

**United States Department of Labor
Employees' Compensation Appeals Board**

P.T., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Austin, TX, Employer**

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**Docket No. 08-2532
Issued: March 3, 2009**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 29, 2008 appellant filed a timely appeal from a June 26, 2008 decision of the Office of Workers' Compensation Programs denying her claim for an injury on April 9, 2006. 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 an injury on April 9, 2006 in the performance of duty as alleged.

FACTUAL HISTORY

On May 8, 2006 appellant, then a 51-year-old manual letter clerk, filed a traumatic injury claim alleging that on April 9, 2006 she lost consciousness at work because of some unidentified substance that she inhaled. She subsequently indicated that she inhaled chlorine, floor wax or some other cleaning substance.

The employing establishment controverted appellant's claim, stating that she had not been exposed to any chemicals during her work shift on April 9, 2006. The record reflects that management contacted Cheryl Winget, manager of distributions operations, Robert Conley, maintenance manager and other individuals involved in building maintenance. They determined that there was no use of chlorine, wax or other cleaning products or noxious substances in the workplace on April 9, 2006.

In an April 9, 2006 report, an emergency medical technician stated that appellant smelled chlorine at work and then experienced a seizure. In an emergency room report dated April 9, 2006, Dr. James B. Balarbar provided a history that someone was mopping the floor at work that day and appellant was exposed to the odor of chlorine. Appellant had a preexisting condition of partial seizure disorder which she stated was triggered by "strong smells." Dr. Balarbar provided findings on physical examination and diagnosed an acute allergic reaction with anaphylaxis.

On April 13, 2006 Dr. Richard D. Tyer, a neurologist, noted that appellant had a history of complex partial seizures which likely began when she was exposed to a toxic substance at age 33. He stated that her current work environment appeared to trigger recurrent seizures.

In a May 9, 2006 duty status report, a neurologist noted that appellant had an abnormal electroencephalogram with clinical findings of complex partial seizures. He diagnosed partial epilepsy with impairment of consciousness. The history provided was that on April 9, 2006 appellant experienced a seizure after inhaling fumes or odors from an unidentified substance.

By decision dated June 29, 2006, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a medical condition causally related to the April 9, 2006 work incident.

Appellant requested an oral hearing that was held on April 3, 2007. She provided a written statement addressing her history of allergic reactions. Appellant asserted that she was exposed to the smell of chlorine on April 9, 2006 and became ill as a result.

In reports dated August 10 and 11, 2006, Dr. Dan R. Baker, an attending family practitioner, stated that appellant had a long history of reactions to environmental stimuli, including smells, fragrances and fumes. On April 9, 2006 appellant was exposed to a chlorine odor at work which caused an allergic reaction resulting in nasal irritation, a headache, irritated eyes and loss of consciousness. Dr. Baker diagnosed allergic rhinitis, allergic reaction and complex partial seizures.

In reports dated August 30 and 31, 2006, Dr. Balarbar stated that he examined appellant in the emergency room on April 9, 2006 after she had an allergic reaction. Appellant developed difficulty breathing due to exposure to chlorine fumes while someone was mopping the floor at work.

By decision dated May 31, 2007, an Office hearing representative affirmed the June 29, 2006 denial of appellant's claim, as modified to reflect that she failed to establish that she was exposed to any chemicals at work on April 9, 2006.

Appellant requested reconsideration. By decision dated June 26, 2008, the Office affirmed the May 31, 2007 decision.¹

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,³ including that she is an "employee" within the meaning of the Act⁴ and that she filed her claim within the applicable time limitation.⁵ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

ANALYSIS

Appellant alleged that on April 9, 2006 she lost consciousness at work when she was overcome by the smell of chlorine of some other substance and had to be treated at a local emergency room.

The employing establishment advised that appellant had not been exposed to any chemicals during her work shift on April 9, 2006. The record reflects that management contacted individuals involved in building cleaning and maintenance who determined that there

¹ Subsequent to the June 26, 2008 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

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, 57 (1968).

⁴ *See M.H.*, 59 ECAB __ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB __ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB __ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁸ *T.H.*, 59 ECAB __ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

was no use of chlorine, wax or other cleaning products or noxious substances in the workplace on April 9, 2006.

The medical reports of record contain a history provided by appellant that she was exposed to chlorine, floor wax or some other substance on April 9, 2006 while at work that caused her to have a seizure and be transported to the emergency room. However, the evidence does not establish the first component of fact of injury, that she actually experienced the employment incident at the time, place and in the manner alleged. There is no probative evidence that appellant was exposed to chlorine or any other chemical at work on April 9, 2006. Therefore, it is unnecessary to address the second component, the medical evidence, because it is based on a history that is not established as factual.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on April 9, 2006 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 26, 2008 is affirmed.

Issued: March 3, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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