United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 07-14**
	)	**Issued: March 5, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Orlando, FL, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 3, 2006 merit decision denying her traumatic injury 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 sustained a traumatic injury on July 9, 2005 causally related to factors of her federal employment.

FACTUAL HISTORY

On July 14, 2005 appellant, a 37-year-old security screener, filed a traumatic injury claim (Form CA-1), alleging that on July 9, 2005 she became "hot at ESAT checkpoint." She stated that the nature of her injury was that she had difficulty breathing.

On July 9, 2005 Mary Bowerman, supervisor, authorized medical treatment of appellant pursuant to appellant's alleged "difficulty breathing" on that date. Appellant submitted an undated attending physician's report, bearing an illegible signature, reflecting that the date of injury was July 9, 2005 and describing the history of injury as "poor ventilation." The diagnosis provided was "asthma." In response to the question as to whether he believed appellant's condition was caused or aggravated by employment factors, the person completing the form circled "yes."

Appellant submitted emergency department records dated July 9, 2005, from Orlando Regional Sandlake Hospital. A report bearing an illegible signature of a physician's assistant provided a diagnosis of acute bronchospasm and reflected that appellant had a history of asthma, and developed chest tightness and began wheezing on the date of treatment. The record contains a July 9, 2005 report of an x-ray of the lungs.

Appellant also submitted emergency department records dated June 11, 2005, including an unsigned physician's record from Dr. Estorlando Erdoc, a treating physician, providing a diagnosis of "exacerbation of asthma," an intake form noting the date of the accident as June 11, 2005, physicians' notes, bearing an illegible signature, providing a symptom of "bronchial spasms" and an adult nursing flow sheet, noting that appellant was admitted for an asthma attack. A prehospital care report reflected appellant's statement that she was exposed to the smell of fuel at work, in a poorly ventilated area, which caused her to wheeze and have "[shortness of breath]."

Appellant submitted medical reports, work excuses and prescription forms, signed by Dr. Carlos R. Vazquez, a treating physician. In a letter dated July 5, 2005, Dr. Vazquez stated that appellant had "occupational asthma due to toxic fumes exposure at work, contact dermatitis due to latex gloves and fabric material from pants use at work." Work excuses dated July 12 and August 17, 2005 indicated that appellant was unable to work due to medical illness from July 10 through 19, 2005 and from August 18 through 23, 2005. In a May 9, 2006 work excuse, Dr. Vazquez stated that appellant was unable to work on that date due to medical illness secondary to a work-related injury.

Appellant submitted emergency department medical records dated April 23, 2006 from Florida Hospital. An unsigned medical record face sheet and progress notes bearing an illegible signature, reflected that she was admitted for chest pain. An adult nursing flow sheet reflected appellant's statement that she had been "under a lot of stress."

On May 10, 2006 appellant filed a recurrence of disability claim as of April 23, 2006, alleging that her original injury occurred on July 9, 2005. She alleged that, while working Lane 6 East on April 23, 2006, she felt pain in her chest and had a lack of breathing capacity. Appellant stated that she never fully recovered from her original injury and that it was worsening due to the poor air quality in the workplace. She submitted an April 23, 2006 report of a magnetic resonance imaging (MRI) scan of the chest. Appellant also submitted a report dated May 9, 2006 from Dr. Vazquez, containing a diagnosis of "asthma."

On May 30, 2006 the Office notified appellant that the evidence submitted was insufficient to establish her July 9, 2005 claim. The Office advised appellant to provide, within 30 days, additional documentation, including details surrounding the alleged injury, witness statements and other evidence establishing that the alleged event occurred at the time, place and in the manner alleged. The Office also advised appellant to submit a medical report containing a diagnosis and a physician's opinion, supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

In response to the Office's request, appellant submitted numerous time and attendance reports, time analysis forms, work excuses and prescription forms. She also submitted an August 23, 2005 report from Dr. Vazquez who provided a diagnosis of "asthma -- uncontrolled," dermatitis -- worsened" and "allergic rhinitis -- uncontrolled." Noting that the "date of service" was July 12, 2005, he stated that appellant's chief complaint was "asthma exacerbation at work due to inhalation of fumes." Under the section entitled "symptoms/related," Dr. Vazquez indicated "fatigue, dyspnea, cough, wheezing, PND, orthopnea, chest pain, GERD, headaches, dizziness, rash, worsened by wearing uniform's pants, emergency room visit for asthma attack at work July 9, 2005. No air conditioning at work, very humid and hot, increase amount of dust at checkpoint."

