United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket Nos. 08-2377 & 09-196**
DEPARTMENT OF THE NAVY, NAVAL ELECTRONICS SYSTEM COMMUNICATION, Charleston, SC, Employer	)	**Issued: September 25, 2009**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 2, 2008 appellant, through counsel, filed a timely appeal from an August 14, 2008 decision of the Office of Workers' Compensation Programs' hearing representative affirming the April 24, 2008 denial of her request for expansion of her claim. On October 27, 2008 appellant's counsel filed a timely appeal from an October 15, 2008 decision, denying authorization for a medical test. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly denied appellant's request to expand her claim to include the conditions of vocal chord shortness of breath, vocal cord dysfunction, allergic rhinitis/hay fever, reactive airway dysfunction syndrome, persistent cough, gastroesophageal reflux disease and sleep apnea with hypersomnia; and (2) whether the Office properly denied authorization for appellant's request for a polysomnography test.

FACTUAL HISTORY

On December 1, 2005 appellant, then a 47-year-old computer technician, filed a traumatic injury claim alleging that on that date she had an allergic reaction to smelling paint fumes.[1] The Office accepted the claim for dysphagia and chronic pharyngitis, which was subsequently expanded to include chronic obstructive asthma.[2] Appellant stopped work on December 1, 2005 and was placed on the periodic rolls for temporary total disability.

Appellant's physician requested that her claim be expanded to include additional conditions.

In development of the case, the Office referred appellant to Dr. Cary E. Fechter, a physician Board-certified in internal medicine and pulmonary disease, to resolve a conflict in the medical opinion evidence regarding her work capacity between Dr. Pastis, her treating Board-certified internist, who found "multiple exasperations to paint exposure" at work and Dr. Robert L. Thomas, a second opinion physician Board-certified in internal medicine, pulmonary diseases and critical care medicine who diagnosed occupational asthma, dysphagia, chronic pharyngitis, hypertension and type two diabetes, and noted that appellant had been exposed three times to paint fumes at work, which resulted in asthma attacks. Dr. Thomas opined that she was capable of working an eight-hour day provided that she was not exposed to dust, fumes and strong smoke or odors.

On September 18, 2007 Dr. Fechter reported that appellant had been exposed to paint fumes three times at work with the most recent exposure being December 1, 2005. He diagnosed occupationally-induced asthma due to her exposure to strong paint fumes on July 15, 2004 and February 28 and December 1, 2005. Dr. Fechter noted that appellant's "condition seems to worsen with every onset of an attack." Under review of systems, he noted "[o]bvious anxiety/depression, particularly about being in house and not being able to get out." Dr. Fletcher reported under aspects of care:

> "Almost any time [appellant] leaves the house she is exposed to either wind, dust, chemicals or gas fumes from cars and she gets sick. We are not certain if all of that is acute bronchospasm or not. Consequently, we are, as physicians, referring her to a psychiatric [physician] for evaluation although it appears it is truly medically induced."

In concluding, he opined that appellant was totally disabled from all work including sedentary employment.

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[1] The Office assigned claim file number xxxxxx122.

[2] On December 31, 2007 the Office combined claim file numbers xxxxxx657 and xxxxxx168 with claim file number xxxxxx122. Under claim file number xxxxxx657 appellant alleged that on July 14, 2004 she had an allergic reaction to smelling paint fumes. She, under claim file number xxxxxx168, alleged that on February 28, 2005 she had an allergic reaction to smelling paint fumes. In a November 21, 2007 memorandum, the Office noted that claim file numbers xxxxxx657 and xxxxxx168 had been administratively closed with no accepted condition.

On November 27, 2007 Dr. Pastis noted that he had seen appellant since December 22, 2005 and that she had been exposed "to strong industrial paint while on the job" three times, which were July 15, 2004 and February 28 and December 1, 2005. He opined that the accepted employment conditions needed to be expanded to include shortness of breath, allergic rhinitis/hay fever, vocal cord dysfunction, reactive airways dysfunction syndrome, persistent cough, asthma, gastroesophageal reflux disease and sleep apnea with hypersomnia. Dr. Pastis concluded that these conditions were employment related as they had not existed prior to her work paint exposure. He related that appellant stated that she was currently "unable to leave her house without risking flare-up of her underlying lung disease."

