

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

C.T., Appellant)	
)	
and)	Docket No. 09-2104
)	Issued: July 2, 2010
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
Anchorage, AK, Employer)	
)	

Appearances:
Appellant, pro se
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 August 24, 2009 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated June 5, 2009 denying appellant's claim for wage-loss compensation for the period November 23 through 26, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant established that she was entitled to wage-loss compensation from November 23 through 26, 2008 for disability causally related to her accepted employment conditions.

FACTUAL HISTORY

On April 16, 2002 appellant, then a 36-year-old air traffic control specialist, filed an occupational disease claim alleging that she suffered from sinus blockage and nose pain as a result of her federal employment. Appellant specifically alleged that the quality of the air in the tower was extremely poor due to the lack of humidity and the cleaning crew raising dust cleaning the vents.

On December 18, 2003 the Office accepted appellant's claim for chronic ethmoid sinusitis. It accepted appellant's claim for short, intermittent periods of disability from July 11, 2002 through August 29, 2004. Appellant also received ongoing treatment for sinusitis.

On December 30, 2008 appellant filed a claim for compensation for the period November 23 through 26, 2008. A time analysis form indicated that appellant missed time from work on November 23, 25 and 26, 2008 due to sinus infection. In support of her claim, appellant submitted a November 24, 2008 disability note wherein Dr. Loretta L. Lee, a Board-certified internist, indicated that appellant was to miss work due to illness for two days beginning November 25, 2008 and continuing through November 26, 2008.

By letter dated January 2, 2009, the Office indicated that appellant's claim could not be paid at that time and requested that she submit medical evidence in support of her disability claim. In response, appellant submitted evidence already in the record. In addition, she submitted notes from a November 25, 2008 visit wherein Dr. Lee indicated that appellant was complaining of upper respiratory syndrome with moderate constant cough, nose congestion and sore throat. Dr. Lee assessed appellant with acute sinusitis maxillary and bronchitis and indicated that she was required to miss two days of work. Appellant also submitted an article from an unnamed publication discussing sinus infections, instructions for taking Augmentin and Oxycod, and a copy of an earnings and leave statement.

By decision dated February 23, 2009, the Office denied appellant's claim for compensation for the period November 23 to 26, 2008 on the grounds that the submitted evidence did not support the claimed periods of disability.

Appellant requested reconsideration on February 28, 2009. In support thereof, she submitted a February 26, 2009 report wherein Dr. Lee indicated that appellant was asked to stay off work on November 25, 2008 because of acute bacterial sinusitis. Dr. Lee noted that allergy, viral infections and pollutants induce local inflammation in the mucosal lining of the sinuses which leads to occlusion of the ostiomeatal complex, the common drainage path for the frontal, maxillary and ethmoid sinuses. The overgrowth of bacteria in the sinuses is what causes acute bacterial sinusitis. Dr. Lee noted that appellant showed her paperwork noting that appellant's occupational injury of April 14, 2002 was related to exposure to poor quality air with massive amounts of dust and debris. She opined that the airborne irritants could have triggered her symptoms.

In an April 6, 2009 letter from the employing establishment, a program consultant forwarded a September 13, 2003 indoor air quality evaluation regarding appellant's work in the tower cab portion of the employing establishment. The employing establishment noted that the report found the indoor air quality to be generally acceptable, but did suggest actions regarding dust in the tower cab. He noted that the employing establishment did pursue remedial action in response to the recommendations.

By decision dated June 5, 2009, the Office denied modification of its prior decision.

LEGAL PRECEDENT

The term "disability," as used in the Federal Employees' Compensation Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving

at the time of the injury.¹ In other words, if an employee is unable to perform the required duties of the job in which she was employed when injured, the employee is disabled.² Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.³

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.⁴ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁵

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS

Appellant filed a claim for compensation alleging that she was disabled from November 23 through 28, 2008 due to the accepted injury. The Board finds, however, that she failed to submit sufficient probative medical evidence demonstrating total disability for this period of time due to her accepted condition.

In support of her claim, appellant submitted reports by Dr. Lee. In Dr. Lee's November 24, 2008 note, she indicates that appellant was disabled from November 25 through 26, 2008 due to illness, but provides no further explanation. In a report, also dated November 25, 2008, Dr. Lee noted that appellant had acute sinusitis maxillary and bronchitis and that appellant was required to miss two days of work. Although these reports, taken together, establish that appellant could not work due to sinusitis and bronchitis, these reports do not link this period of disability to the accepted employment condition. On reconsideration, appellant submitted a February 26, 2009 report wherein Dr. Lee indicated that appellant was told to stay off work on November 25, 2008 because of acute bacterial sinusitis. Dr. Lee noted that on reviewing appellant's paperwork, she had an occupational injury on April 14, 2002 which was related to exposure to poor quality air and massive amounts of dust and debris. She noted that

¹ *Patricia A. Keller*, 45 ECAB 278, 286 (1993).

² *Id.*

³ *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

⁵ *Fereidoon Kharabi, id.*

⁶ *Ronald E. Eldridge*, 53 ECAB 218 (2001).

⁷ *Mary A. Ceglia*, 55 ECAB 626 (2004).

the airborne irritants could have triggered her symptoms. The Board notes that this opinion is speculative. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁸ Dr. Lee's opinion that there "could have" been a causal relationship based on unspecified paperwork is insufficient to establish causal relationship as it does not successfully link appellant's disability to her previous exposure to irritants in her workplace.

Appellant has not submitted rationalized medical evidence showing that she was disabled from November 23 through 26, 2008 due to her accepted employment injury. Consequently, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant has not established that she was entitled to wage-loss compensation from November 23 through 26, 2008 for disability causally related to her accepted employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2009 is affirmed.

Issued: July 2, 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

⁸ See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).