

General Accountability Office (GAO) building located at 441 G Street, NW in Washington, DC.¹ She stated that she had difficulty breathing, weakness, fatigue, dizziness, nausea, airborne illness and pain in her lung and ribs. Appellant indicated that she returned to work on September 20, 2004 after an extended absence and asserted that she sustained a “medical relapse” on October 13, 2004.²

The Office asked appellant to submit additional factual and medical evidence in support of her claim and she submitted e-mails to and from agency officials discussing the GAO building and her medical condition. Appellant asserted that several coworkers had reported experiencing health problems which they believed were related to the GAO building. In a narrative statement, she related her claimed medical condition to toxic substances from printers, printer cartridges, molds, formaldehyde, asbestos, carpet mastics, cleaning supplies, heavy metals and other airborne substances, lack of fresh air intake, and inadequate design of the heating, ventilating and cooling (HVAC) system to account for the number of personnel on her floor. Appellant asserted that she and coworkers frequently noticed noxious smells in the workplace. She claimed that a printing plant vented directly into her building’s main HVAC system.³ Her problems began about one year after she started working in the GAO building and her conditions grew progressively worse.⁴

On February 23 and March 1, 2001 the Science Applications International Corporation (SAIC) conducted an Indoor Environmental Quality study of the GAO building.⁵ The testers measured total volatile organic compounds (TVOC), carbon dioxide concentration, temperature, relative humidity and airborne dust concentrations. The TVOC concentrations were well within the baseline ranges established in the past and were among the lowest values ever recorded in the building.⁶ The carbon dioxide levels indicated that outdoor air supply was adequate and

¹ Appellant worked at the GAO building from April 2001 to her retirement in 2006 except for a period when she was detailed to another work location. She indicated that since starting work in the GAO building she had worked in several cubicles on the third floor of the building.

² Appellant was moved to different locations within the GAO building. In November 2006 she retired from the employing establishment on disability retirement.

³ Appellant also claimed stress from a hostile working environment and retaliation. She later generally indicated that a supervisor threatened her, that she was asked to work many hours and that the situation in her work unit was extremely hostile.

⁴ Appellant described several medical emergencies at work, including those occurring on March 11, October 13 and December 9, 2004, which she attributed to her work environment. During these episodes, appellant reported experiencing symptoms such as difficulty in breathing, nausea, vomiting, bloody nose, trembling in her extremities, extreme pain and a burning sensation in her right ribcage, burning lips, confusion and neurocognitive dysfunction, extreme burning sensation in her nose and throat, burning smell, chemical taste in her mouth and a sensation that her right lung was going to collapse.

⁵ The testers obtained samples from four random areas on each floor of the building, including the third floor where appellant worked. Each sample area measured about 25 feet by 25 feet. The Board notes that each of the environmental surveys in the record contains extensive discussion of the standards applied, including those formulated by the National Institute for Occupational Safety and Health and the American Conference of Governmental Industrial Hygienists.

⁶ The baseline values were obtained between 1996 and 1998 and comprehensive environmental studies had been conducted on a semi-annual basis since 1998.

temperature readings were within the recommended comfort guidelines. Relative humidity readings were mostly within the recommended guidelines for the time of year and airborne dust concentrations were very low. The print shop on the first floor of the building stored flammable chemicals which caused higher TVOC concentrations than those found in other parts of the building, but an exhaust system vented to the outside and chemical fumes from the shop did not appear to affect the air quality in other parts of the building. A repeat study performed on August 22 and 23, 2001 showed TVOC concentrations that were well within the baseline ranges established in the past. Temperature and relative humidity readings were well within recommended comfort guidelines and carbon dioxide levels revealed that the outdoor air supply was adequate. Airborne dust sampling could not be performed due to equipment failure. On August 20, 2002 SAIC performed testing of appellant's workplace which yielded results which were similar to those found during the testing performed in early 2001.

