United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 09-1611**
	)	**Issued: April 22, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Spokane, WA, Employer	)	

Appearances:
Brook Beesley, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2009 appellant filed a timely appeal from Office of Workers' Compensation Programs' February 11, 2009 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she developed an asthma condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 42-year-old accounting technician, filed a claim for benefits on February 11, 2008, stating that she developed an asthma condition due to exposure to dust and other "infiltrates"

at the employing establishment. She noted that she had been admitted to the hospital on February 7, 2008.[1]

In a report dated February 7, 2008, received by the Office on February 25, 2008, Dr. Stephen E. Lloyd-Davies, a specialist in internal medicine, examined appellant at the employing establishment's emergency health clinic. He stated that appellant had asthma but noted that it had been relatively quiescent since she began working at the employing establishment. Dr. Lloyd-Davies advised, however, that appellant had been having difficulty breathing since new carpet had been installed at the work site. He stated that when she entered the building to begin work she became congested and experienced itchiness, wheezing and a feeling that her throat was closing. Dr. Lloyd-Davies related that appellant's symptoms abated whenever she left the work site but reemerged whenever she returned to work. He noted that appellant had experienced all of these symptoms when she entered the building on February 7, 2008, the date of his examination, at approximately 7:45 a.m.

Dr. Lloyd-Davies stated that appellant worked in a cubicle close to the heating system or heating duct and wondered whether something was emanating from the duct, which exacerbated her condition. Appellant told him that there was poor air circulation in her office and that she had recently begun using a fan to ameliorate this situation, which partially improved until the blades accumulated dust and dirt. Dr. Lloyd-Davies noted that a coworker of appellant who worked in the same area had similar symptoms until she was moved to a different area with a window, at which time these symptoms reportedly abated. He indicated that appellant did not appear to be in acute distress during his examination. Dr. Lloyd-Davies advised appellant to use her inhaler as needed for wheezing and shortness of breath and released her to return to work. The February 7, 2008 clinic report stated that management would conduct a review of possible air quality problems at appellant's work site. Appellant was advised to follow up with her regular provider to monitor her problem, use a fan to help alleviate her symptoms, relocate to a work site near a window to get fresh air and return to the emergency department if her symptoms worsened.

In a letter dated September 29, 2008, the Office asked the employing establishment to provide additional information concerning appellant's claim, including: the potentially harmful substances to which she had been exposed; the results of any air samples at the work site, if available; an explanation of the air circulation/ventilation of the work area; the frequency and duration of her exposure; the precautions taken to minimize effects of any such exposure; and a copy of her position description and physical requirements of the job.

Appellant submitted a May 27, 2008 report from Suzanne Levitch, a registered nurse, received by the Office on January 6, 2009, who noted that appellant had been evaluated for allergies and asthma she attributed to stagnant airflow in her department. Ms. Levitch recommended that appellant be relocated to a work area with maximum airflow circulation and a filter system located in the same proximity.

By letter to the Office dated July 14, 2008, the employing establishment controverted the claim. It noted that appellant's private insurance carrier was currently paying appellant for medical

[1] Although appellant filed a Form CA-1 for benefits, the Office adjudicated the claim as one based on an occupational condition.

treatment for her allergies and asthma, which she believed was causally related to employment factors; *i.e.*, building sickness and poor air quality in her work area over a period of time. The employing establishment denied that appellant's medical condition was attributable to these factors.

By letter to appellant dated September 19, 2008, the Office noted that her claim had originally been handled as a simple, uncontroverted case, which resulted in minimal or no time loss from work. The case was administratively handled to allow medical payments up to $1,500.00. The Office noted that, because the employing establishment was challenging her claim, it was initiating formal adjudication. It requested additional factual and medical information, including: a detailed description of the employment-related exposure or contact which she believe contributed to her illness; the means by which she was exposed; the degree and length of such exposure; the job activities which she believed contributed to her condition; and a comprehensive medical report from her treating physician containing a diagnosis of her condition and an explanation of how work-related exposure contributed to the condition.

By decision dated October 24, 2008, the Office denied appellant's claim for compensation, finding that she did not submit medical evidence sufficient to establish that she sustained an asthma condition in the performance of duty.

On October 30, 2008 appellant requested reconsideration.

In a report dated May 27, 2008, received by the Office on January 6, 2009, Dr. Richard G. Gower, Board-certified in internal medicine, performed several tests to determine the severity of appellant's asthma and allergies. He noted that skin testing for pollens and inhalants indicated that appellant had some mild low-grade allergy to weeds, cats, trees, mold and cockroaches. Dr. Gower related that appellant underwent a pulmonary function test, which was within normal limits; although she did have a 38 percent improvement in her post-bronchodilator levels, at peak expiratory flow. He instructed appellant to continue using Nasacort and albuterol for her rescue inhaler.

In a report dated October 14, 2008, Dr. Jordan Leach, Board-certified in internal medicine, advised appellant to continue using medication to treat her skin condition and to avoid wearing her wrist bracelets, which apparently aggravated this condition. He stated that appellant was in stable condition.

