

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

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R.E., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
CUSTOMS & BORDER PROTECTION, )  
Douglas, AR, Employer )

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**Docket No. 09-1108  
Issued: March 17, 2010**

*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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 18, 2009 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated June 25, 2008 and February 5, 2009. 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 sustained an injury in the performance of duty on December 17, 2007.

**FACTUAL HISTORY**

Appellant, a 51-year-old border patrol officer, filed a traumatic injury claim on December 18, 2008, alleging that she became dizzy and disoriented and began throwing up while on duty on December 17, 2007. The case was initially handled administratively and medical expenses were paid by the Office.

In a treatment note dated December 18, 2007, Dr. John Dobrowolski, Board-certified in family practice, released appellant from work for four days.

In a statement dated January 7, 2008, appellant stated that she began feeling sick to her stomach on December 18, 2007. She advised that she felt lightheaded, began to vomit and waited at the worksite until an ambulance came and took her to the hospital emergency room. Appellant was admitted to the hospital and stayed overnight for observation.

On May 14, 2008 the Office advised appellant that her claim had initially been administratively handled as a routine, uncontroverted case which resulted in minimal or no time loss from work. It authorized payment of medical expenses up to \$1,500.00 in accordance with procedure. The Office noted, however, that, since appellant's medical bills had now exceeded \$1,500.00, it was required to formally adjudicate the merits of her claim. It advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment, and a diagnosis of her claimed condition. It requested that appellant submit the additional evidence within 30 days.

In a radiology report dated December 17, 2007, received by the Office on June 17, 2008, Dr. Nilo Gomez, Board-certified in radiology, stated that appellant had been experiencing headaches, dizziness, vomiting and hypoxia. He noted that x-rays of appellant's abdomen showed a normal bowel gas pattern with no abnormal mass, calcifications or organomegaly. Dr. Gomez advised that the right kidney, collecting system, ureter and bladder appeared normal except for an incidental finding of double collecting system on the left side. He noted that the chest x-ray showed no active cardiopulmonary pathology and indicated a negative acute abdomen series.

In a discharge summary from Southeast Arizona Medical Center dated December 18, 2008, Dr. Dobrowolski indicated that appellant was experiencing presyncope, in addition to vomiting and dizziness, both of which had resolved. Appellant also submitted diagnostic test results, hospital treatment notes and medication records.

By decision dated June 25, 2008, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim that she sustained an injury in the performance of duty on December 17, 2007.

On July 2, 2008 appellant requested an oral hearing, which was held on December 10, 2008. At the hearing, she testified that, when she began coughing and vomiting on December 17, 2007, the employing establishment called an ambulance for her. Appellant stated that one of the paramedics who arrived with the ambulance told her she had tuberculosis, as indicated by red splotches on her arms; she advised that she was tested for tuberculosis when she arrived at the hospital. She asserted that she was informed that many of the persons she encountered crossing the border were carriers of tuberculosis. Appellant related that some of these persons carry their identification cards in their mouths and that border officers do not wear gloves or masks. She stated, however, that she was unable to state definitively that someone

who had tuberculosis had coughed on her. Appellant indicated that she had initially tested positive for tuberculosis after the initial skin test but that subsequent tests taken at the hospital and subsequent medical examinations were negative for the disease. She indicated that her vomiting and coughing was probably caused by double shifts, short turnarounds and exposure to fumes from vehicles which were parked in line for hours at a time.<sup>1</sup>

Appellant submitted a December 18, 2007 Form CA-16 from Dr. Dobrowolski which indicated that she had experienced nausea, dizziness, coughing and shortness of breath on December 17, 2007. Dr. Dobrowolski diagnosed sinus congestion, presyncope and hypoxemia and indicated that these conditions were not caused by her employment.

By decision dated February 5, 2009, an Office hearing representative affirmed the June 25, 2008 Office decision.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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. First, 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.<sup>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

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<sup>1</sup> The hearing representative advised appellant that, under 20 C.F.R. § 10.303, simple exposure to a workplace hazard such as an infectious agent does not constitute a work-related injury entitling an employee to treatment under the Act. He stated that the employing establishment therefore was not required to use a Form CA-16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless appellant had sustained an identifiable injury or medical condition as a result of that exposure.