On February 4, 2003 the Nuchemco Company performed an Indoor Environmental Evaluation which studied the interior spaces on the third floor of the GAO building. The employing establishment requested the study after there had been several reports of objectionable "moldy" or "musty" odors on an intermittent basis.⁷ Samples were collected of airborne fungal spores and airborne organic chemical vapors to evaluate concentrations of formaldehyde and total hydrocarbons. Direct measurements were made of carbon monoxide, carbon dioxide, temperature, relative humidity, and airborne respirable dusts. The testing results were found to be representative of normal conditions and "did not differ from typical findings for any office building." Measurements via direct reading meters showed that the levels of carbon dioxide, carbon monoxide, airborne dusts and temperature in the selected sample locations were well below any levels that would be of health concern or that would be suggestive of any ventilation problems. Visual inspection revealed that there were no water stains on ceiling tiles, walls or carpets. The report indicated that on the testing date an odor lasting about five minutes had been reported in the sampling area. However, no abnormal findings were observed in the area where the odor was reported and no potential source of the odor was identified which could be correlated with the location and timing of the odor report.⁸ Prior inspections of the ventilation system components were reported to have also found negative results. It was further noted:

"In summary, the findings of the survey were that the office suite as sampled on the day of investigation was operating in a very satisfactory mode and met the current health and comfort based guidelines. The source of the reported odors remains unidentified. The indoor environmental measurements made during this survey show that even on a day when odors were present, no abnormal findings

⁷ The study covered a significant portion of the third floor as this was the area where objectionable odors were reported. The report noted that about three years prior to the study, the old utility systems on the GAO building were removed and new systems were installed to include an HVAC system and a modernized plumbing system. The HVAC system was structured in a compartmental manner such that any odors circulated by the system would only be circulated in a discrete localized area. Prior inspections of the HVAC system performed by the building management department of the GAO building showed the system to be in good operating condition with no signs of mold or dirt problems.

⁸ It was suspected that odors might travel from the loading dock up through the freight elevator but it was determined that this was not a source of odor transmission.

were observed in the affected zone for the chemical and biological parameters most frequently used to assess indoor air quality.”

An October 15, 2003 Indoor Environmental Study of the GAO building, performed by SAIC, measured TVOC concentrations, carbon dioxide concentrations, airborne dust concentrations, temperature and relative humidity.⁹ TVOC concentrations were well within the baseline ranges established in the past. Airborne dust concentrations were within normal ranges and all recorded data on carbon dioxide, temperature and relative humidity were lost due to equipment malfunction. An addendum to this study indicated that the equipment was repaired and the air was appropriately monitored on October 28, 2003. The addendum showed that temperature and relative humidity levels were within the normal comfort ranges and that carbon dioxide levels were normal for occupied indoor spaces. It was noted that there was an adequate supply of outdoor air for the number of people present.

In a May 4, 2004 report, Dr. Deborah Tussing, an attending Board-certified anesthesiologist, stated that appellant had a “complex history since childhood” of head trauma, chronic pain, chronic fatigue, irritable bowel syndrome, fainting episodes, hypothyroidism, jaw problems, tachycardia syndrome, chronic myofascial pain, chronic sinusitis, low cholesterol, anemia, hematuria, sleep disturbance, digestive problems, and multiple allergies to foods, drugs and chemicals. She noted that appellant “describes potential toxic environmental exposure from childhood (possibly) and up to the present, including exposure at work sites and from her experience of complete amalgam removal in 1997 and stress.” Dr. Tussing diagnosed numerous conditions including hypotension and tachycardia syndrome with presyncopal events aggravated by stress, moderate obstructive sleep apnea, history of chronic fatigue syndrome and Epstein-Barr virus, fibromyalgia, chronic myofascial pain syndrome, irritable bowel syndrome, post-traumatic stress disorder, history of multiple closed head traumas, chronic migraine headaches, allergies, chronic hematuria of unknown etiology, mitral regurgitation, chronic sinusitis with headache, gastrointestinal reflux and a history of mild anemia of questionable etiology. He indicated that there was possible toxic mercury exposure and possible exposure to other toxins “related to work and living environment.”

Appellant submitted several laboratory reports along with additional reports from Dr. Tussing discussing her general medical condition. In May and July 2004 Dr. Alan Vinitzky, an attending Board-certified internist specializing in environmental medicine, tested appellant for the presence of metals and other substances. The tests showed levels of various substances, including cadmium, nickel, barium, tin and tungsten, that were above the identified reference ranges. In a June 4, 2004 letter, Dr. William Behrens, an attending Board-certified family practitioner, diagnosed several conditions including chronic fatigue, fibromyalgia, anemia and abdominal pain.

