United States Department of Labor
Employees' Compensation Appeals Board

MARY A. AUSTEN, Appellant	)	
and	)	**Docket No. 06-12**
	)	**Issued: February 10, 2006**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, Chattanooga, TN, Employer	)	

Appearances:
Mary A. Austen, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 28, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 26, 2005 denying her claim. 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 she sustained an injury in the performance of duty on or about May 4, 2005.

FACTUAL HISTORY

On July 9, 2005 appellant, then a 48-year-old food inspector, filed an occupational disease claim alleging that something on her smock caused her to develop a severe rash. Appellant first developed the rash on May 2, 2005 while at work and realized that it was caused or aggravated by her employment on May 4, 2005. She sought medical assistance from a doctor on May 3, 2005 and received a shot which cleared up her rash. When she returned to work again on May 5, 2005, appellant again broke out in a rash. Appellant questioned whether someone

may have done something to her smock but did not identify any particular person. In support of her claim, appellant submitted medical notes from Dr. Terence Orme, an anesthesiologist, who diagnosed dermatosis, unspecified. In a form report dated May 3, 2005, Dr. Orme noted that appellant's rash started around the bra and panty lines and moved throughout her body. In a form report dated May 4, 2005, he noted that appellant's rash returned after she returned to work. In a May 6, 2005 note, Dr. Orme advised that appellant's two reactions were probably related to the work environment "in some fashion."

In a July 13, 2005 letter, the employing establishment controverted appellant's claim. It stated that the garment/smock appellant referred to was worn over street cloths and there was no report of situations in the workplace of any tampering of the work garment/smock. The employing establishment also submitted a July 12, 2005 statement which noted that there had been no changes in the laundry provider, cleaning process or detergent used on the garment/smock.

In a letter dated July 20, 2005, the Office advised that the information appellant submitted was insufficient to determine her entitlement to benefits under the Act. She was provided with 30 days in which to provide additional medical and factual information. The Office requested that appellant provide detailed information regarding how her skin was exposed to her work garment and how tampering could have occurred with her work garment. No new factual or medical information was received.

By decision dated August 26, 2005, the Office denied appellant's claim, finding that the evidence submitted was insufficient to establish that the events occurred as alleged and there was no medical diagnosis which could be connected to the claimed events.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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.[2] 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.[3]

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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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, generally, 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.[4]

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.[5] An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[6] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[7] 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.

ANALYSIS

The Office found that the evidence was insufficient to establish that the events occurred as alleged. Appellant claimed that her skin condition/rash arose as a result of her work smock. However, she failed to submit any evidence to establish that someone at work tampered with the work smock. The employing establishment specifically denied any situations in the workplace involving tampering with work smocks. The employing establishment also noted that the smocks were worn over street clothes, there had been no changes in the laundry provider, cleaning process or detergent used on work smocks. The Office received no response to its request that appellant provide additional factual information.

The Board notes that an alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action as evidence of the occurrence of the incident.[8]

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[4] *Id.*

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

[6] *John D. Jackson*, 55 ECAB ____ (Docket No. 03-2281, issued April 8, 2004); *William Nimitz, Jr.*, 30 ECAB 567 (1979).

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

[8] *See Rex A. Lenk*, 35 ECAB 253 (1983).

When an employee claims an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.[9] The Board finds that appellant has established that she wears a smock at work, but she has not established any particular degree of smock contact with her skin, that any tampering occurred or that any changes in detergents, laundering or processing of the smocks occurred. Appellant was given an opportunity to provide more factual information to support her claim, but she did not provide any such evidence. Thus, beyond the mere wearing of a smock at work over her street clothes, appellant has not established that she experienced a specific exposure in the workplace.

The Board further finds that the medical evidence is insufficient to establish that appellant's skin condition is causally related to wearing a smock at work. In a May 6, 2005 note, Dr. Orme opined that appellant's two reaction "were probably related" to the work environment "in some fashion." At best, this medical opinion is speculative as to the etiology of appellant's skin condition, stating only that it could be related to employment factors to which appellant was exposed while at work.[10] Dr. Orme did not otherwise provide a reasoned medical opinion that appellant's skin condition/rash was caused or contributed to by his employment.[11] As such, Dr. Orme's opinion is insufficient to meet appellant's burden of proof. Thus, appellant failed to establish through the submission of reasoned medical evidence that wearing a smock at work caused or aggravated a specific medical condition.

For these reasons, appellant has not met her burden of proof in establishing her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on or about May 4, 2005, as alleged.

[9] *Joseph W. Kripp*, 55 ECAB ___ (Docket No. 03-1814, issued October 3, 2003).

[10] *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).

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

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2005 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: February 10, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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