



on September 25, 2000 and first related it to her employment on March 21, 2001. Appellant took time off work intermittently. The record includes medical and factual evidence indicating that she has episodic asthma symptoms since 2000 and noting the employing establishment's effort to accommodate her condition.

Medical evidence submitted in support of her claim included an October 1, 2000 report from Dr. Scott B. Rosenberg, a Board-certified internist and pulmonary specialist, who diagnosed persistent asthma symptoms status post bronchitis. On April 27, 2005 Dr. Michael L. Lippmann, a Board-certified internist and pulmonary specialist, diagnosed moderate asthma and noted that appellant first began to develop asthma symptoms and exacerbations after returning to her workplace from absences or hospitalizations.

On August 29, 2005 the Office referred appellant to Dr. Anita Ko, a Board-certified pulmonary care specialist, for a second opinion to determine the cause and extent of appellant's condition. In a September 22, 2005 report, Dr. Ko diagnosed occupational asthma, which she defined as new-onset asthma caused at work. She indicated that appellant's asthma had improved since she stopped work. However, Dr. Ko noted that appellant had returned to work in a different building on August 17, 2005 and had noticed a return of her cough, shortness of breath and respiratory problems, although her symptoms were generally milder. In an undated supplementary form report received by the Office on November 16, 2005, she reiterated that appellant's symptoms were caused by her work environment and dismissed smoking as a major cause of appellant's condition.

The Office accepted appellant's claim for extrinsic asthma (occupational) and paid wage-loss compensation for various periods, including December 26, 2005 to January 6, 2006.

In a December 5, 2005 attending physician's report, Dr. Lippmann released appellant to return to light-duty work effective January 9, 2006. He stated that, although appellant could work, she was unable to return to her previous workplace due to "sick building syndrome." In a December 22, 2005 duty status report, Dr. Lippmann reiterated that appellant could return to work on January 9, 2006.

Appellant returned to work on January 9, 2006 but stated that she became sick and left. She did not work the following day or subsequently.

On February 28, 2006 appellant filed a claim for compensation for leave without pay from January 8 to 21, 2006. On the same day, she filed claims for compensation for leave without pay taken from January 23 to 27, February 5 to 18 and February 19 to March 4, 2006. The employing establishment controverted appellant's claim for compensation for the period January 8 to March 4, 2006, noting that she was released to return to work effective January 9, 2006 but did not return and did not provide medical documentation supporting total disability.

By correspondence dated March 14, 2006, the Office requested additional information concerning appellant's claim for total disability compensation between January 8 and March 3, 2006.

In a March 30, 2006 statement, appellant explained that she returned to work on January 9, 2006 and was hospitalized for asthma on January 12, 2006. She did not indicate

whether she returned to the same building, but noted that her symptoms persisted throughout details and relocations to several different buildings on the employing establishment's office campus. By correspondence dated April 4, 2006, the employing establishment explained that it would be "impossible" to offer appellant a light-duty assignment. It advised that she was "not able to withstand working in our building," and that she noticed difficulty breathing within a half hour of arriving at work. The employing establishment noted that appellant had been detailed to another building on August 21, 2005 but had the same respiratory problem.

By decision dated May 31, 2006, the Office denied appellant's claim for compensation benefits for the period January 8 to March 4, 2006, on the grounds that she did not submit sufficient medical evidence to establish total disability for work during the period claimed.

On June 13, 2006 appellant requested an oral hearing. She submitted a May 26, 2006 report from Dr. Lippmann advising that she had asthma and possible "sick building syndrome" and had been unable to work since January 10, 2006. Dr. Lippmann explained that appellant "has been forced to go out of work indefinitely as a result of her symptoms which recur each time she returns to her place of work."

On June 30, 2006 the Office resumed appellant's compensation for total disability effective March 6, 2006. On August 11, 2006 it placed her on the periodic compensation rolls effective August 6, 2006.

In a July 11, 2006 report, Dr. Lippmann noted that he had treated appellant for several years for her asthmatic condition and opined that "some environmental exposure at work has aggravated her asthma making it untenable to further continue working in the building that she has been." He explained that appellant's symptoms were far less severe when she was away from her workplace. Dr. Lippmann opined that appellant's absence from January 8 to March 4, 2006 was work related because appellant's symptoms were more severe at work and less severe when she was away from her workplace. He noted that she was hospitalized on January 12, 2006 and attributed the hospitalization to her attempted return to work. Dr. Lippmann concluded that "any attempt to return to work would endanger [appellant's] health and cause exacerbation of her symptoms."

