United States Department of Labor
Employees' Compensation Appeals Board

H.D., Appellant	)	
and	)	**Docket No. 07-1026**
	)	**Issued: October 1, 2007**
DEPARTMENT OF VETERANS AFFAIRS, CARL VINSON VETERANS ADMINISTRATION MEDICAL CENTER, Dublin, GA, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 6, 2007 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated June 8 and October 6, 2006 and January 9, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury on November 3, 2005 causally related to her federal employment; and (2) whether the Office properly denied her requests for subpoenas.

FACTUAL HISTORY

On November 23, 2005 appellant, then a 53-year-old registered nurse, filed a Form CA-1, traumatic injury claim, alleging that on November 3, 2005 she sustained an allergic reaction to environmental chemicals consisting of redness on her anterior chest, generalized heat, increased

blood pressure, abdominal pain and itching. She stopped work that day. Appellant had been working limited duty in an office environment due to an accepted single episode of an allergic reaction to a solvent on June 17, 2005.[1]

By letter dated December 1, 2005, the Office informed appellant of the evidence needed to support her claim. On December 20, 2005 the employing establishment controverted the claim. In a December 16, 2005 report, Dr. Mohammad Al-Shroof, a Board-certified internist, advised that appellant was disabled until further notice. Pulmonary function studies dated December 19, 2005 were interpreted as normal. In a December 27, 2005 report, Dr. Susan L. Tanner, an internist, advised that appellant was being treated for chemical sensitivities.[2]

By decision dated January 3, 2006, the Office denied appellant's claim. It accepted that the claimed incident occurred but that the medical evidence was insufficient to establish causal relationship.

On February 2, 2006 appellant requested a hearing.[3] She submitted a copy of an email sent to the employing establishment on November 18, 2005 in which she stated that on November 3, 2005 she was scheduled for a pulmonary function test at employee health and, upon arriving there at 7:30 a.m., she was instructed to go to the intensive care unit (ICU) for the test. As she was walking to the ICU, she looked for a telephone in ambulatory care to call her union representative, but while there her eyes became irritated and red; appellant became hot and had a headache. Appellant subsequently experienced difficulty breathing and a scattered stinging sensation. She continued to the ICU for the test but was told to return to employee health. Her throat began to feel tight and sore and she became anxious. Appellant arrived at employee health at about 8:15 a.m. and requested to be examined by a doctor. She stated that she was initially refused medical treatment by management and called security. Appellant was then treated by Chris May, a physician's assistant, and later seen by Dr. Sesha P. Chary in the emergency room. After her discharge at 3:25 p.m., she felt unsteady, but was able to drive to the emergency room at Fairview Hospital where she was treated.

On March 11, 2006 appellant submitted requests to subpoena medical personnel including Dr. Chary, Betty Reynolds, R.N., and Mr. May, all with the employing establishment, Dr. Tanner and Dr. Willie Edward Morgan, an emergency physician, with Fairview Hospital. By

[1] The June 17, 2005 claim was adjudicated by the Office under file number 06-2143995 and the instant claim under file number 06-2153585. Appellant had four additional accepted claims for a reaction to an insect bite on July 24, 2004, file number 06-2119680, a September 13, 2004 contact dermatitis caused by a glove, file number 06-2124292 and incidents on February 3 and 24, 2007 for single episodes of reactions to solvents, file number 06-2134956 and file number 06-2134957.

[2] Appellant also submitted medical evidence that predated the instant claim and a July 8, 2005 statement in which she requested reasonable accommodation, noting that she sustained her first allergic reaction on July 24, 2004.

[3] Appellant also submitted evidence regarding events that predated the date of injury and duplicate of evidence previously of record. The record also contains affidavits dated January 27, 2006 in which James Hampton and Jerry Jackson, of the employing establishment's human resources department, testified regarding an Equal Employment Opportunity Commission claim submitted by appellant and evidence regarding a reprimand for extended unauthorized absence.

decision dated June 8, 2006, an Office hearing representative denied appellant's requests for subpoenas.