In a January 7, 2005 decision, the Office denied appellant’s claim on the grounds that she did not submit sufficient factual and medical evidence to establish that she sustained an injury due to exposure to environmental factors in the workplace. It found that all the environmental

⁹ The testers obtained samples from four random areas on each floor of the building, including the third floor.

studies were basically within normal limits and that none of the medical evidence showed that appellant sustained a medical condition due to work-related environmental conditions.¹⁰

Appellant requested a hearing before an Office hearing representative. Prior to the hearing, she submitted numerous documents including excerpts from medical and scientific journals, governmental articles and other studies of a generic and informational nature. Appellant also submitted numerous medical reports dated beginning in 2002 discussing her medical problems. The reports contained such diagnoses as gastroesophageal reflux with chronic laryngitis, anxiety, depression, mild mitral valve regurgitation, migraine headaches, chronic fatigue, irritable bowel syndrome and sleep apnea.

In an April 23, 2004 report, Dr. Behrens indicated that he was holding appellant off work beginning March 11, 2004 for “up to 90 days.” He stated that she experienced chronic fatigue, chronic pain and other cognitive dysfunctions due to several serious disorders that were currently under evaluation. In an April 20, 2004 report, Dr. Michael R. Mardiney, Jr., an attending Board-certified allergist, indicated that appellant gave a history of itching, redness and darkness of the eyes, swelling of the eyelid, nasal itching, nasal congestion, sneezing, nosebleed, bad breath, frequent sore throats, sore tongue, change in appearance of the tongue, difficulty swallowing and chewing, itching and ringing of the ears, fullness of the ears, earaches, headaches, sinus problems, shortness of breath, wheezing, facial pain, coughing, itching of the skin, eczema and abdominal problems. He performed allergy testing that showed reaction to such substances as dust mites, cat hair, feathers, ragweed and house dust. Dr. Mardiney’s impression was sinusitis, allergic rhinitis, chronic fatigue syndrome and fibromyalgia.

A March 31, 2005 Environmental Quality Investigation, performed by BEM Systems, Inc., was added to the record. The investigation included testing for carbon dioxide, carbon monoxide, respirable dusts, temperature, relative humidity, total hydrocarbons, formaldehyde and airborne viable mold.¹¹ The report stated that the temperature was within recommended guidelines. The relative humidity was slightly below the recommended minimum but it was found that this was likely a temporary condition due to the low outdoor humidity on the date of testing. The quality of outside air supplied to building occupants on the third floor was found to be above the recommended minimum ventilation guidelines for office buildings. Air circulation inside offices and cubicles was found to be adequate without creating discomfort from draft. Local exhausts in bathrooms were adequate to maintain negative pressure and prevent the spread of odors. Odors from heating meals with the microwave ovens, cologne, perfume and body products were noticed, but these odors dissipated very quickly and therefore were not believed to

¹⁰ The Board notes that appellant’s October 18, 2004 claim is essentially a claim for physical conditions caused by the environment in her workplace. Appellant only made brief, vague references to being exposed to a hostile work environment and she has not clearly filed a claim for a work-related emotional condition.

¹¹ Testing was carried out in numerous locations on the third floor of the GAO building where appellant worked. It appears that the primary purpose of the study was to evaluate appellant’s specific complaints, including claims of noxious odors.

be responsible for the odors that resulted in widespread complaints. Two chemicals associated with printing operations, acetonitrile and tetrachloroethene, were identified at trace levels.¹²

The report further indicated that the HVAC system was found to be well maintained and samples collected from inside occupied areas did not have significant amounts of unidentified organic and inorganic matter or pollen. The air-handling units were clean with low levels of condensation, the supply and return air ducts were reasonably clean and there was an absence of microbial amplification inside the air conveyance system.¹³ There was a moderate level of bacterial contamination in the cooling tower water and reservoir basin surfaces of the HVAC system, but this cooling water did not come into contact with the supply air stream so bacteria contamination in this location would not normally result in exposure to building occupants. Carbon dioxide levels were within recommended levels and carbon monoxide, ozone, nitrous oxides and formaldehyde were not detected in the building. Dust levels were well below levels of concern and although fiberglass was found there were no health complaints consistent with the etiology of exposure to fiberglass. Mold spores, mycelia fragments, pollen, skin cells, and fibers were examined on air samples collected in spore traps but there was no problem in the areas identified. There was an absence of common problems related to moisture damage, mold bacteria, bioaerosols, suspended particulates or industrial gases. There were some levels of dog and cat allergens slightly above the level that can trigger sensitization and bronchial hyperactivity but they were below the level where acute reactions were anticipated.