<sup>2</sup> Appellant testified that it was the employing establishment's decision for her to go to the hospital in the ambulance, not hers. She therefore requested reimbursement for the ambulance service and emergency room treatment. The hearing representative agreed that reimbursement for these services should be authorized through the Form CA-16 her physician completed on December 18, 2007.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

establish that the employment incident caused a personal injury.<sup>7</sup> 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.<sup>8</sup>

The Board has held that 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.<sup>9</sup>

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 his employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

The Office accepted that appellant became dizzy, disoriented, experienced shortness of breath and began vomiting on December 17, 2007. Appellant, however, has not submitted rationalized, probative medical evidence to establish that the symptoms she exhibited on December 17, 2007 were caused by an incident of employment.

In the instant case, appellant became dizzy, lightheaded, experienced shortness of breath, began vomiting and showed red skin splotches on her arms on December 17, 2007; the Board notes that these are not incidents of employment, but constitute symptoms of illness. Appellant stated at the hearing that she was told by paramedics on December 17, 2007 that she had indications of tuberculosis and advised that an initial skin test was positive for the disease. She was unable to pinpoint any specific exposure to tuberculosis carriers in the course of her employment, but stated that the employing establishment advised her that such carriers regularly attempt to cross the border and that on one occasion a tuberculosis carrier had been identified. Appellant did not indicate, however, that this person had coughed on her or had otherwise engaged in close contact with her. She has therefore not established any incident of employment occurring in a specific time, place and manner on December 17, 2007.

The Board further finds that appellant has not established that she sustained an injury. The question of whether an employment incident caused a personal injury can only be established by

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<sup>7</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>8</sup> *Id.*

<sup>9</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>10</sup> *Id.*

probative medical evidence.<sup>11</sup> Pursuant to 20 C.F.R. § 10.303,<sup>12</sup> simple exposure to a workplace hazard such as an infectious agent does not constitute a work-related injury entitling an employee to treatment under the Act, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.<sup>13</sup> Appellant has not established that she was directly exposed to tuberculosis and although her initial skin test was positive all subsequent tests and medical examinations proved negative results.<sup>14</sup> She also has not established that her exposure to automobile fumes at the worksite resulted in any work-related condition.

In support of her claim, appellant submitted reports from Dr. Dobrowolski dated December 18, 2007. Dr. Dobrowolski stated findings on examination and indicated that appellant had presyncope, epoxemia, and had experienced shortness of breath, dizziness, disorientation and vomiting on December 17, 2007. He indicated on the form, however, that these conditions were not caused by her employment. Therefore, although Dr. Dobrowolski presented diagnoses of appellant's condition, he did not present an opinion that these conditions were employment related. Dr. Gomez indicated in his December 17, 2007 x-ray report that appellant had hypoxia but noted that the results of his abdominal and chest x-rays were essentially normal. None of the diagnostic test results and hospital treatment notes appellant submitted contained an opinion pertaining to causal relationship. Appellant failed to provide a rationalized, probative medical opinion relating her current condition to factors of her employment.<sup>15</sup>

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not establish that the alleged incident of employment actually occurred at the time, place and in the manner alleged on December 17, 2007. She also did not provide a medical opinion which describes or explains the medical process through which the illness she displayed on December 17, 2007 was causally related to the claimed injury. Accordingly, appellant did not establish that she sustained an injury in the performance of duty. The Office properly denied her claim for compensation.

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<sup>11</sup> *Carlone, supra* note 6.

<sup>12</sup> 20 C.F.R. § 10.303

<sup>13</sup> The Board notes that, under section 20 C.F.R. § 10.303, preventive treatment is the responsibility of the employing establishment. The employing establishment could have used the December 18, 2007 Form CA-16 appellant submitted to authorize medical testing for appellant had she been exposed to a workplace hazard. As noted above, Dr. Dobrowolski indicated on the form that the conditions for which appellant was being treated were not work related and the hearing representative did not find that appellant had been exposed to any workplace hazards. Appellant did, however, instruct the district Office to authorize and process all applicable bills related to the CA-16 form.

<sup>14</sup> The record contains no medical documentation pertaining to testing or examinations for tuberculosis.

<sup>15</sup> The Board notes that the reports from a physician's assistant which appellant submitted do not constitute medical evidence pursuant to section 8101(2).

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty on December 17, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2009 and June 25, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: March 17, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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