

or understand why someone would do this.” Appellant’s supervisor stated that he inspected appellant’s office one hour later and did not see or smell anything outside his office.

Dr. Jeffrey B. Gordon, a Board-certified family practitioner, completed a report on August 18, 2008 and diagnosed migraine, toxic encephalopathy and multiple chemical sensitivities. He listed appellant’s history as working with her office door shut when an odor like perfume came under her door at 11:30 a.m. The floral odor permeated appellant’s office as she went to her car to eat lunch and her condition deteriorated. Appellant developed numbness in her left side, flushing in her face and flashing lights in her eyes. Dr. Gordon indicated with a checkmark “yes” that he believed that her condition was caused or aggravated by her employment noting that she was “exposed to a toxic substance while at work.” He noted that when he examined appellant on August 18, 2008 her condition was normal.

In a letter dated September 11, 2008, the Office requested additional information from appellant and allowed 30 days for a response. Dr. Robert K. Kakehashi, a physician Board-certified in emergency medicine, diagnosed mental status changes on May 23, 2006 and suggested that she had an underlying psychiatric disorder with a paranoid component. Dr. J. Steven Poceta, a Board-certified neurologist, examined appellant on August 7, 2006 and diagnosed a resolving episode of confusion with no ongoing neurologic or psychiatric deficits and history of migraines triggered by perfume. Dr. Gordon completed a series of notes diagnosing multiple chemical sensitivity syndrome on June 16, September 26, October 18, December 12, 13 and 18, 2006; and January 30, February 1, 12 and 14 and March 22, 30, 2007. He submitted form reports dated November 14, 2006 and January 30, February 7, March 12, June 5 and August 22, 2007 diagnosing toxic encephalopathy and multiple chemical sensitivity syndrome. In narrative reports dated November 9, 2006 and January 17, 2008, Dr. Kaye H. Kilburn, a Board-certified internist of professorial rank, diagnosed appellant’s condition as multiple chemical sensitivity and chemical encephalopathy due to cologne and other chemicals which was permanent and provided her credentials.

Dr. John R. Montague, a Board-certified psychiatrist, completed a report on June 29, 2006 and noted appellant’s exposure to cologne on May 12, 2006. He found that she did not have a diagnosable psychiatric condition.

Appellant completed a narrative statement describing her exposure to a “strong cologne” on February 12, 2006. She submitted a December 11, 2006 claim for traumatic injury. On January 27, 2007 appellant reported an injury due to exposure to “Old Spice” and “Axe” colognes. In a statement dated September 28, 2008, she responded to the Office’s questions and stated that she was exposed to a fragrance that smelled like perfume and that when she smelled the perfume she immediately put on her charcoal filter mask and “turned up the Austin air filter in my office.” After a few minutes appellant stepped outside of the building for fresh air, but then reentered because of work on the air conditioning unit. She ate lunch in her car due to the odor, began to feel worse and went home to take her migraine medicine. Appellant retired from the employing establishment on September 12, 2008. She alleged that she developed multiple chemical sensitivity on May 12, 2006 due to exposure to “an extreme amount of cologne.”

On August 15, 2008 *via* e-mail appellant requested that her supervisor take additional steps to address the “spraying incidents.” She alleged that her office door was sprayed with cologne or perfume as well as the area outside the ladies room. Appellant’s supervisor responded and stated, “I find it hard to believe that anyone would spray perfume at your office doors. If anyone is caught doing that it will be dealt with.”

Dr. Gordon completed reports on August 7, September 27, October 24, November 22 and 8, 2006, February 15, 16 and March 8, 2007; and March 14, April 20 and October 7, 2008 and noted appellant’s history of headaches, dizziness, nausea and tingling in her hands and feet after exposure to a coworker’s cologne beginning on May 12, 2006. He stated that she experienced reactivation of her condition on October 18 and December 5, 2006 and January 27, 2007 and that her treatment consisted of rest and avoidance of toxic substances. In regard to appellant’s claimed exposure on August 14, 2008, Dr. Gordon noted the floral fragrance that she believed responsible for her condition and diagnosed acute and persistent multisystem clinical syndrome due to exposure to toxic environmental substances or multiple chemical sensitivity syndrome and migraines. He stated, “[Appellant’s] repeated absences from work are unquestionably related to unavoidable exposure to noxious substances in her workplace.” Dr. Gordon opined that her illness was caused or aggravated by her work environment, the colognes or perfumes worn by coworkers.

By decision dated October 14, 2008, the Office denied appellant’s claim on the grounds that she failed to submit the necessary factual statement describing her claimed exposure on August 14, 2008 and as the medical evidence was not sufficiently detailed to meet her burden of proof.

Appellant, through her attorney, requested a telephonic hearing on October 30, 2008.

The employing establishment submitted a statement from appellant’s supervisor on November 20, 2008. He stated, “On August 14, 2008 I investigated [appellant’s] complaint. I smelled the doors to her office and the area around the doors. I also opened one door and smelled inside the office and detected no evidence of perfume or other unusual fragrance.”