In a December 13, 2005 telephone hearing, appellant testified that she never had health issues related to the environment until she began working at the GAO building in April 2001. She indicated that her condition worsened in the summer of 2003 and discussed her medical treatment for various problems. Appellant related her increased problems to smells she noticed in the workplace. She submitted a statement in which a coworker discussed smells noticed in the workplace in November 2005,¹⁴ fact sheets on indoor pollutants with her comments written on the sides, documents regarding her requests for accommodation in the workplace, and additional statements recounting the development of her claim.

Appellant also submitted additional medical evidence after the hearing. A magnetic resonance imaging (MRI) scan test of her brain and neck was performed in August 2004 for a “history of toxic metal exposures.” The test showed some C6-7 disc protrusion without cord compression but the imaging of the brain was normal. In a January 10, 2005 report, Dr. Behrens

¹² The report stated that acetonitrile was typically an off-gas from quick-drying inks and tetrachloroethene was often released from products used to de-ink printing equipment. At that point, there no longer was a print shop on the first floor of the building. A tester noticed a faint chemical solvent odor near office 3H72 on the third floor that lasted for about one or two minutes. Testing in this area revealed slightly elevated readings for the brief period the odor lasted.

¹³ Two outside air intake chambers had unidentified organic and inorganic matter and a significant amount of pollen, but data from the inside work spaces showed that these materials were not disseminated through the air conveyance equipment.

¹⁴ The employing establishment indicated that the November 2005 incident was due to an electrical short in a light fixture and there was no “lasting impact to the work area.”

stated appellant “continues to have respiratory and other symptoms -- possibly work related -- and would benefit from another work environment, perhaps on another floor.”

Appellant submitted an October 22, 2005 report of Dr. Ritchie C. Shoemaker, an attending Board-certified family practitioner,¹⁵ who indicated that when he first examined appellant on February 1, 2005 she provided a history of illness symptoms beginning after her exposure in April 2001 to areas of water intrusion and evidence of amplified growth of microbes, including fungi, in her workplace. She reported no significant ongoing illnesses until she developed shortness of breath in April 2002. Dr. Shoemaker diagnosed “sick building syndrome” or “mold illness” which he described as a chronic biotoxin-associated illness caused by exposure to interior environments of water-damaged buildings. The causative agents in such illnesses include not only fungi but also actinomycetes and other bacteria. Dr. Shoemaker stated, “It is my opinion, to a reasonable degree of medical certainty that the multiple symptoms, profound cognitive impairments and multiple physiologic and neurotoxicological abnormalities present in [appellant] were solely caused by exposure to toxigenic organisms resident in her water-damaged workplace.” He indicated that “no other environment” had made appellant ill and that she had no known “confounding exposure to other biotoxins.” Dr. Shoemaker advised her to avoid water-damaged buildings as she was at risk for recurrence of her illnesses. He provided an extended generalized discussion regarding his methods of evaluating biotoxin-related illnesses and his efforts to make such methods better understood in the larger medical community.

