

In an undated statement, appellant asserted that she was diagnosed with asthma since working at the bulk mail center. She indicated that her condition had worsened since construction began at the facility. Appellant noted that, upon entering the building, she would have watery eyes, difficulty breathing and coughing. She also noted that she was unable to return to work without developing increased symptoms after the building had a fire.

In a May 30, 2007 report, Dr. T.N. Kakish, a Board-certified internist, noted that appellant had been diagnosed with asthma since January 2003 and that her symptoms had become significantly worse since summer 2006, at which time she became less responsive to her medication. He indicated that her symptoms included shortness of breath, wheezing, coughing and a decreased response to an inhaler. Dr. Kakish advised that appellant related her increasing symptoms to construction at work. He advised that she should be placed in a construction-free work environment to keep her symptoms under control.

On June 26, 2007 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit additional evidence. In particular, it requested a factual statement outlining the harmful work factors alleged to have caused or aggravated appellant's condition. The Office also requested a doctor's report with an opinion on how exposure to the alleged employment factors contributed to the diagnosed condition. In a July 5, 2007 statement, appellant indicated that she had been exposed to fumes, dust and dirt. She further indicated that she had been able to keep her condition under control without increased medication since being away from work.

By decision dated August 20, 2007, the Office denied appellant's claim for compensation finding that she did not establish that the claimed medical condition was related to the established work events.

Appellant requested reconsideration on January 31 and April 2, 2008. She also submitted an October 22, 2007 report from Dr. Roderick McPhee, a Board-certified allergist and immunologist, who noted that appellant's symptoms consisted of shortness of breath, coughing and a "throat closing" sensation. Dr. McPhee further noted that her symptoms had worsened while working at the bulk mail center, but had improved since leaving work in March 2007. He also noted that appellant's condition had improved since she started taking medication. The results of his spirometry were "entirely normal." Dr. McPhee advised that skin testing showed a sensitivity to dust mites. He suspected that acid reflux played a role in appellant's condition. Also on October 22, 2007, Dr. Lawrence Collins Sweet, a Board-certified allergist and immunologist, noted appellant's complaint of watery eyes, coughing and a "throat closing" feeling. He further noted that she had stopped work in March 2007 and had felt better since then. Dr. Sweet also noted the possibility that appellant's asthma could be caused by allergies and noted results of allergy testing. In a November 14, 2007 letter, the employing establishment notified appellant that her fitness-for-duty examination performed by Dr. Nisha Parulekar, an internist, determined that she was not fit for duty. Dr. Parulekar's report was not submitted to the record.

By decision dated June 10, 2008, the Office denied modification of its August 20, 2007 decision. It found that the evidence of record was devoid of a well-reasoned medical opinion explaining how the claimed asthma condition and subsequent disability for work since

March 2007 was causally related to appellant's factors of employment, namely exposure to construction and fire debris.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹

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 establishing 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 diagnosed condition is causally related to the employment factors identified by the claimant.²

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 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 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.³

ANALYSIS

The record reflects that appellant has been diagnosed with asthma. The record also reflects that construction was ongoing at the employing establishment and that there had also been a previous fire at the employing establishment. However, appellant has not submitted sufficient medical evidence to establish that her diagnosed respiratory condition is causally related to specific employment factors.

Dr. Kakish noted that appellant had been diagnosed with asthma since January 2003. He indicated that her symptoms consisted of shortness of breath, wheezing, coughing and a decreased response to her inhaler. Dr. Kakish also indicated that appellant's symptoms had

¹ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

significantly worsened since summer 2006 and that appellant attributed her increasing symptoms to construction at work. The mere fact that a condition manifests itself during a period of employment, however, does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁴ Furthermore, Dr. Kakish did not address appellant's employment activities or discuss how such activities caused or contributed to her asthma.⁵ While he noted that she attributed her increasing symptoms to her employment, Dr. Kakish did not provide his own specific opinion supporting that particular factors of appellant's employment caused or aggravated her diagnosed asthma.

In an October 22, 2007 report, Dr. McPhee indicated that symptoms of appellant's asthma included shortness of breath, coughing and a "throat closing" sensation. He also noted that her symptoms worsened while working at the bulk mail center. To the extent that Dr. McPhee's opinion supports causal relationship, it is not sufficient to meet appellant's burden of proof. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, with supporting rationale, to establish causal relation.⁶ As Dr. McPhee did not explain how exposure to construction and fire debris caused or aggravated the symptoms of her asthma, his opinion lacks medical rationale. Dr. McPhee also did not explain how appellant's sensitivity to dust mites and acid reflux could have been caused or aggravated by factors of appellant's employment.

Dr. Sweet's report noted appellant's complaint of watery eyes, coughing and "throat closing" sensation. He indicated the possibility that allergies caused appellant's asthma. However, Dr. Sweet referenced only a possibility that allergies caused appellant's condition but he did not identify a particular type of allergy nor did he relate any such allergy to any particular employment factors or exposures.⁷ Thus, this report is insufficient to establish appellant's claim.

Additionally, the employing establishment's letter noting Dr. Parulekar's determination that appellant is unfit for duty does not constitute medical evidence as the actual report from Dr. Parulekar is not of record. The question of whether there is a causal relationship is medical in nature, and generally, can be established only by medical evidence.⁸

⁴ *Alberta S. Williamson*, 47 ECAB 569 (1996).

⁵ *See K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007) (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).

⁶ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

⁷ *See Kathy Marshall*, 45 ECAB 827 (1994) (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).

⁸ *James Mack*, 43 ECAB 321 (1991).

Consequently, the medical evidence is not sufficient to establish that appellant's asthma is causally related to exposure to construction and fire debris.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 10, 2008 is affirmed.

Issued: May 19, 2009
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