to conduct additional sampling in these administrative areas…."
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> Appellant described her exposure to fumes in the workplace, as follows:
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> "I have had problems with the fumes since I started working at the agency and the problem has continued to escalate. There was major construction done in the atrium next to our offices and I have to go thru the atrium to get to my office. The fumes were sometimes like a tar smell or chemical burning odor. The fumes would cause breathing difficulties and my blood pressure would tend to escalate upward. I would sometimes go to the health unit because I [was] so light headed and dizzy and my blood pressure would be high. Once I would go home and leave the facility, my blood pressure would appear back normal. As of March 9, 2004 it got to the point that my blood pressure was out of control and I became very light headed, dizzy, fatigue and advised my supervisor that I needed to go home because my blood pressure was too high. I went home and I have been out ill with my blood pressure so high until I had to be admitted to the hospital and now I am having to take blood pressure medicine and have not been able to return to work at the facility."

In a decision dated December 28, 2004, the Office denied appellant's claim on the grounds that she was not exposed to chemicals or solvents, as alleged. The Office found that the evidence demonstrated that appellant had not had any contact with solvents for over nine years and no exposure to chemicals.

In a September 15, 2004 memorandum, the Department of Health & Human Services addressed the monitoring for formaldehyde at the employing establishment facility for the period July 1992 through January 2004. All measurements were below OSHA action levels with no sources of formaldehyde in the administrative areas. An October 6, 2004 memorandum addressed the potential for an administrative employee to be exposed to selected contaminants.

> "Hexane, toluene and xylene exist in the environment as a result of burning gasoline and from industrial emissions. Therefore, everyone is exposed to some concentration of these chemicals outside the workplace.
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> "Hexane, xylene and toluene are present in the production area of the BEP [Bureau of Engraving and Printing] as a component of another product. Air monitoring has been performed in the production area. The highest toluene concentration was 0.01 present of the OSHA PEL [permissible exposure limit]. The highest xylene measurement was less than 0.5 present of the OSHA PEL.
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> "These three products are not used in the administrative area, therefore, no employee in the administrative areas are exposed in this area and no sampling is required."

The memorandum noted that the threshold concentration for detecting odors from these common chemicals was "far less than the OSHA PEL."

Appellant requested an oral hearing before an Office hearing representative. On March 1, 2005 she provided the names, telephone numbers and addresses of individuals who witnessed and could verify that the smell in the building had become so strong at the end of January or the beginning of February 2004, that the entire building was evacuated and the fire department called. At the hearing, which was held on November 16, 2005, appellant testified about her exposure to fumes at work.

In an affidavit dated December 16, 2005, Robert J. Hobbs, the manager of the Facilities Management Division, stated that he was responsible for building construction and design, at the facility where appellant worked. He stated that he was the lead contracting officer's technical representative (COTR) on the construction project in question, which he described as follows:

> "The construction project was adjacent to the atrium and was contained behind a temporary wall. The temporary wall, which consisted of plywood on insulated metal studs that ran from the floor to the ceiling (see attached photos), barred employee access. Only construction workers, BEP COTRs and safety representatives were allowed into the construction area. At no time did [appellant] occupy any of these positions or have any reason to be in the construction area. The temporary wall was erected in a few days, starting September 30, 2003 and was completed by October 3, 2003. Once the temporary

> wall was erected, the actual construction project of building an additional auditorium commenced October 6, 2003. All aspects of the construction project took place behind the temporary wall. No construction was done in the atrium. In fact, if an employee were to stand in the [a]trium or pass through the [a]trium all they would be able to see is the temporary wall erected to separate the atrium from the construction area; employees could not see the construction taking place behind the temporary wall. During the period January 2004 [to] March 2004, construction activities that took place behind the temporary wall included the removal of the glass exterior wall, concrete floor, granite pavers, stucco ceiling and HVAC ductwork and a concrete column and the installation of structural steel. No materials requiring [material] safety data sheets were utilized by the contractor during this period.
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> "No fire evacuations took place at the facility during the period January 2004 [to] March 2004. Moreover, the Fort Worth Fire Department was never called out to the [a]gency during that time period. I reviewed the [f]ire [a]larm and [f]ire [d]rill log book maintained by our safety specialists for that period to verify that there were no fire evacuations and no calls to the Fort Worth Fire Department."