Dr. Shoemaker indicated that at the time of appellant’s first office visit in February 2005 she exhibited ongoing symptoms, including fatigue, weakness, aching, muscle cramps, sharp stabbing pains in her ribs, headaches, sensitivity to bright lights, tearing and blurred vision, shortness of breath, sinus congestion, cough, abdominal pain, occasional secretory diarrhea, joint pain without true arthritis, morning stiffness lasting more than two hours, impairment of executive cognitive functioning with difficulty in handling simple math abstractly, difficulty with recent memory, impaired concentration, confusion, decreased ability in word finding, decreased assimilation of new knowledge, disorientation, mood swings, appetite swings, impairment of ability to control body temperature, numbness in her face and all fingers, vertigo, unusual taste sensations and excessive thirst. He noted that he observed that appellant’s symptoms significantly improved when she was off work for a period in February 2005 and took the medication cholestyramine, but that the symptoms abruptly returned within two hours of returning to work on February 28, 2005. Dr. Shoemaker posited that appellant’s symptoms combined with various biomarkers (including elevated matrix metalloproteinase-9 and a genotype named 11-3-52B) pointed towards the conclusion that she had a biotoxin-related illness. He noted that it was theoretically possible that some other exposure could have caused her problems, but posited that “each of these modalities was ruled out by presence of items from history, symptoms, and laboratory studies.”¹⁶ Dr. Shoemaker indicated that appellant’s

¹⁵ Dr. Shoemaker does not have any other certifications from the American Board of Medical Specialties. The record contains the results of body chemistry testing that Dr. Shoemaker obtained in February and March 2005. The testing measured the levels of numerous proteins and hormones.

¹⁶ Dr. Shoemaker ruled out various potential “confounding” conditions, including ear problems, back pain, allergy, headache, gynecologic problems, Lyme disease, depression, pregnancy or other preexisting biotoxin illness.

symptoms could simply have been due to the usual progression of an allergy, but stated that the “abundance of incredibly abnormal physiologic measurements found in [appellant] to date, especially in innate immune responses, and absence of elevated IgE [Immunoglobulin E], precludes hypothetical argument.”

In a November 21, 2005 letter, Dr. Neal L. Presant, a Board-certified family practitioner and occupational medicine physician,¹⁷ stated that he had reviewed the evaluation of Dr. Shoemaker and found that he provided an in-depth analysis of the causality of appellant’s medical condition. Dr. Presant noted, “Much of what he states is controversial, and as he indicates, is highly debated in the medical community. However, I have no reason to doubt [appellant’s] report of her symptoms or their temporal relationship to her being in the GAO building.” He indicated that, therefore, he would recommend that appellant work in a different building, preferably one without the type of water damage that both appellant and Dr. Shoemaker identified as a cause of her medical conditions. Dr. Presant stated that from the point of view of the Family and Medical Leave Act (FMLA), appellant was receiving regular medical care from a licensed medical professional for an illness that reportedly rendered her too sick to work. Dr. Presant noted, “It would thus qualify as a ‘serious’ medical condition under the FMLA.”

In a March 3, 2006 decision, the Office hearing representative affirmed the Office’s January 7, 2005 decision denying appellant’s claim for work-related environmental conditions. In a June 28, 2007 order, the Board set aside the March 6, 2006 decision and remanded the case to the Office so that it could add to the record documents concerning Dr. Shoemaker’s evaluation. On remand the Office added to the record reports (dated between February and October 2005) which pertained to Dr. Shoemaker’s evaluation. In a May 29, 2008 decision, the Office hearing representative affirmed the Office’s January 7, 2005 decision. The Office hearing representative found that the environmental studies showed that the presence of potential allergens and toxins in the workplace was extremely limited and that the medical evidence did not show that appellant sustained a medical condition due to the accepted work-related environmental conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹⁸ has the burden of establishing the essential elements of 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 specific condition for which compensation is claimed are causally related to the employment injury.¹⁹ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²⁰

¹⁷ Dr. Presant served as an occupational medicine consultant for the Department of Health and Human Services.

¹⁸ 5 U.S.C. §§ 8101-8193.

¹⁹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

²⁰ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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 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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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. 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.²¹

The Board has held that the fact that a condition manifests itself or worsens during a period of employment²² or that work activities produce symptoms revelatory of an underlying condition²³ does not raise an inference of causal relationship between a claimed condition and employment factors. The Board also has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.²⁴

ANALYSIS

Appellant claimed that she sustained numerous medical conditions since April 2001 due to environmental factors at work. She asserted that these conditions occurred because her work site manifested "sick building syndrome" and she was exposed to a variety of allergens and

²¹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

²² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

²³ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

²⁴ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

toxins.²⁵ The Board finds that appellant did not submit sufficient factual and medical evidence to establish the occurrence of such employment-related conditions.²⁶