Appellant submitted medical reports dated November 3, 2005 from the employing establishment health clinic. Mr. May noted seeing her at 8:15 to 8:30 a.m. with complaints of syncope and intense pruritus. Physical findings included high blood pressure and an increased heart rate but no hives or urticaria and her airway remained patent. Mr. May opined that appellant was having a panic attack and advised that Benadryl was given because she took Benadryl on a daily basis but had not taken it yet that day. Cool compresses were placed and appellant was monitored. Her blood pressure dropped in about 20 minutes. At 8:40 a.m. she was given Ativan and her care was transferred to Dr. Chary who noted appellant's history of hypertension and multiple allergies and her symptoms of itching, stomach ache, headache and that she felt that she was having panic episodes. She noted that appellant improved with normal oximetry. Cutaneous examination revealed no gross or obvious maculopapular rash. Dr. Chary concluded that appellant had an "obvious allergic reaction which I am unable to pinpoint." Emergency room reports from Fairview Park Hospital, also dated November 3, 2005, noted that appellant arrived a 3:15 p.m., complaining that she became dizzy while driving home. Dr. Morgan noted that physical examination revealed normal skin with no rash. He diagnosed acute urticaria. Appellant was monitored in the waiting room until it was safe for her to drive and she was discharged at 12:12 a.m. on November 4, 2005.

In a February 23, 2006 report, Dr. Tanner advised that she began treating appellant on December 27, 2005. She noted appellant's complaints of allergic reactions consisting of burning, itching and rashes which had increased in severity and that appellant correlated these with stripping and sealing floors at the employing establishment. Dr. Tanner opined that appellant had sensitivity to scents, odors, fumes and latex and fit the profile of a patient with a diagnosis of multiple chemical sensitivity. By report dated April 3, 2006, Dr. Herbertta Pearson, Board-certified in family medicine, advised that appellant had been treated for multiple chemical sensitivity since February 21, 2006, noting that episodes dated back to June 2005. She recommended that appellant not be exposed to chemicals at work. Pulmonary function studies of April 20, 2006 were interpreted by Dr. Jeffrey Rymuza, Board-certified in internal medicine and pulmonary disease, as borderline normal. In a June 15, 2006 report, Dr. Mokhtar Hacena, a Board-certified internist, noted that appellant was not working. He provided physical findings, advised that her diagnostic testing showed improvement. Dr. Hacena diagnosed persistent occupational asthma and recurrent urticaria, controlled for the past few months. He opined that the improvement of appellant's lung function was suggestive of occupational asthma and urticaria "induced by chemical at the workplace." Dr. Hacena advised that she could return to work in a chemical-free environment.

At the hearing held on June 28, 2006, appellant's attorney argued that a pattern of exposures at work caused her medical condition. Appellant testified that on November 3, 2005 she was working in an office environment with carpeting and had entered an area with a strong chemical smell and then began to panic.

By letter dated July 31, 2006, the employing establishment responded to appellant's hearing testimony. It noted that no stripping or waxing of floors was performed in any of the areas appellant claimed to have entered or visited and that she had submitted no documentation

of sensitivity testing identifying any specific chemical in use that caused her to have an allergic reaction. The employing establishment provided a housekeeping checklist dated November 2, 2005 that showed that on the night of November 2, 2005 the only area that was stripped and waxed was a bathroom on 9A.

In a June 27, 2006 report, Dr. Tanner noted appellant's report that repeated exposures to solvents, chemicals, floor wax, sealants, ammonia and methyl ether used in the work environment caused her condition. She characterized it as permanent, chronic and recurring. Dr. Tanner diagnosed multiple chemical sensitivity characterized by swelling, itching, pain, scratching, redness, drowsiness, chronic fatigue, severe headache, stomach pain, uncontrolled/accelerative high blood pressure, blurred vision, ineffective breathing, tightness in chest, chest pain, rashes on extremities and chest, sensitive eyes with tearing, gastrointestinal exacerbation, urticaria, hives, swelling, altered mental status, generalized muscle/joint pain, poor balance, irritability, cognitive difficulties and vertigo. Dr. Tanner also diagnosed depression and noted that appellant could have side effects from the medication she was taking. Appellant's treatment consisted of elimination and protection from volatile compounds, any other known incitants and biological treatment and advised that appellant could only live and work in environments that were rigidly controlled for exposure to volatile compounds, odors, molds, asbestos and chemical solvents. In an undated report, received by the Office on August 8, 2006, Dr. Tanner noted a history that appellant had allergic reactions at work in February and June 2005 due to exposure to a solvent. She listed a number of chemicals used in hospitals and advised that, based on appellant's history and medical documentation, "anyone of these chemicals are [sic] more likely than not to trigger an allergic reaction/responses." Dr. Tanner reiterated her previous diagnosis.