In an October 21, 2008 report, Dr. Scott Smith, an osteopath, stated that appellant was referred to him from the emergency room for evaluation of a rash on her right arm, which had begun approximately one week previously. He related that appellant was taken to the emergency room because she felt as if her throat was closing, for which she was prescribed prednisone. Dr. Smith noted that she was also given medication to treat allergic rhinitis, which she attributed to a new bracelet she wore on her right wrist. He noted no other significant findings.

In an October 22, 2008 report, Dr. Leach diagnosed dyspnea and recommended that appellant follow up with her primary care provider. He also stated that appellant was experiencing increased sensations of her throat closing, which caused her to leave work early. Dr. Leach also

noted that appellant had hives on her face, for which she was prescribed prednisone. He advised that appellant's problems seem to have started when the carpet was changed in her work area.

Appellant submitted numerous medical reports from physicians' assistants, which indicated that appellant had been treated for her asthma, allergy and skin conditions during October 2008.

In an October 27, 2008 report, received by the Office on November 13, 2008, the employment establishment's chief of engineering services submitted the results of an April 17, 2008 air quality inspection at appellant's work site. The report noted that carbon dioxide levels were measured in several places and levels were found between 1,270 parts per million (PPM) and 1,450 PPM. It noted that levels of carbon dioxide in excess of 1,000 PPM were indicative of an inadequate ventilation system and could cause symptoms in workers such as fatigue and eye/throat irritation, pursuant to the National Institute for Occupational Safety Health (NIOSH). The report recommended that management either reduce the number of employees in the building or increase the flow of fresh air within the building.

On October 29, 2008 the Occupational Health and Safety Administration (OHSA) issued a notice of unsafe or unhealthful working conditions to the employing establishment based on its April 17, 2008 inspection.

In a November 13, 2008 report, Dr. Smith stated that appellant was still being treated for her pruritic rash, which was most likely contact dermatitis. He indicated that her condition could be related to her work environment given the fact that she sat underneath a vent in her office.

By decision dated February 11, 2009, the Office denied modification of the October 24, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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.[3] 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.[4]

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

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 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.[5]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[6] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an occupational disease in the performance of duty. The record indicates that appellant has asthma and that there is evidence that her condition was aggravated by the employing establishment's air circulation system. The October 27, 2008 report stated that the results of an air quality inspection at appellant's work site undertaken in April 2008 -- two months after appellant filed her claim -- were indicative of an inadequate ventilation system which could cause fatigue and eye/throat irritation. Management was advised to reduce the number of employees in the building or increase the flow of fresh air within the building. On October 29, 2008, based on the April 2008 inspection, OHSA issued a notice of unsafe or unhealthful working conditions to the employing establishment. Appellant, however, has not established that her asthma is causally related to this exposure in her employment.

In support of her claim, appellant submitted several medical reports documenting her asthmatic symptoms. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[7] The reports submitted by appellant did not explain which factors of appellant's employment caused or aggravated her asthma, or how appellant's condition arose. In his May 7, 2008 report, Dr. Lloyd-Davies stated that appellant had asthma, which had been asymptomatic until recently, when new carpet was installed at the work site. He noted that she began to experience shortness of breath, congestion, itchiness, wheezing and a sensation that her throat was closing when she entered her building to begin work.

[5] *Id.*

[6] *Id.*

[7] *See Steven S. Saleh*, 55 ECAB 169 (2003); *Robert G. Morris*, 48 ECAB 238 (1996).

These symptoms abated whenever she left the work site but reemerged whenever she returned to work. Dr. Lloyd-Davies advised that appellant's work area was close to the heating duct, that there was poor air circulation in her office and stated that it was possible that there was something emanating from the duct, which aggravated her condition. While his report diagnoses asthma and indicates that the condition was aggravated by employment factors, his opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.[8] Dr. Lloyd-Davies did not describe the development of appellant's asthma condition in any detail or how the employment factors would have been competent to cause the claimed condition. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's condition was causally related to the employing establishment's poor air circulation system. Dr. Gower, as noted in his May 27, 2008 report, had appellant undergo several tests to determine the severity of her asthma condition, including skin testing and pulmonary function tests. The results of these tests, however, were normal. In addition, Dr. Gower did not provide an opinion regarding the work relatedness of appellant's asthma condition. While the reports from Dr. Leach and Dr. Smith mentioned the ventilation problems at appellant's work office and noted her shortness of breath and her sensation that her throat was closing, they do not discuss her asthma condition. These physicians treated appellant primarily for a skin disorder, a condition, which was not accepted by the Office. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.[9]

Neither the fact that a condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10] The Board finds that the medical reports of record are insufficient to establish a causal relationship between appellant's diagnosed condition and employment factors, as these physicians did not provide sufficient explanation or rationale to support their conclusions.[11] Lastly, the reports from physicians' assistants have no probative value. Reports from a physician's assistant are not considered medical evidence as a physician's assistant is not considered a physician under section 8101 of the Act.[12]

As appellant has not met her burden of proof in establishing her occupational disease claim, the Board will affirm the October 24, 2008 and February 11, 2009 decisions.

CONCLUSION

The Board finds that the Office properly found that appellant did not sustain an asthma condition in the performance of duty.

[8] *William C. Thomas*, 45 ECAB 591 (1994).

[9] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[11] *See supra* note 8.

[12] *Ricky S. Storms*, 52 ECAB 349 (2001).

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2009 and October 24, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 22, 2010
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