The record shows that the fire department was called to the employing establishment on March 4, 2004 (incident number 04-0640096). The alarm occurred at 12:27:55 p.m. The unit arrived at 12:39:56 p.m. No aid was given. The report noted: "System malfunction. False call."

In a decision dated January 19, 2006, the Office hearing representative affirmed the denial of appellant's claim. The hearing representative found that, while the record did not support hazardous levels of chemical substances in the air of the administrative office or atrium at work, the evidence established that appellant was exposed to low levels of chemicals and fumes, below OSHA permissible exposure limits. The hearing representative found, however, that the medical evidence did not contain a rationalized explanation as to how such low levels caused or contributed to appellant's diagnosed conditions. He noted that Dr. Rea did not explain how exposures to formaldehyde, xylene, toluene and hexane, all within safe limits established by OSHA, could have caused or contributed to her diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place

[1] 5 U.S.C. §§ 8101-8193.

and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[2]

Causal relationship is a medical issue[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

ANALYSIS

Appellant's has not submitted sufficient evidence that she was, in fact, exposed to particular chemicals at work. Notwithstanding her account of very strong odors, in the workplace, particularly in the atrium during a 2004 construction project, she has not produced a single statement from a coworker who also smelled them. The record contains evidence on the indoor air quality at her worksite. A survey taken on April 5, 2004 detected no hydrocarbons. Samplings for formaldehyde in the administrative areas from July 1992 through January 2004 were all below the limit of detection. The October 6, 2004 memorandum from the Department of Health & Human Services acknowledged that hexane, toluene and xylene existed generally in the environment and that everyone was, therefore, exposed to some concentration of these chemicals outside the workplace. These chemicals were present in the production area, though far below permissible exposure limits and were not used in the administrative areas. Further, the record indicates that the production area had its own independent air handling equipment that was kept under negative pressure. The rest of the facility, including appellant's offices, was kept under positive pressure, so that any time the production doors were opened, air was drawn into the production area and not out of the production area, keeping all the production-related odors from the administrative area.

The weight of the factual evidence, therefore, does not support that low-level exposure to formaldehyde, hexane, toluene and xylene was established. Formaldehyde, hexane, toluene and xylene were shown to exist below permissible exposure levels in the production area. But the indoor air quality survey dated April 5, 2004, which was requested specifically in response to appellant's health concerns while working in Office A-126 and nearby work areas, detected no

[2] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

hydrocarbons. The factual evidence developed in this case does not substantiate appellant's claim of exposure to particular chemicals. The Board finds that appellant has not met her burden to submit sufficient evidence to establish that she experienced a specific chemical exposure occurring at the time, place and in the manner alleged.

Without an established history of occupational exposure, Dr. Rea's opinion is of diminished weight on the question of causal relationship. Dr. Rea, a specialist in environmental medicine, explained in general how patients can become extremely sensitive when exposed to very low levels of incitants once their ability to cope with chemicals has been weakened by long-term or acute traumatic exposures. He explained that a patient could suffer disabling physical and neurological symptoms upon exposure to inciting agents at levels tolerated by the general healthy population. He obtained a history that appellant had "significant exposure to chemicals in the workplace." However, this is not established by the evidence in this case.[7] Dr. Rea was vague in reporting appellant's sensitivities to "inciting agents" or "to many of the chemicals she regularly encounters in the workplace." His reports failed to address specific chemical agents or the monitoring obtained in appellant's facility. While skin testing confirmed sensitivity to many chemicals Dr. Rea did not distinguish the workplace or discuss any exposures occurring outside her employment. He did not describe appellant's work environment, including the measures taken to environmentally isolate the administrative area and the results of indoor air quality surveys, particularly the finding that no hydrocarbons could be detected. Medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value.[8]

Appellant's chief complaint appears to be that of hypertension. Dr. Rea offered no explanation of how exposure to formaldehyde, hexane, toluene or xylene far below OSHA's permissible exposure levels would cause or aggravate hypertension.

The, medical opinion evidence is of little probative value as the weight of the factual evidence does not establish appellant's occupational exposure to particular chemicals, particularly from October 2003, when construction began, to March 2004, when she stopped work. For this reason, the Board will affirm the denial of appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met her burden to submit sufficient evidence to establish that she experienced a specific exposure occurring at the time, place and in the manner alleged. Because the weight of the factual evidence does not establish the alleged occupational exposure, she has not met her burden of proof to establish that she sustained an injury in the performance of duty.

[7] *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

[8] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2006
Washington, DC

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

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