The record contains several comprehensive investigative environmental studies, including those conducted in February, March and August 2001, August 2002, February and October 2003 and March 2005. In connection with these studies, tests were carried out to detect such potentially harmful substances as TVOC, fungal spores, mold, formaldehyde, carbon monoxide, carbon dioxide and airborne respirable dusts. Temperature and relative humidity testing was performed and appellant's work area was examined for water damage. The reports found that no allergens were identified at abnormal levels that were likely to cause notable harm to employees. The HVAC system that serviced appellant's work area was consistently found to be reasonably clean and it was determined that no notable allergens were spread by this system. Water damage was not observed and no unusual amounts of mold or dust were found anywhere in the workplace.²⁷

In March 2005 it was discovered that two chemicals used in printing operations, acetonitrile and tetrachloroethene, were identified as present but these were found only at trace levels. In March 2005 it was also noted that there was a moderate level of bacterial contamination in the cooling tower water and reservoir basin surfaces of the HVAC system. However, it was stated that this cooling water did not come into contact with the supply air stream so bacteria contamination in this location would not normally result in exposure to building occupants. Mold spores, mycelia fragments, pollen, skin cells, and fibers were examined on air samples collected in spore traps but there was no problem in the areas identified. There was an absence of common problems related to moisture damage, mold bacteria, bio-aerosols, suspended particulates or industrial gases.

On appeal appellant argued that the investigative environmental studies conducted on behalf of the employing establishment were not properly carried out and that the Office did not properly evaluate them. She alleged that the testers did not evaluate an adequate portion of the third floor of the GAO building where she worked, that they did not adequately examine the HVAC system and its water towers, and that they did not apply the proper standards in evaluating their findings. Appellant did not explain these allegations in detail, however, or provide adequate support for her position. The Board notes that the various testers evaluated significant portions of the third floor of the GAO building on a periodic basis. They typically took samples from four areas on the third floor which each measured at least 25 by 25 feet and

²⁵ Appellant claimed numerous employment-related conditions, including those related to her respiratory, cardiac and digestive systems. Since April 2001 she worked in various cubicles on the third floor of the GAO building in Washington, DC.

²⁶ At the October 13, 2009 oral hearing before the Board, appellant alleged that various documents were missing from the record (which she had reviewed on a compact disc), including documents relating to her disability retirement and a whistleblower complaint she filed against another federal agency. The Board has carefully reviewed the record and finds that it contains all the relevant documents, including the factual and medical evidence considered by the Office in its decisions denying appellant's claim.

²⁷ There were some levels of dog and cat allergens slightly above the level that could trigger sensitization and bronchial hyperactivity but they were below the level where acute reactions were anticipated.

comprehensively evaluated various portions of the HVAC system including the water towers. On a number of occasions, the testers specifically chose to evaluate areas where appellant and her coworkers had reported the existence of noxious odors. The environmental reports discussed the testing findings in the context of standards advanced by various organizations, including the National Institute for Occupational Safety and Health and the American Conference of Governmental Industrial Hygienists, and appellant has not adequately explained her assertion that improper standards were applied. Appellant made note of the fact that testing equipment failed during the environmental studies. However, the testers typically repaired the equipment and carried out appropriate retesting at later dates.²⁸

On appeal appellant also alleged that the environmental studies did not acknowledge that a printing operation in the GAO building (which apparently operated up until early 2005) vented chemicals directly into the HVAC system and then circulated air throughout the entire building. The Board notes that the environmental testers considered this circumstance. They explained that the print shop on the first floor stored flammable chemicals which caused higher TVOC concentrations than those found in other parts of the building, but an exhaust system vented to the outside and chemical fumes from the shop did not appear to affect the air quality in other parts of the building. Appellant claimed that the March 2005 study uncovered three named chemicals (other than acetonitrile and tetrachloroethene) and two unknown chemicals, but she did not discuss these particular chemicals or explain why she felt that she sustained a medical condition as a result of any of them. During the March 2005 testing, a faint chemical solvent odor was noticed near office 3H72 on the third floor that lasted for about one or two minutes. Testing in this area revealed slightly elevated readings for the brief period the odor lasted but there was no indication that this represented a long-standing chemical exposure. In March 2005 two outside air intake chambers were found to have unidentified organic and inorganic matter and a significant amount of pollen, but it was noted that data from the inside work spaces showed that these materials were not disseminated through the air conveyance equipment.²⁹

Appellant submitted medical reports concerning her multiple medical conditions, but none of these reports contains a well-rationalized opinion relating any medical condition to the above-described employment factors.

