

**United States Department of Labor
Employees' Compensation Appeals Board**

G.S., Appellant)	
)	
and)	
)	
U.S. POSTAL SERVICE, POSTAL)	Docket No. 09-1872
INSPECTION SERVICE, Washington, DC,)	Issued: April 14, 2010
Employer)	
)	

Appearances:
Appellant, pro se
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 July 14, 2009 appellant filed a timely appeal from a June 16, 2009 merit decision of the Office of Workers' Compensation Programs denying his occupational disease claim. Pursuant to 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 established that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 17, 2009 appellant, a 51-year-old postal inspector, filed an occupational disease claim (Form CA-2) for headaches, hypertension, fatigue and memory loss that he attributed to exposure to high levels of carbon monoxide produced by the employing establishment's heating, ventilation and air conditioning (HVAC) system. He worked on the fifth floor of the employing establishment's Chicago Carrier Annex from October 1997 to October 2007, after which he transferred to another facility in San Francisco. Appellant alleged

that his medical conditions began in 1997 when he began working at the Chicago facility. On his claim form, he noted that March 11, 2009 was the date he first became aware of his condition and that it was caused by his federal employment. Appellant relates that, after testing at the Chicago Carrier Annex in October 2008 it revealed high concentrations of carbon monoxide produced by a flaw in the building's HVAC system, the employing establishment closed the fifth floor for five months to repair the boiler exhaust stacks.

The employing establishment submitted a report dated September 22, 2008 and a series of e-mail messages documenting the results of the carbon monoxide testing as well as the status of remedial measures taken. The highest carbon monoxide levels were found on the fifth floor's closed case room and sealed HVAC area. Investigation revealed that the source of the carbon monoxide was a boiler exhaust stack. The fifth floor of the Chicago Carrier Annex was vacated while the boiler exhaust stack was repaired. Employees returned to work on the fifth floor on October 30, 2008.

On March 31, 2009 the Office contacted the employing establishment, requesting a statement from a knowledgeable supervisor concerning the accuracy of appellant's allegations.

Appellant submitted an April 8, 2009 note in which he described his employment duties and his employment-related exposure. He alleged that he worked on the fifth floor of the Chicago Carrier Annex for 10 years, 10 hours per day, 15 to 25 days per month.

In an April 20, 2009 note, Mark Gorbey, assistant inspector in charge, reported that appellant transferred to San Francisco 10 months before the high carbon monoxide levels were detected in the fifth floor at the Chicago Carrier Annex. He noted that no carbon monoxide testing was performed at its Chicago Carrier Annex prior to August 2008. Mr. Gorbey related that the building was closed for three months after high levels of carbon monoxide were discovered on the fifth floor. He also noted that appellant's exposure, after factoring in the actual number of workdays per month and his travel schedule, was more reasonably 10 days per month.

By decision dated June 16, 2009, the Office denied the claim because the evidence of record did not demonstrate that appellant sustained an injury as defined by the Federal Employees' Compensation Act. It found that appellant had not established the alleged exposure to carbon monoxide caused a medically-diagnosed injury.

LEGAL PRECEDENT

An employee seeking benefits under the Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³ As part of his burden, the

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

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.⁶

ANALYSIS

Appellant identified exposure to elevated concentrations of carbon monoxide at the employing establishment's Chicago Carrier Annex as the employment factor he deemed responsible for his condition. His burden is to demonstrate that exposure to elevated carbon monoxide levels on the fifth floor of the Chicago Carrier Annex caused a medically-diagnosed disease or condition and that this disease or condition was causally related to his employment-related exposure. The Board finds appellant has not established that he sustained an injury in the performance of duty.⁷

Appellant has not submitted medical evidence diagnosing any disease or condition for which compensation is claimed.⁸ Although he alleges that his exposure to elevated carbon monoxide concentrations caused headaches, hypertension, fatigue and memory loss, because he does not qualify as a "physician" for purposes of the Act, his lay opinion is not relevant.⁹ Appellant has not submitted probative evidence containing a rationalized medical opinion explaining how any such diagnosed disease or condition was causally related to his exposure to elevated carbon monoxide levels while working on the fifth floor of the Chicago Carrier Annex. For these reasons, he has not satisfied the basic elements of a claim for compensation.

An award of compensation may not be based on surmise, conjecture or speculation. The mere fact that a condition manifests itself or worsens during a period of employment¹⁰ or that

⁴ *G.T.*, *supra* note 3; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ Appellant submitted an internet article and a document concerning carbon monoxide exposure. Newspaper articles, medical texts and excerpts from publications are of no evidentiary value on the issue of causal relationship as they are of general application and are not probative as to whether specific conditions were the result of particular circumstances of the employment. *Eugene Van Dyk*, 53 ECAB 706 (2002). Accordingly, this material has no evidentiary value.

⁸ *See Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

⁹ 5 U.S.C. § 8101(2). *See Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

¹⁰ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

work activities produce symptoms revelatory of an underlying condition¹¹ does not raise an inference of causal relationship between a claimed condition and employment factors or entitlement to compensation under the Act. While appellant has identified employment factors he deems responsible for his condition, he has not submitted probative medical evidence containing a diagnosis of any disease or condition resulting from this alleged exposure. He also has not submitted evidence demonstrating that he sustained a medically-diagnosed condition that is causally related to his employment.

Because appellant has not submitted sufficient evidence supporting his claim the Board finds appellant has not established that he sustained an injury in the performance of duty.

CONCLUSION

The Board finds appellant has not established that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 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

¹¹ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).