By decision dated July 3, 2006, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the event occurred as alleged. The Office found that appellant had failed to meet her burden of showing that the incident occurred at the time, place and in the manner alleged.[1]

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4]

An employee seeking benefits under the Act has the burden of proof to establish 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

[1] The Board has no jurisdiction to consider the merits of appellant's recurrence claim, as it is an interlocutory matter before the Office. *See* 20 C.F.R. § 501.2(c). *See also Scott R. Walsh*, 56 ECAB ___ (Docket No. 04-1962, issued February 18, 2005); *Gloria Swanson*, 43 ECAB 161 (1991).

[2] 5 U.S.C. §§ 8101 *et seq.*

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.[6]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

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.[8] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9]

Causal relationship is a medical issue 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 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 established incident or factor of employment.[10]

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[5] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

[7] *See Betty J. Smith, supra* note 6.

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

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury on July 9, 2005.

Appellant noted on her claim form that she became "hot at ESAT checkpoint" and that she had difficulty breathing. She provided no detailed account of and stated no apparent cause for injury. Appellant presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did she allege that she experienced a specific event, incident or exposure at a definite time, place and manner.[11]

Appellant's vague recitation of the facts does not support her allegation that a specific event occurred which caused an injury.[12] Moreover, there are inconsistencies in the evidence which cast serious doubt on the validity of her claim. In her Form CA-1, appellant stated that she became "hot at ESAT checkpoint" and that she had difficulty breathing, but she did not designate a specific event or exposure that caused her alleged condition. The contemporaneous medical evidence of record does not support appellant's allegation that her condition resulted from a work-related event or exposure. July 9, 2005 emergency department records describe the history of injury as "poor ventilation." A July 12, 2005 work excuse indicated that appellant was unable to work from July 10 through 19, 2005, due to medical illness. On July 23, 2005 her treating physician, Dr. Vazquez, stated that appellant's chief complaint on July 12, 2005 was "asthma exacerbation at work due to inhalation of fumes." Under the section entitled "symptoms/related," Dr. Vazquez indicated "fatigue, dyspnea, cough, wheezing, PND, orthopnea, chest pain, GERD, headaches, dizziness, rash, worsened by wearing uniform's pants, emergency room visit for asthma attack at work July 9, 2005. No air conditioning at work, very humid and hot, increased amount of dust at checkpoint." Although Dr. Vazquez noted that appellant visited an emergency room for an asthma attack at work, he did not provide a history of injury. He stated generally that there was no air conditioning at work and that it was hot, humid and dusty, but Dr. Vazquez did not relate these conditions to the alleged July 9, 2005 incident. Appellant has not presented any evidence, such as witness statements, to substantiate that a work-related injury occurred on July 9, 2005 as alleged. Her representation that she became hot and had difficulty breathing does not describe the occurrence of an injury.

In *Tracey P. Spillane*,[13] an employee filed a claim alleging that she sustained an allergic reaction at work. However, she did not clearly identify the aspect of her employment which she believed caused the claimed condition, but only made vague references to "possibly having a reaction to magazines or latex gloves." The Board held that the employee did not adequately specify the employment factors which caused her need for medical treatment, nor did she specify details such as the extent and duration of exposure to any given employment factors. The medical record reflected that the employee did not clearly report to her physicians that she felt

[11] *See Betty J. Smith, supra* note 6; *see also Tracey P. Spillane, supra* note 6.

[12] *See Dennis M. Mascarenas, supra* note 9.

[13] *See Tracey P. Spillane, supra* note 6.

her claimed condition was due to a specific and identifiable employment factor. In this case, appellant's allegations are vague and do not relate with specificity the cause of the injury or the events surrounding the alleged July 9, 2005 incident. She did not address the nature of the employment activity in which she was engaged at the time of the alleged injury; or the immediate consequence of the injury (*e.g.*, whether she fainted, had to sit down or required medical intervention). Appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty and it is not necessary to discuss the probative value of the medical reports.[14]

The Board finds that appellant has failed to establish the fact of injury. She did not submit sufficient evidence to establish that she actually experienced a specific event, incident or exposure at the time, place and in the manner alleged or that such event, injury or exposure caused an injury.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury on July 9, 2005 causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[14] *Id*