United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 09-920**
	)	**Issued: October 21, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 25, 2009 appellant filed a timely appeal from August 28, 2008 and February 2, 2009 merit decisions of the Office of Workers' Compensation Programs' Branch of Hearings and Review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of her claim.

ISSUE

The issue is whether appellant satisfied her burden of proof to establish that her asthma was aggravated by factors of her federal employment on April 15 and 16, 2008.

FACTUAL HISTORY

On April 28, 2008 appellant, a 53-year-old bulk mail clerk, filed an occupational disease claim (Form CA-2) alleging that exposure to fumes and vapors on April 15 and 16, 2008 produced by a floor cleaning solution aggravated her asthma. The asthma attack she attributes to this exposure occurred later that night as she slept. Appellant first realized her condition and that it was caused or aggravated by her federal employment on April 16, 2008.

In a May 6, 2008 note, Dr. Vanessa Robinson, Board-certified in geriatric medicine and internal medicine, diagnosed asthma and provided work restrictions.

By decision dated August 21, 2008, the Office denied the claim because the evidence did not demonstrate that her asthma resulted from the identified employment factors.

On August 26, 2008 appellant requested a hearing.

A hearing was conducted on December 8, 2008, during which appellant offered testimony concerning her asthma and her exposure to fumes on April 15 and 16, 2008. She has another claim for the same condition for which she is receiving wage-loss compensation.[1] Appellant has asthma for which she takes medication. She did not sustain an immediate asthma attack upon exposure to the fumes and vapors on April 15, 2008, rather it occurred on or about 2:00 a.m. or 3:00 a.m., April 16, 2008, as she slept. Appellant did not seek medical attention, rather she chose to stay home and take her asthma medication.

In a December 30, 2008 note, Dr. Robinson opined:

> "Based on the enclosed narrative, bleach affects and aggravates asthma because the strong fumes, which can cause severe coughing, major breathing problems, tightness in the chest, and fatigue."

By decision dated February 2, 2009, the Office hearing representative affirmed the Office's August 21, 2008 decision.

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[3] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[4] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's

[1] OWCP File No. xxxxxx484.

[2] 5 U.S.C. §§ 8101-8193.

[3] *D.B.*, 58 ECAB ___ (Docket No. 07-440, issued April 23, 2007); *George W. Glavis*, 5 ECAB 363, 365 (1953).

[4] *M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *George W. Glavis*, *supra* note 3.

[5] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

statements in determining whether a *prima facie* case has been established.[6] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[8]

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.[9]

ANALYSIS

The Board finds that, while appellant has asthma, she has not established that her asthma was aggravated by exposure to fumes and vapors produced by a cleaning solution on April 15 and 16, 2008. Appellant alleged that employment exposure aggravated her asthma but also reported that her first asthma attack occurred hours later, while she was sleeping, not immediately after exposure. She did not seek medical attention during the month in April to treat her condition. The record reflects that appellant was currently receiving compensation under a prior claim for the same condition. The Board finds that the record does not contain sufficient evidence to establish that the alleged exposure to fumes and vapors on April 15 and 16 2008 aggravated her asthma. The medical evidence of record is insufficient and, therefore, appellant has not satisfied her burden of proof.

[6] *M.H., supra* note 4; *John D. Shreve*, 6 ECAB 718, 719 (1954).

[7] *S.P., supra* note 5; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

[8] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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

The relevant medical evidence of record consists of a report and note signed by Dr. Robinson.[10] This evidence is of limited probative value because it lacks an opinion explaining how appellant's exposure to fumes and vapors on April 15 and 16, 2008 aggravated her asthma.[11] Dr. Robinson diagnosed asthma but provided no findings on examination or a review of appellant's medical history. She opined that bleach "affects and aggravates" asthma because the strong fumes can cause severe coughing, major breathing problems, tightness in the chest and fatigue; however, such symptoms are indicative of a myriad of pulmonary conditions and, furthermore, Dr. Robinson provides no medical rationale explaining if appellant was actually exposed to bleach on April 15 and April 16, 2008, how this alleged exposure aggravated her asthma or, for that matter, if and how this alleged exposure caused any of the aforementioned symptoms. These deficiencies reduce the probative value of her report such that they are insufficient to satisfy appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.[12] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[13] She failed to submit such evidence and, therefore, failed to satisfy her burden of proof.

CONCLUSION

The Board finds that appellant has not satisfied her burden of proof to establish that her asthma was aggravated by factors of her federal employment on April 15 and 16, 2008.

[10] Appellant submitted reports and notes pertaining to tests performed and treatment received in May and September 2006. These reports and notes are of no probative value because they predate the period of exposure at issue here. Appellant also submitted a report dated April 20, 2008, in which Dr. Robinson stated that appellant was "totally incapacitated" from February 21 through 23, 2008. This report is of no probative value as it concerns a period of disability which predates that at issue here. As such, these reports and notes are insufficient to satisfy appellant's burden of proof.

[11] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

[12] *Patricia J. Glenn*, 53 ECAB 159 (2001). *See also Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[13] *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2009 and August 28, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 21, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board