In a May 4, 2004 report, Dr. Tussing, an attending Board-certified anesthesiologist, diagnosed numerous conditions affecting several body systems. She indicated that there was possible toxic mercury exposure and possible exposure to other toxins “related to work and

²⁸ For example, all data recorded on October 15, 2003 for carbon dioxide, temperature and relative humidity were lost due to equipment malfunction. The equipment was repaired and retesting was performed on October 28, 2003 which showed that temperature and relative humidity levels were within the normal comfort range and that carbon dioxide levels were normal for occupied indoor spaces.

²⁹ The Board notes that acetonitrile and tetrachloroethene were only found in trace levels and appellant has not shown, for the reasons discussed below, that the medical evidence establishes that she sustained an identifiable medical condition due to these chemicals or any other substances found in March 2005. On appeal appellant also asserted that she sustained an emotional condition, including post-traumatic stress disorder, due to harassment and retaliation by management at work. However, there is no final decision of the Office within the Board’s jurisdiction regarding a claim for a work-related emotional condition and the matter is not currently before the Board. *See* 20 C.F.R. § 501.2(c).

living environment.” However, Dr. Tussing did not provide a diagnosis of any environmental medical condition sustained by appellant, identify allergen or toxin exposures established by the record or provide a clear opinion on causal relationship. There is no indication that appellant was exposed to mercury in the workplace. Therefore, Dr. Tussing’s opinion does not show that appellant sustained a condition due to an established employment factor. In an April 20, 2004 report, Dr. Mardiney, an attending Board-certified allergist, performed allergy testing that showed reaction to dust mites, cat hair, feathers, ragweed and house dust. Dr. Mardiney’s impression was sinusitis, allergic rhinitis, chronic fatigue syndrome and fibromyalgia. He did not provide any indication that these conditions were related to allergens at work. As noted above, no abnormal amounts of mold, dust or similar allergens were found anywhere in the workplace.³⁰

On April 23, 2004 Dr. Behrens, an attending Board-certified family practitioner, indicated that he was holding appellant off work beginning March 11, 2004 for up to 90 days. He stated that she experienced chronic fatigue, chronic pain and other cognitive dysfunctions due to several serious disorders that were currently under evaluation. On April 10, 2005 Dr. Behrens indicated that appellant “continues to have respiratory and other symptoms -- possibly work related -- and would benefit from another work environment, perhaps on another floor.” He did not, however, provide a clear opinion that she sustained any condition due to work-related allergens or toxins established by the record. The Board has held that an opinion which is speculative in nature is of limited probative value on the issue of causal relationship.³¹ In May and July 2004, Dr. Vinitsky, an attending Board-certified internist specializing in environmental medicine, tested appellant for the presence of metals and other substances. The tests showed levels of various substances, including cadmium, nickel, barium, tin and tungsten that were above the identified reference ranges. There is no indication in the record that appellant was exposed to these substances in the workplace and Dr. Vinitsky did not provide any opinion that she sustained an identifiable medical condition due to exposure to these substances.

Appellant submitted an October 22, 2005 report of Dr. Shoemaker, an attending Board-certified family practitioner,³² who indicated when he first spoke to appellant in February 2005 that she provided a history of a wide range of illness symptoms beginning after her exposure in April 2001 to areas of water intrusion and evidence of amplified growth of microbes, including fungi, in her workplace. Dr. Shoemaker diagnosed “sick building syndrome” or “mold illness” which he described as a chronic biotoxin-associated illness caused by exposure to interior environments of water-damaged buildings. He posited that appellant’s symptoms combined with various biomarkers (including elevated matrix metalloproteinase-9 and a genotype named 11-3-52B) pointed towards the conclusion that she had a biotoxin-related illness. Dr. Shoemaker stated, “It is my opinion, to a reasonable degree of medical certainty that the multiple symptoms, profound cognitive impairments and multiple physiologic and neurotoxicological abnormalities

³⁰ Although dog and cat allergens were later found in 2005 that were slightly above the level that can trigger sensitization and bronchial hyperactivity, they were below the level where acute reactions were anticipated. Dr. Mardiney did not clearly indicate that cat hair at work caused an identifiable condition.