In a letter dated December 5, 2007, the Office informed Dr. Pastis that he failed to provide any medical rationale supporting his request to expand appellant's accepted conditions.

On December 18, 2007 Dr. Fechter stated that he agreed with Dr. Pastis' findings. He noted that he had been treating her since September 2007 and opined that her paint exposure at work caused her occupationally-induced asthma as well as her frequent bouts of shortness of breath and asthma flare ups.

In a December 19, 2007 report, Dr. Pastis responded to the Office's request for medical rationale. He noted that "[r]eactive airways dysfunction syndrome occurs as a result of inhaled chemical damage to the tracheobronchial tree" resulting in "an obstructive-type lung disease, which behaves similarly to asthma" and shortness of breath. Next, Dr. Pastis stated that he believed "the timing of [appellant's] paint exposures and her subsequent symptoms provided a reasonable rationale to explain why the paint exposure led to reactive airways dysfunction syndrome." He stated the chemical exposure to paint fumes also caused vocal cord irritation, swelling of her uvula and hoarseness which resulted in vocal cord dysfunction. Dr. Pastis noted that individuals with asthma also have sinus problems, which led to appellant's worsening diagnosis of allergic rhinitis/hay fever symptoms. As to the gastroesophageal reflux disease, he stated that he agreed that it was probably a preexisting condition. Dr. Pastis indicated that appellant's sleep apnea was not related to reactive airways dysfunction syndrome or chemical exposures, but related that "swelling of the uvula and the retropharyngeal tissues can lead to obstructive sleep apnea." Thus, he concluded that the employment conditions caused inflammation of appellant's uvula and retropharyngeal spaces which "may have exacerbated obstructive sleep apnea and provides a rationale for evaluation and treatment of obstructive sleep apnea." In addition, Dr. Pastis related that she "had significant symptoms of daytime sleepiness, as well as nocturnal oxygen desaturations." Lastly, he opined that appellant sustained permanent damage as shown by her reactive airways dysfunction syndrome and that removing her from her environment did not correct the problem.

On February 26, 2008 Dr. Robert A. Marwick, a second opinion Board-certified otolaryngologist, noted that appellant was exposed four years ago at work to paint fumes. He reported that her voice was both normal and hoarse during the examination and that he found no positive physical findings on examination. In concluding, Dr. Marwick stated that he would like to see appellant on a bad day.

Dr. Marwick, in a March 27, 2008 report, stated that he had reviewed the statement of accepted facts and physical examination. He concluded that there was no objective evidence

supporting any continued residuals or disability from her accepted employment injury as described in the statement of accepted facts. In concluding, Dr. Marwick noted that "[o]ther than a report of one time exposure to paint fumes four years ago" he concluded that appellant could return to her date-of-injury position providing there was no further exposure to paint fumes.

In a report dated April 21, 2008, Dr. Pastis noted appellant's illness history and reported that a spirometry test revealed that she is stable and has moderate restriction. He noted that she had a "[h]istory of reactive airways dysfunction syndrome," which he believed was not "the source of her shortness of breath" and attributed her restrictive dysfunction condition to her weight. Dr. Pastis diagnosed obstructive sleep apnea and recommended sending appellant for "a follow[-]up sleep study to see the effect of UPPP [uvulopalatopharyngoplasty] surgery and whether she is still requiring CPAP [continuous positive airway pressure]."

On April 24, 2008 the Office received an April 21, 2008 sleep study request form for a CPAP study. The form noted that Dr. Pastis, the requesting physician, believed that appellant "may be able to come off of CPAP" as she recently had UPPP surgery.

By decision dated April 24, 2008, the Office denied appellant's request to expand her claim to include the additional conditions.

In a report dated April 30, 2008, Dr. Shaun Scott, a treating Board-certified otolaryngologist, noted that he has treated appellant for allergic rhinitis and sinusitis since October 2001. While this condition was not caused by appellant's exposure to paint, Dr. Scott opined that her paint exposure likely aggravated these preexisting conditions.

