United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 06-1980**
	)	**Issued: December 15, 2006**
U.S. POSTAL SERVICE, ROSELAND POSTAL FACILITY, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 23, 2006 appellant filed a timely appeal from a May 22, 2006 decision of the Office of Workers' Compensation Programs affirming the denial of an occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained a respiratory condition in the performance of duty.

FACTUAL HISTORY

On February 11, 2005 appellant, then a 47-year-old mail processing clerk, filed an occupational disease claim, asserting that workplace exposures to diesel exhaust fumes, silica dust and cleaning chemicals caused acute bronchitis, carbon monoxide poisoning, silicosis and a chronic upper respiratory condition. She submitted a December 7, 2001 environmental study showing that carbon monoxide in the employing establishment's dock area was below two parts

per million, well below the Department of Labor's Occupational Safety and Health Administration (OSHA) limits. A February 24, 2003 environmental sampling showed trace amounts of silica, below permissible exposure limits. Appellant stopped work on approximately January 21, 2005 and did not return.[1]

On January 6, 1999 appellant sought emergency room treatment for carbon monoxide poisoning. Dr. Kavita Nagella, an emergency room physician, noted appellant's respiratory complaints and that she had installed a new furnace the day before. In a February 10, 1999 report, Dr. Nagella noted appellant's account of a coughing episode the previous night with chest pain and shortness of breath.

In an April 18, 2000 report, Dr. Ann Onyekwuluje, an attending Board-certified internist, diagnosed pharyngitis and held appellant off work through April 24, 2000.

In a February 26, 2002 report, Dr. Valeria Yashina, an attending Board-certified internist, noted appellant's respiratory complaints. Pulmonary function testing performed on March 28, 2002 was normal, with diffusion capacity at the lower limit of normal. June 28, 2004 chest x-rays showed no active lung disease. In a January 4, 2005 report, Dr. Yashina diagnosed bronchitis. She held appellant off work through March 3, 2005.

In a January 20, 2005 report, Dr. C.S. Altman, an anesthesiologist, obtained a normal chest x-ray and diagnosed acute bronchitis. He held appellant off work on January 21 and 22, 2005. February 7, 2005 spirometry and February 9, 2005 chest x-rays were normal. A February 9, 2005 abdominal computerized tomography (CT) scan showed a density in the right lung base consistent with atelectasis.

In a March 22, 2005 letter, the Office advised appellant of the additional factual and medical evidence needed to develop her claim. The Office explained to appellant that she must submit evidence proving the alleged exposures to dusts, fumes and chemicals. Also, she must provide a report from her physician explaining how and why these exposures would cause the claimed respiratory conditions.

In an April 21, 2005 report, Dr. Yashina described appellant's account of shortness of breath for six to nine months, which she related to workplace exposures. Dr. Yashina diagnosed bronchitis. She could not "confirm or deny that exposure to fumes caused [appellant's] bronchitis."

[1] Appellant submitted leave requests slips for intermittent absences from April 17, 2000 to January 21, 2005 due to various respiratory and other health complaints.

In a May 12, 2005 report, Dr. Argyro Hatseras, an attending pulmonologist, opined that appellant's dry cough from January 4, 2004 onward could be of postviral etiology and that her shortness of breath was due to deconditioning. He noted that appellant had never smoked.[2]

By decision dated June 22, 2005, the Office denied the claim on the grounds that causal relationship was not established. The Office accepted that appellant was exposed to floor cleaners and silica dust. It found, however, that appellant's doctors did not support appellant's assertion that these exposures caused the claimed respiratory problems.

Appellant requested an oral hearing, held March 30, 2006. At the hearing, she stated that she first experienced respiratory problems on December 8, 1997 when she had shortness of breath. Appellant asserted that her lung condition improved as she was no longer exposed to diesel fumes and ethyl-based cleaners. She submitted additional evidence.

In a January 7, 2002 letter, the employing establishment confirmed its use of Super 6 and Ultra 10 floor cleaners for more than four years. Material safety data sheets showed that Ultra 10 contained the hazardous ingredients dibutyl phthalate, diethylene glycol and ethyl ether, all noted as capable of causing respiratory tract irritation. Super 6 was described as a detergent with no hazardous ingredients that posed no inhalation hazard. An April 18, 2003 OSHA survey found silica dust at the employing establishment from cutting bricks.