On August 10, 2006 Dr. Lippmann stated that appellant had "sick building syndrome," which he characterized as "a most difficult diagnosis to prove." He noted that sick building syndrome "occurs most frequently with federal buildings, as [appellant's] symptoms of asthma are worse when going to work." Dr. Lippmann indicated that appellant could not return to her place of employment and was seeking work elsewhere. In a work capacity evaluation, also prepared on August 10, 2006, he diagnosed "sick building syndrome" and concluded that appellant was unable to work in the employing establishment's building. In an undated note, Dr. Lippmann indicated that appellant was seen in his office on February 21, 2006. Appellant also provided January 12, 2006 emergency room notes diagnosing her with acute exacerbation of asthma. The notes indicated that appellant's symptoms were gradual in onset.

An oral hearing was held on March 21, 2007. By decision dated June 13, 2007, the hearing representative affirmed the denial of appellant's claim for compensation benefits, finding

that the medical evidence of record was insufficient to establish that appellant was totally disabled during the period claimed, due to her accepted condition.

### **LEGAL PRECEDENT**

The term disability as used in the Federal Employees' Compensation Act<sup>1</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>2</sup> Whether a particular injury caused an employee to become disabled for employment is a medical issue which must be resolved by competent medical evidence.<sup>3</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>4</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> 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.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>8</sup> and it must be one of reasonable medical certainty<sup>9</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof in establishing that she was disabled for work from January 8 to March 4, 2006, due to her accepted employment-related

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>2</sup> *Sean O'Connell*, 56 ECAB 195 (2004).

<sup>3</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>4</sup> *Id.*

<sup>5</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>6</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>7</sup> *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, *supra* note 6.

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

condition. The record reflects that the Office accepted appellant's asthma as work related and that she took time off from work intermittently. On December 5, 2005 Dr. Lippmann released appellant to return to work effective January 9, 2006. In her March 30, 2006 statement, appellant reported that she returned to work on January 9, 2006 but became sick again and was hospitalized for her asthma on January 12, 2006. She remained out of work indefinitely, but did not receive compensation for her absence from January 8 to March 3, 2006.

After the Office's May 31, 2007 decision denying appellant's claim for compensation for total disability for the period January 8 to March 4, 2006, appellant submitted medical evidence from Dr. Lippmann. In a May 26, 2006 report, Dr. Lippmann stated that appellant had "sick building syndrome" and had been unable to work since January 10, 2006 due to recurring symptoms of asthma each time she entered her workplace. However, the Board notes that the mere fact that a disease or condition manifests itself or worsens during a period of employment<sup>11</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>12</sup> does not raise an inference of causal relationship between the condition and the employment factors. Although Dr. Lippmann stated that appellant's symptoms worsened when she returned to work, this in and of itself does not establish that her work caused her total disability for work. He also noted appellant's complaints of worsening symptoms in his July 11 and August 10, 2006 reports. However, the mere fact that appellant's symptoms worsened when going to work does not establish, without more, that she was totally disabled due to her accepted condition.

In his July 11, 2006 report, Dr. Lippmann related appellant's condition to "some environmental exposure at work." He diagnosed "sick building syndrome," which he characterized as "a most difficult diagnosis to prove," and stated that appellant's hospitalization on January 12, 2006 was "clearly ... a result of an exacerbation of her asthma when she attempted to return to work ... on January 8, 2006." However, Dr. Lippmann did not present adequate explanation and rationale supporting his opinion that appellant was totally disabled for work due to her accepted asthma. Although he related appellant's disability to "some environmental exposure at work," he did not specifically identify a particular environmental exposure or atmospheric irritant and explain in detail how any irritant or exposure caused her disability between January 8 and March 4, 2006. Dr. Lippmann also did not give a detailed explanation of the reasons for appellant's January 12, 2006 hospitalization and why he believed it was related to her return to work four days earlier. The lack of a detailed explanation regarding causal relationship is especially important since previous reports from Dr. Lippmann had released appellant to work as of January 9, 2006. Dr. Lippmann also opined that appellant's continuing disability was due to the risk that a return to work would endanger her health and cause another exacerbation of her symptoms. The Board notes, however, that an appellant's fear of future injury is not compensable.<sup>13</sup> Thus Dr. Lippmann's reports are insufficient to establish that appellant's total disability for work during the period claimed, due to her accepted condition.

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<sup>11</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>12</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>13</sup> *I.J.*, 59 ECAB \_\_ (Docket No. 07-2362, issued March 11, 2008), *citing Calvin E. King*, 51 ECAB 394 (2000).

Other medical evidence submitted does not specifically address whether appellant's disability from January 8 to March 4, 2006 was due to her accepted condition or to employment factors. Accordingly, the Board finds that the evidence does not establish that appellant was totally disabled due to her accepted condition between January 8 and March 4, 2006.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she was totally disabled from January 8 to March 4, 2006 due to her accepted work-related condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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