On May 14, 2008 appellant's counsel requested a review of the written record and submitted a May 1, 2008 report by Dr. Pastis. Counsel also requested a referral to a second opinion psychiatrist to evaluate her consequential emotional condition. In the May 1, 2008 report, Dr. Pastis noted that the diagnosis of reactive airways dysfunction syndrome "is almost identical to asthma but is induced by chemical exposure as has occurred for [appellant]." He noted that prior to her paint exposure appellant did not have any difficulty breathing, coughing wheezing and shortness of breath despite the presence of some sinus complaints and her smoking. Dr. Pastis noted that the positive methacholine challenge test aided in the confirmation of the diagnosis of reactive airways dysfunction syndrome. He noted appellant had chemical exposure-induced vocal cord irritation with subsequent uvula swelling and hoarseness. Dr. Pastis opined that she "likely developed asthma in response to her irritant exposures, which parallels her reactive airways dysfunction syndrome." As to appellant's gastroesophageal reflux disease, Dr. Pastis opined that it "may have been a preexisting condition" and "likely made her cough and shortness of breath worse." Dr. Pastis stated that he could not directly correlate her paint/chemical exposure to this condition. In concluding, he attributed appellant's persistent cough as being likely due to her reactive airways dysfunction syndrome and asthma.

In a June 4, 2008 report, Dr. Pastis stated that the Office misquoted his April 21, 2008 report. He noted that appellant's spirometry tests have consistently shown she has a restrictive impairment. Dr. Pastis related that the conditions of reactive airways dysfunction syndrome and asthma "are dynamic conditions and one would expect periods of quiescence between exposures."

On July 7, 2008 the Office received the results of a May 7, 2008 polysomnography study by Dr. Hugh D. Durrence, a treating Board-certified family practitioner, which found no sleep disorder breathing condition.

By decision dated August 14, 2008, the Office hearing representative affirmed the April 24, 2008 decision denying appellant's request to expand her claim.

In a letter dated September 11, 2008, the Office requested that appellant submit medical evidence from the provider showing the diagnosis for the requested procedure and how it is related to appellant's accepted conditions. Appellant was afforded 30 days to submit the requested evidence.

In response appellant submitted her October 7, 2008 statement and an October 2, 2008 report from Dr. Pastis, who diagnosed reactive airways dysfunction syndrome due to work exposure. He related that she had hoarseness, vocal cord dysfunction, oropharyngeal swelling trouble and "obstructive sleep apnea, which was complicated by her elongated uvula and airway edema." Dr. Pastis reported appellant's symptoms improved following her UPPP and turbinate reduction surgery. In concluding, he stated that she "needed her postoperative polysomnogam to see if she still requires CPAP" and that "[t]he study show she no longer needs it as her surgery was a success."

On October 15, 2008 the Office denied appellant's request to authorize a polysomnography test. It explained that Dr. Pastis did not provide medical rationale to support a causal relationship between the accepted conditions of dysphagia, chronic pharyngitis and chronic obstructive asthma and the requested test. It further explained that the "evidence support[s] that the procedure requested was due to the UPPP surgery, due to sleep apnea, to evaluate whether you are in need of a CPAP."

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that, a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[3] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a casual relationship.[4] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6] Neither the mere fact that a

[3] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[4] *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[5] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[6] *Phillip L. Barnes* 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant's employment caused the conditions of dysphagia and chronic pharyngitis, which was subsequently expanded to include chronic obstructive asthma. It denied her request to expand her claim to include the conditions of shortness of breath; vocal cord dysfunction; allergic rhinitis/hay fever; reactive airway dysfunction syndrome; persistent cough; gastroesophageal reflux disease; and sleep apnea with hypersomnia. The issue is whether appellant has met her burden of proof to establish that those conditions were causally related to her accepted injury. The Board finds that she has not met her burden of proof.

On November 27, 2007 Dr. Pastis requested that the Office expand appellant's accepted employment conditions to include shortness of breath, allergic rhinitis/hay fever, vocal cord dysfunction, reactive airways dysfunction syndrome, persistent cough, asthma, gastroesophageal reflux disease and sleep apnea with hypersomnia. He concluded that these conditions were employment related as they had not existed prior to her work paint exposure. This report is insufficient to meet appellant's burden of proof. The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.