In an April 14, 2005 report, Dr. Katherine Duvall, an attending physician Board-certified in occupational medicine, assessed "upper airway irritant exposure" possibly related to hydrocarbons and fumes at work. She explained that "usually these exposures [were] fairly short lived." In a February 16, 2005 report, Dr. Hatseras diagnosed possible sleep apnea. In an April 6, 2006 report, Dr. Melvin Lopata, an attending Board-certified internist, opined that spirometry performed that day was normal. He noted that diffusing capacity was reduced in proportion to the lung volumes and arterial blood gases showed mild hypoxemia.[3]

By decision dated May 22, 2006, an Office hearing representative affirmed the June 22, 2005 decision, finding that appellant failed to establish that she sustained a respiratory condition in the performance of duty. The hearing representative found that appellant submitted insufficient rationalized medical evidence explaining how workplace exposures would cause the claimed breathing difficulties. The hearing representative further found that, while appellant established workplace exposure to silica dust, no doctor diagnosed a condition due to this exposure.

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[2] Appellant submitted medical evidence regarding emotional, neurologic and orthopedic problems and July 2004 and March 2005 hernia repairs. These reports are not relevant to appellant's claim as they do not mention any respiratory conditions. Appellant also submitted chart notes dated from July 8, 1997 to January 13, 2001 diagnosing sore throat, pharyngitis or a viral syndrome. As these forms do not contain a physician's legible signature, they are not medical evidence for the purposes of this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Appellant also submitted copies of articles and internet pages regarding silicosis, toxic exposure, respiratory conditions and sleep apnea. The Board has held that excerpts from publications and medical literature are not of probative value in establishing causal relationship as they do not specifically address the individual claimant's medical situation and work factors. *Gloria J. McPherson*, 51 ECAB 441 (2000).

[3] A February 3, 2005 blood test showed carbon monoxide at 1.7, slightly above the 1.5 limit for high normal.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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 filed within the applicable time limitation; that an injury was sustained while 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

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) 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 generally 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 medial 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]

ANALYSIS

Appellant has established that she was exposed to Super 6 and Ultra 10 floor cleaners, dibutyl phthalate, diethylene glycol, ethyl ether, silica dust and diesel fumes at work. She also established that she sustained bronchitis and pharyngitis, as diagnosed in reports from January 1999 to January 2005, Drs. Onyekwuluje and Yashina, attending Board-certified internists and Dr. Altman, an anesthesiologist. However, her doctors did not opine that the accepted workplace exposures caused bronchitis or pharyngitis. In fact, Dr. Yashina stated that she could not "confirm or deny that exposure to fumes caused [appellant's] bronchitis." Because

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Solomon Polen*, 51 ECAB 341 (2000).

these doctors did not explain how and why workplace exposures caused any respiratory condition, their opinions are of diminished probative value in establishing causal relationship.[8]

Dr. Duvall, an attending physician Board-certified in occupational medicine, submitted an April 14, 2005 report assessing "upper airway irritant exposure" possibly related to hydrocarbons and fumes at work. However, she did not explain how and why these exposures would cause an upper airway irritation. Dr. Duvall's opinion is thus of diminished probative value in establishing appellant's occupational disease claim.[9]

Dr. Hatseras, an attending pulmonologist, opined on May 12, 2005 that appellant's cough could be of postviral etiology and her shortness of breath due to deconditioning. Thus, Dr. Hatseras attributed appellant's respiratory problems to nonoccupational causes.

Appellant's physicians do not attribute her respiratory conditions to workplace exposures. The Board notes that the Office advised appellant in its March 22, 2005 letter of how important it was to submit a report from her doctor explaining how and why workplace exposures would cause the claimed respiratory conditions. But appellant did not submit such reports. Therefore, the Board finds that appellant has not established that she sustained any conditions due to the accepted workplace exposures.[10]

CONCLUSION

The Board finds that appellant has not established that she sustained a respiratory condition in the performance of duty.

[8] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[9] *Id*.

[10] *Guiseppe Aversa*, 55 ECAB 164 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 22, 2006 is affirmed.

Issued: December 15, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board