³¹ See *Jennifer Beville*, 33 ECAB 1970, 1973 (1982), *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962).

³² Dr. Shoemaker does not have any other certifications from the American Board of Medical Specialties.

present in [appellant] were solely caused by exposure to toxigenic organisms resident in her water-damaged workplace.” He noted that it was theoretically possible that some other exposures could have caused appellant’s problems, but indicated that he had ruled out nonwork-related causes for problems due after evaluating her history, symptoms and laboratory studies.

This report is of limited probative value on the relevant issue of the present case because Dr. Shoemaker did not clearly identify the employment-related allergens established by the record that he believed caused harm to appellant. He did not discuss the numerous investigative environmental reports of record or explain how specific findings found in those reports were responsible for appellant’s condition. Dr. Shoemaker’s opinion, therefore, is not based on a complete and accurate factual and medical history.³³ These environmental reports generally show a lack of abnormal levels of allergens including those such as dust and mold. Dr. Shoemaker emphasized his apparent belief that appellant’s medical conditions were primarily caused by long-term exposure to a water-damaged workplace. However, none of the periodic environmental reports showed the existence of water damage (or resulting conditions such as significant mold or bacterial exposure) that could have resulted in appellant developing a medical condition at work. Dr. Shoemaker appears to have relied on appellant’s own representation that her workplace was water damaged. Although a moderate level of bacterial contamination was found in March 2005 in the cooling tower water and reservoir basis surfaces of the HVAC system, it does not appear that this cooling water came into contact with the supply air stream.³⁴ For these reasons, Dr. Shoemaker has not established a connection between appellant’s claimed medical conditions and employment factors established by the record and his opinion on causal relationship is of limited probative value.

As part of his rationale on causal relationship, Dr. Shoemaker indicated that appellant’s medical problems were work related because her symptoms were worse during periods when she worked in the GAO building. However, the Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.³⁵ Dr. Shoemaker’s report also is not based on a complete and accurate factual and medical history because he did not discuss appellant’s medical condition prior to starting work in the GAO building in April 2001. He indicated that he had eliminated various nonwork-related conditions as being responsible for appellant’s wide range of symptoms beginning in April 2001, but he provided no notable discussion of her medical condition prior to April 2001, including descriptions of physical examination and diagnostic testing findings from that period.

In a November 21, 2005 letter, Dr. Presant, a Board-certified family practitioner and occupational medicine physician,³⁶ stated that he had reviewed the evaluation of Dr. Shoemaker

³³ See *supra* note 21.

³⁴ Moreover, appellant indicated that she had sustained her claimed medical problems by October 18, 2004, the date that she filed her claim with the Office. Prior to March 2005, there had been no indication that there was any level of bacteria in the cooling tower water.

³⁵ See *supra* notes 22 and 23.

³⁶ Dr. Presant served as an occupational medicine consultant for the Department of Health and Human Services.

and found that he provided an in-depth analysis of the causality of appellant's medical condition. He noted, "Much of what [Dr. Shoemaker] states is controversial, and as he indicates, is highly debated in the medical community. However, I have no reason to doubt [appellant's] report of her symptoms or their temporal relationship to her being in the GAO building." As noted above, the mere fact that an employee manifests a given condition while employed for the Federal Government does not show that the condition was work related. Dr. Presant's report is of limited probative value on the relevant issue of the present case because he did not provide a rationalized medical opinion showing that appellant's claimed conditions were related to established employment factors. Appellant submitted numerous documents such as excerpts from medical and scientific journals which she believed support her claim. The Board has held that such materials are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.³⁷

For these reasons, appellant did not establish that she sustained medical conditions due to environmental factors at work.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained medical conditions due to environmental factors at work.

³⁷ See *supra* note 24.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 29, 2008 decision is affirmed.

Issued: November 20, 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