In a December 19, 2007 report, Dr. Pastis opined that appellant's reactive airways dysfunction syndrome was employment related as the condition occurs as a result of "inhaled chemical damage to the tracheobronchial tree." He concluded that her paint exposure with subsequent symptoms provided sufficient rationale to conclude that this condition was employment related. Dr. Pastis also concluded that the chemical exposure to paint fumes also caused vocal cord irritation, swelling of appellant's uvula and hoarseness, which resulted in vocal cord dysfunction. This report noted that she accepted employment paint exposure and provided an opinion on the causal relationship between that exposure and her diagnosed conditions of shortness of breath, allergic rhinitis/hay fever, vocal cord dysfunction, reactive airways dysfunction syndrome, persistent cough, asthma, gastroesophageal reflux disease and sleep apnea with hypersomnia. Dr. Pastis did not; however, offer any medical reasoning in support of his stated conclusion. A mere conclusion without the necessary medical rationale explaining how and why he believes that appellant's accepted chemical exposure could result in a diagnosed condition is not sufficient to meet her burden of proof.[8] The medical evidence must also include rationale explaining how Dr. Pastis reached the conclusion he or she is supporting. He did not provide such an explanation. Due to the foregoing deficiencies this report is insufficient to establish appellant's claim.

[7] *V.W.*, 58 ECAB ___ (Docket No. 07-234, issued March 22, 2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[8] *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009); *Albert C. Brown*, 52 ECAB 152 (2000) (a medical conclusion unsupported by medical rationale is of diminished probative value).

On appeal, appellant's attorney contends that Dr. Marwick's opinion should be excluded because it is based on an inaccurate history. In addition, appellant argues that the Office should not have referred her to Dr. Marwick for a second opinion evaluation because this amounted to physician shopping. She contends that there is nothing in the record showing that appellant had any preexisting medical condition other than what Dr. Marwick noted in his report. As appellant correctly pointed out, Dr. Marwick's reports are based on an inaccurate history as the physician incorrectly stated that she was exposed once to pain fumes approximately fours years ago. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.[9] Moreover, the Office only excludes reports from the record under specific circumstances relative to impartial medical specialists, a situation which is not presented on this appeal.[10] Appellant also contends that the Office erred in relying upon Dr. Marwick's report to deny the expansion of appellant's claim to include the additional conditions of vocal chord shortness of breath; vocal cord dysfunction; allergic rhinitis/hay fever; reactive airway dysfunction syndrome; persistent cough; gastroesophageal reflux disease; and sleep apnea with hypersomnia. The Office did, however, not rely upon Dr. Marwick's reports when it denied the expansion of appellant's claim. The basis of the Office's denial was that Dr. Pastis failed to provide sufficient rationale explaining how the diagnosed conditions were causally related to her employment injury.

Next, appellant contends that the Office erred in failing to request that Dr. Fletcher, the impartial medical examiner, provide a supplemental report regarding her depression and that the Office erred in failing to refer appellant for a second opinion evaluation to determine the extent and cause of her consequential emotional condition. We disagree. The Office referred appellant to Dr. Fletcher to resolve the conflict in the medical opinion evidence on the issue of whether she was totally disabled due to her accepted conditions. Dr. Fletcher resolved this conflict by finding that she was totally disabled due to her accepted conditions. As to her emotional condition, Dr. Fletcher merely noted the existence of this condition without providing any opinion as to whether her depression and anxiety were consequential injury of her accepted conditions. Thus, the Office properly did not request Dr. Fletcher to provide a supplemental report as he had resolved the conflict in the medical opinion evidence.

As to appellant's assertion that the Office erred in failing to refer her for a second opinion evaluation, the Board notes that it is her burden to submit medical evidence establishing the `existence of the claimed condition and that the condition is causally related to the identified employment factors.[11] While the Office may require an employee to undergo a physical examination, as it deems necessary, the determination of the need for the examination is a matter within the province and discretion of the Office.[12] None of the medical evidence in the record provides an opinion that appellant's depression and anxiety are consequential injuries. Thus, the

[9] *M.W.*, 57 ECAB 710 (2006); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[10] *See Terrance R. Stath*, 45 ECAB 412 (1994); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.6 (September 1995).

