

note, Dr. Thomas J. Brothers, an attending physician, advised that appellant needed a permanent change in her environment due to severe asthmatic bronchitis.

In a June 19, 1984 report, Dr. James E. West, a Board-certified surgeon, noted that appellant was hospitalized on June 11, 1984 with a diagnosis of asthmatic bronchitis. Appellant reported that about a month prior, she went into a room at work and breathed some sort of material that she was unable to identify. Since that time she had difficulty breathing and was treated on an outpatient basis. Dr. West noted that appellant was improving.

In a June 20, 1984 report, Dr. A.F. Toole, a Board-certified otolaryngologist, noted that appellant was hospitalized with asthmatic bronchitis. Appellant told him that she went into a building that had been closed, as part of her employment, and experienced coughing. Dr. Toole noted that she complained of coughing to the point where she had trouble getting her breath. Appellant's x-rays were within normal limits and her nose, throat and nasopharynx were clear. Dr. Toole doubted that a polyp had formed, stating that it was "more likely" appellant may be expectorating sputum and catching some thick tenacious sputum on the vocal cords and giving her intermittent larygospasm.

In a June 22, 1984 discharge summary, Dr. Brothers noted that appellant was moderately dyspneic and acutely ill. He stated that her place of employment seemed to be very smoky and hazardous to her current symptoms. Dr. Brothers diagnosed allergic bronchitis and chronic obstructive pulmonary disease.

In a July 12, 1984 report, Dr. Durwood Bradley, a professor of pulmonary medicine at the University of Alabama, advised that appellant was admitted to the pulmonary department on July 5, 1984 and was discharged on July 10, 1984. Appellant had a two-month history of cough, shortness of breath and choking. Dr. Bradley stated that no serious cause of airway disease was found. He noted that whatever appellant had it was a benign and self-limited disorder. Dr. Bradley noted that appellant's condition was "probably a tracheolaryngobronchitis due to an airway irritant and should clear completely with time."

A July 13, 1984 discharge summary from Dr. Susan J. Pruitt noted that appellant was admitted to pulmonary services with a diagnosis of laryngotracheobronchitis, had a bronchoscopy and was discharged in good condition. Appellant complained that she smelled chlorine fumes while at her employment and since that time, experienced a dry cough, hoarseness and burning sensations. Dr. Pruitt noted that no clear diagnostic explanation was found for appellant's symptoms.

In an August 14, 1984 report, Dr. Jeffrey W. Hawkins, a Board-certified internist in pulmonary disease, stated that appellant informed him that she was in good health until May 22, 1984 when she entered a warehouse at the employing establishment and detected a strong odor. Appellant developed a burning sensation in her throat with nonproductive cough and hoarseness. Following this episode, the cough and hoarseness persisted with associated episodes of paroxysmal coughing that seemed to be precipitated by eating, lying down and exertion. Dr. Hawkins reviewed her treatment and diagnosed laryngotracheobronchitis. He opined that appellant's prolonged episode of laryngotracheobronchitis was most likely precipitated by a chemical irritation received while working in the enclosed atmosphere of a storage warehouse.

In an August 22, 1984 report, Norman D. Butler, an industrial hygienist, noted that at the request of the safety director, he conducted an inspection on July 19, 1984 in order to determine if any chemicals were stored or used within the building. Upon entering the building, he detected a light musty odor and noticed the internal temperature of the area seemed to be in the 80 to 90 degree range. Subsequent to the inspection, Mr. Butler was contacted by appellant who stated that on May 22, 1984, she spent two to three hours in the building inventorying materials. Appellant noted that after 30 to 40 minutes she noted a chlorine odor but that a colleague, Kaye Poe, supply clerk/investigator, did not smell it. When questioned, Ms. Poe informed Mr. Butler that she remembered appellant saying that she smelled chlorine but she did not smell chlorine or experience any eye or respiratory irritation. Mr. Butler stated that appellant's allegations that her medical problems were caused by her presence in Building 38 could not be substantiated. In a September 25, 1984 follow-up report, Mr. Butler noted that appellant attributed her asthmatic problems to creosote treated ammunition boxes in the warehouse on May 22, 1984. As a result, atmospheric monitoring within the warehouse was conducted on September 11, 1984. He noted that a determination was made to test for pentachlorophenol (PCP), a chemical used for preservation of ammunition boxes and pallets. The test showed that airborne concentrations of PCP within the warehouse were below detectable limits. During the survey, it was noted that a cylinder believed to be compressed nitrogen during the previous survey was actually compressed inert helium. Mr. Butler stated that the testing demonstrated that none of the stored items were hazardous.

In an October 30, 1984 report, Dr. Hawkins advised that appellant was in good health until May 22, 1984 when she developed the onset of a persistent laryngitis and bronchitis. He noted that she was convinced that the initiation of cough and laryngeal irritation occurred from exposure to a strong chemical odor while working in a storage warehouse. Dr. Hawkins concurred, noting the timing of her illness. He opined that appellant's exposure resulted in an allergic response to a chemical irritation and precipitated her prolonged illness.