In a July 19, 2006 report, Dr. Al-Shroof advised that he had treated appellant from August 2004 to January 2006 for multiple allergic reactions, urticaria, anxiety disorder, hypertension, palpitations and noncardiac chest pain. He noted that stress tests from August 2004 and January 2006 did not reveal any coronary artery disease.

By decision dated October 6, 2006, an Office hearing representative affirmed the January 3, 2006 decision. She found that the evidence of record established that appellant experienced symptoms of illness with 45 minutes of her arrival at work on November 3, 2005. However, the medical evidence failed to establish both the specific nature of the illness and a relationship to a specific causal agent in her workplace, on that date. The hearing representative advised appellant that, because she and her attorney claimed multiple instances of exposure, she could file an occupational disease claim.

On December 12, 2006 appellant requested reconsideration.[4] In reports dated October 23 and December 1, 2006, Dr. Tanner again opined that appellant experienced an allergic reaction on November 3, 2005 when she "walked through an area or areas with allergens present or used and environmental stimuli that have been known to cause allergic reaction/responses in the past." These allergens triggered an allergic reaction which worsened within minutes resulting in a permanent aggravation to appellant's immune system. Dr. Tanner advised that frequent

[4] Appellant again submitted irrelevant and duplicative evidence.

exposure had made appellant become very hypersensitive to workplace allergens and that she was disabled secondary to workplace chemical exposures in June and November 2005 and opined that she could not be within less than one foot of chemicals or solvents.

By decision dated January 9, 2007, the Office denied modification of the October 6, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[5] 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[6]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[7] In order to determine whether an employee 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 is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[8]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[10] Neither the mere fact

[5] 5 U.S.C. §§ 8101-8193.

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[8] *Tracey P. Spillane*, 54 ECAB 608 (2003).

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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 causal relationship.[11]

ANALYSIS -- ISSUE 1

The Board finds that the medical evidence is insufficient to establish a causal relationship to a chemical agent or other allergen at the employing establishment on November 3, 2005, as alleged.

The pulmonary function studies on December 19, 2005 and April 20, 2006 do not contain an opinion regarding the cause of any diagnosed condition and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] The reports submitted from the employing establishment health unit and Fairview Hospital did not establish that appellant sustained an employment injury on November 3, 2005. Mr. May's report does not constitute competent medical evidence, as a physician's assistant is not considered a physician under the Act.[13] Nonetheless, he found no hives or urticaria on physical examination and diagnosed a panic attack. Dr. Chary also found no skin rash and opined that appellant had an "obvious allergic reaction which I am unable to pinpoint." Dr. Al-Shroof merely advised that appellant was disabled on December 16, 2005. In July 2006, he advised that he had treated appellant from August 2004 to January 2006 for multiple diagnoses including allergic reactions, urticaria and an anxiety disorder. Dr. Al-Shroof did not provide an opinion regarding the cause of appellant's diagnosed condition. Dr. Pearson merely recommended that appellant not be exposed to chemicals at work. As these reports do not contain opinions regarding the cause of appellant's condition, they do not establish that she sustained an employment injury on November 3, 2005.[14]

Dr. Morgan, an emergency room physician at Fairview Hospital diagnosed acute urticaria. His physical findings, however, revealed normal skin with no rash. The Board has long held that medical opinions that are speculative or equivocal in character have little probative value.[15] Dr. Morgan's report is therefore insufficient to meet appellant's burden of proof. While Dr. Hacena opined in a June 15, 2006 report, that the improvement of appellant's lung function was suggestive of occupational asthma and urticaria "induced by chemical at the workplace," he did not provide an opinion that her condition was caused by a November 3, 2005 incident or otherwise specify the chemical agent or agents implicated. Medical conclusions such as

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

[12] *Willie M. Miller*, 53 ECAB 697 (2002).