[11] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[12] *See* 5 U.S.C. § 8123; *Dana D. Hudson*, 57 ECAB 298 (2006).

Office did not err in not referring appellant for a second opinion evaluation on the issue of whether she sustained a consequential emotional condition.

The Board finds that as the medical evidence included in the record does not contain the necessary medical reasoning to establish a causal relationship between appellant's various diagnosed conditions and her employment, she has not met her burden of proof and the Office properly declined to expand her claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Federal Employees' Compensation Act[13] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[14]

In interpreting section 8103 of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act.[15] The Office has the general objective of ensuring that an employee recovers from her injury to the fullest extent possible in the shortest amount of time. It has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[16] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[17] It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[18]

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[19] While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the

[13] 5 U.S.C. §§ 8101-8193.

[14] 5 U.S.C. § 8103; *see also L.D.*, 59 ECAB ___ (Docket No. 08-966, issued July 17, 2008).

[15] *See P.C.*, 59 ECAB ___ (Docket No. 07-1691, issued June 20, 2008).

[16] *A.O.*, 60 ECAB ___ (Docket No. 08-580, issued January 28, 2009); *L.W.*, 59 ECAB ___ (Docket No. 07-1346, issued April 23, 2008); *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

[17] *L.W.*, *supra* note 16.

[18] *J.C.*, 58 ECAB ___ (Docket No. 07-530, issued July 9, 2007).

[19] *R.L.*, 60 ECAB ___ (Docket No. 08-855, issued October 6, 2008).

expenditure is incurred for treatment of the effects of an employment-related injury or condition.[20] Proof of causal relation must include rationalized medical evidence.[21]

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained employment-related dysphagia, chronic pharyngitis and chronic obstructive asthma. Appellant has the burden of proof to establish that the Office abused its discretion by denying authorization for the polysomnogram she requested.

As noted above, the Office is obligated to authorize and pay for treatments it reasonably finds likely to cure, give relief or aid in lessening the period of disability associated with an accepted employment-related condition.[22] It is not obligated to compensate appellant for treatment of nonaccepted conditions.[23] Before she is entitled to authorization and compensation for her requested procedure, she must prove that the condition the test is intended to treat is causally related to her employment injury and that it is medically warranted.[24] Dr. Pastis diagnosed sleep apnea in his various reports and recommended the polysomnogram to determine whether she continued to require CPAP. Sleep apnea has not been accepted as employment related by the Office, however, and thus it is appellant's burden of proof to establish an employment relationship.[25] Dr. Pastis did not explain how the requested polysomnogram was necessitated by the accepted conditions. The Board has previously held that a medical report which does not include a physician's rationalized opinion on causal relationship is not probative on that issue.[26]

In addition, Dr. Pastis' report does not provide an explanation as to how the polysomnogram would be likely to cure appellant's employment-related dysphagia, chronic pharyngitis and chronic obstructive asthma, give relief from the condition, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[27] He noted that the test was to determine whether appellant continued to require CPAP following her surgery and that the test revealed the surgery was successful as CPAP was no longer required.

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[20] *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

[21] *Id.*; *Bertha L. Arnold*, 38 ECAB 282 (1986).

[22] *See supra* note 14.

[23] *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

[24] *Id.*

[25] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by the Office as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

[26] *See A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[27] *See supra* note 14.

As appellant has not established that the requested procedure was for a condition causally related to the employment injury and that the polysomnogram was medically warranted, the Office properly denied authorization for the requested procedure.

CONCLUSION

The Board finds that the Office properly refused to expand appellant's claim to include the conditions of shortness of breath, vocal cord dysfunction, allergic rhinitis/hay fever, reactive airway dysfunction syndrome, persistent cough, gastroesophageal reflux disease and sleep apnea with hypersomnia. The Board further finds that the Office properly denied authorization for her request for a polysomnography test.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 27, 2008 and that of the hearing representative dated August 14, 2008 are affirmed.

Issued: September 25, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board