No further action was taken on the claim.

In a January 30, 2007 letter to appellant's congressman, Dr. Brothers forwarded his medical reports regarding injury to appellant's lungs sustained while working at the employing establishment in 1984. He stated, "It is my medical opinion that [appellant] did sustain some degree of permanent respiratory damage which took place while she was taking inventory in a warehouse. Appellant has had considerable respiratory problems since that accident that she did not have prior to that."

By letter dated November 29, 2007, appellant's congressman asked that her case be reopened. He noted that appellant explained that she entered a locked warehouse and inventoried the contents for about two hours, began to smell something and then began to cough. Appellant told her congressman there was a cylinder of hydrogen and unmarked cylinders and stacks of wooden pallets that had been treated with creosote. After this one day in the warehouse, she had to change jobs and in 2001 stopped work altogether.

On February 6, 2008 appellant filed a request for reconsideration. She noted that she could not walk from one desk to another without gasping for breath and that she missed many days from work. Appellant requested oxygen to breathe and was placed on large doses of

steroids that caused her to gain weight. She alleged that she was forced to retire on disability in January 2001 due the deterioration in her lungs. Appellant also noted that she had open heart surgery in December 2005.

In an April 23, 2008 letter, the employing establishment controverted the claim, noting that the medical evidence was insufficient to establish the causal relationship of her pulmonary condition to specific factors of her employment.

By decision dated May 27, 2008, the Office found that the medical evidence was not sufficient to support that any exposure to fumes on May 22, 1984 caused or precipitated appellant's pulmonary condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

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 to establish 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 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.⁵

As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁶ The weight of medical evidence is manifested and the medical rationale expressed in support of the physician's opinion.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Ruth Seuell*, 48 ECAB 188 (1996); *Elaine Pendleton*, *supra* note 4.

⁶ *Supra* note 4; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

physician must be based on a complete factual and medical background of the employee, 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 employee.⁸

ANALYSIS

The Board finds that the medical evidence submitted by appellant is not sufficient to establish that she sustained a pulmonary condition causally related to her federal employment. Appellant alleged that on May 22, 1984, while working on inventory at the employing establishment she detected an odor like chlorine and developed a cough and hoarseness. However, there is insufficient rationalized medical opinion evidence to relate appellant's condition to any exposure on that date. The record reveals that she was treated in June 1984 for asthmatic bronchitis. Drs. West and Toole, in reports in June 1984, noted that appellant reported that she breathed an unidentified substance while at work one-month prior. However, the physicians did not address whether this caused appellant's asthmatic bronchitis. In a June 22, 1984 discharge summary, Dr. Brothers noted only that appellant's place of employment was "smoky." The Board notes that appellant never made any allegations that her illness was related to smoke at the employing establishment. On July 12, 1984 Dr. Bradley indicated that he found no serious cause of airway disease. He did not relate appellant's condition to any exposure to chemicals at the employing establishment on May 22, 1984. Dr. Pruitt noted that appellant complained of chlorine fumes while at the employing establishment, but concluded that there was no clear diagnostic explanation for her symptoms. On August 14, 1984 Dr. Hawkins reported that appellant's prolonged episode of laryngotracheobronchitis was "most likely" precipitated by a chemical irritation received while working in an enclosed atmosphere of a storage warehouse; however, he did not provide a rationalized explanation supporting this conclusion. Moreover, his opinion was stated in speculative language as he stated that appellant's condition was "most likely" precipitated by exposure. His opinion is of diminished weight.⁹

In an October 30, 1984 report, Dr. Hawkins noted that appellant's condition was caused by the exposure during her federal employment based on the fact that she was in good health until May 22, 1984 when she developed the onset of persistent laryngitis and bronchitis. The Board notes that an award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹⁰ Dr Hawkins did not address the chemical substance or agent believed to be an irritation in this case. He did not provide a basis for finding causal relation other than noting a temporal relation. Dr. Brother's opinion that appellant sustained permanent respiratory damage while taking inventory in the warehouse because she experienced respiratory problems after May 1984 is not persuasive. The Board notes that his opinion was rendered over

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *See Edna M. Davis*, 42 ECAB 728 (1991); *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

¹⁰ *Walter D. Morehead*, 31 ECAB 188 (1986).

20 years after the alleged exposure. Appellant has not submitted persuasive rationalized medical opinion evidence relating her respiratory condition to the alleged workplace exposure on May 22, 1984. She has failed to meet her burden of proof to establish an occupational disease claim.¹¹

CONCLUSION

The Board finds that appellant has not established that she sustained a respiratory condition on May 22, 1984, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 27, 2008 is affirmed.

Issued: August 3, 2009
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

¹¹ *Supra* note 4.