[13] 5 U.S.C. § 8101(2); *see Ricky S. Storms*, 52 ECAB 349 (2001).

[14] *Willie M. Miller*, *supra* note 12.

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

Dr. Hacena's which are unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.[16]

Dr. Tanner who began treating appellant in December 2005 and provided a number of reports, diagnosed multiple chemical sensitivity caused by workplace exposure to various chemicals and noted that appellant had allergic reactions in February, June and November 2005. By definition, a traumatic injury is a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[17] The mere fact that a condition manifests itself during a period of employment or the claimant's belief that the condition was caused or aggravated by employment conditions is insufficient to establish a causal relationship.[18] Dr. Tanner must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.[19] Dr. Tanner did not opine that appellant's condition was caused by exposure on November 3, 2005. Furthermore, her opinion is devoid of her physical findings or any objective testing in support of her diagnoses and conclusions. For these reasons, Dr. Tanner's opinion is insufficient to meet appellant's burden of proof to establish that she sustained an employment injury on November 3, 2005.[20]

Because appellant did not submit a reasoned medical opinion explaining what caused or contributed to her medical condition on November 3, 2005 she did not establish the critical element of causal relationship.[21] As noted by the hearing representative, she retains the right to file an occupational disease claim.[22]

LEGAL PRECEDENT -- ISSUE 2

Section 8126 of the Act provides that the Secretary of Labor, on any matter within her jurisdiction, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles. This provision gives the Office discretion to grant or reject requests for subpoenas. The implementing Office regulations provide that subpoenas for documents will be issued only where the documents are relevant and cannot be obtained by any other means. The Office

[16] *Albert D. Brown*, 52 ECAB 152 (2000).

[17] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, *supra* note 7.

[18] *Charles E. Evans*, 48 ECAB 692 (1997).

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

[20] *Id.*

[21] *Id.*

[22] In cases of injury on or after September 7, 1974, section 8122(a) of the Act provides that a claim for disability or death must be filed within three years after the injury or death. 5 U.S.C. § 8122(a); *Duet Brinson*, 52 ECAB 168 (2000). The three-year time period begins to run from the time the employee is aware or by the exercise of reasonable diligence should have been aware, that his or her condition is causally related to the employment. It is well settled that, if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the last date of this exposure. *Debra Young Bruce*, 52 ECAB 315 (2001).

hearing representative retains discretion on whether to issue a subpoena.[23] A claimant may request a subpoena only as part of the hearings process and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must submit the request in writing and send it to the hearing representative as early as possible but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.[24] Subpoenas for witnesses will be issued only where oral testimony is the best way to ascertain the facts[25] and in requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained.[26] The function of the Board on appeal is to determine whether there has been an abuse of discretion.[27]

ANALYSIS -- ISSUE 2

In this case, appellant requested subpoenas for the appearance of various medical personnel. The Board, however, finds that the Office hearing representative did not abuse her discretion in denying appellant's subpoena requests. In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained.[28] Here appellant did not show why information could not be obtained other than through the subpoena process.[29] Thus, the Office hearing representative acted within her discretion in not issuing subpoenas as requested by appellant.[30]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related injury on November 3, 2005 and that the Office did not abuse its discretion in denying her subpoena requests.

[23] 20 C.F.R. § 10.619.

[24] 20 C.F.R. § 10.619(a)(1).

[25] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[26] 20 C.F.R. § 10.619(a)(2).

[27] *Gregorio E. Conde*, *supra* note 25.

[28] *Claudio Vazquez*, 52 ECAB 496 (2001).

[29] *Janet L. Terry*, 53 ECAB 570 (2002).

[30] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 9, 2007 and October 6 and June 8, 2006 be affirmed.

Issued: October 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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