Appellant testified at the telephonic hearing on February 11, 2009 and attributed her multiple chemical sensitivity to exposure to cologne on May 12, 2006. She stated that since that exposure she had become unable to tolerate perfume and cologne. Appellant stated that the employing establishment provided her with an Austin Air purifier and allowed her to wear a carbon filter mask. She stated on August 14, 2008 she believed that a coworker sprayed perfume under the door to her office. Appellant went outside and ate lunch in her car, but began to develop an aura and knew that a migraine was oncoming, so she went home to take her medication. She returned to work the next day. The hearing representative allowed appellant 30 days to submitted additional information.

By decision dated May 6, 2009, the hearing representative denied appellant’s claim finding that she had not provided sufficient evidence to establish that she sustained an injury on August 14, 2008 as alleged, as the medical evidence failed to provide a history of injury, a specific diagnosis as a result of the incident and rationalized opinion on the causal relationship between appellant’s condition and her employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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/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 upon a traumatic injury or an occupational disease.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.³

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical 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.⁴

ANALYSIS

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to

¹ 5 U.S.C. §§ 8101-8193.

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ *Id.*

⁴ *Id.*

time and place of occurrence and member or function of the body affected.⁵ An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.⁶ The Board finds that appellant's current claim was for a traumatic injury, a specific workplace exposure to perfume on August 14, 2008, which resulted in her disability for work on that date.⁷

Appellant alleged that an odor of perfume came under her door on August 14, 2008. She has not submitted any witness statements or other evidence corroborating that this event took place as alleged. Appellant stated that she developed an aura as a result of this exposure, went home took her migraine medication and was able to return to work the next day. Her supervisor stated that he could not detect any odors in or around appellant's office on August 14, 2008 but he did not inspect her office until one hour after the alleged incident. Appellant's subsequent course of action is consistent with her allegation of an employment exposure. She provided her supervisor with a statement of her version of events *via* e-mail on August 15, 2008 and alleged that someone had sprayed perfume under her office door. Appellant also sought medical treatment from Dr. Gordon, a Board-certified family practitioner and provided him with a consistent history of injury. Dr. Gordon stated that she was working with her office door shut when an odor like perfume came under her door at 11:30 a.m., that she went to her car to eat lunch and that her condition deteriorated. Appellant has provided a consistent history of injury on her claim form, to her supervisor and to her physician. The Board finds that there are not such inconsistencies in the history as to cast doubt on whether the employment incident occurred as alleged. Therefore, appellant has established the first element of her traumatic injury claim.

In support of appellant's claim for a injury on August 14, 2008, in his August 18, 2008 report, Dr. Gordon, as noted above, provided a detailed history of the employment incident and diagnosed migraine, toxic encephalopathy and multiple chemical sensitivities. He indicated with a checkmark "yes" that he believed that appellant's condition was caused or aggravated by her employment noting that she was "exposed to a toxic substance with at work." However, Dr. Gordon also stated that when he examined appellant on August 18, 2008 her condition was normal. This form report does not offer any explanation of how exposure to perfume would result in appellant's diagnosed conditions. Furthermore, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was causally related to employment is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.⁸ Dr. Gordon offered the limited explanation that appellant was exposed to a toxic substance at work, but did not explain how or why perfume was toxic and how this exposure resulted in the diagnosed conditions.

⁵ 20 C.F.R. § 10.5(ee).

⁶ *Id.* at § 10.5(q).

⁷ The Board notes that appellant has a separate claim for an occupational disease as a result of previous employment-related exposures to cologne and perfume. This claim is not currently before the Board and will not be addressed in this decision. 20 C.F.R. §§ 501.2 and 3.

⁸ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

While appellant submitted several medical reports in support of her claim, the only other report which specifically addresses her August 14, 2008 employment incident was Dr. Gordon's October 7, 2008 narrative report in which he described her employment exposure to a floral fragrance. Dr. Gordon again diagnosed acute and persistent multisystem clinical syndrome due to exposure to toxic environmental substances or multiple chemical sensitivity syndrome and migraines. He opined that appellant's work absences were due "to unavoidable exposure to noxious substances in her workplace" and that her illness was caused or aggravated by her work environment, specifically the colognes or perfumes worn by coworkers.

The Board finds that Dr. Gordon's report is not sufficient to meet appellant's burden of proof. While he provided an accurate history of injury and diagnosed migraines and multiple chemical sensitivity syndrome as well as offering the medical opinion that there was a causal relationship between her employment exposure and her diagnosed conditions, he did not provide the necessary medical reasoning to explain how and why she developed a migraine on August 14, 2008 due to the accepted exposure to perfume. Without some medical explanation of how this exposure caused or aggravated appellant's diagnosed condition, this report does not contain the necessary medical rationale to establish appellant's claim.

CONCLUSION

The Board finds that appellant failed to submit the necessary rationalized medical opinion evidence to meet her burden of proof in establishing that she sustained an aggravation of her multiple chemical sensitivity on August 14, 2008 resulting in disability for work on that date.

ORDER

IT IS HEREBY ORDERED THAT May 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2010
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