

coworker's cologne.² On June 16, 2006 she filed a notice of occupational disease alleging that she developed toxic encephalopathy and multiple chemical sensitivity due to exposure to a coworker's cologne beginning on April 20, 2006. Appellant stated that she became extremely ill on May 11, 2006. By decision dated September 14, 2006, the Office denied her claim finding that the medical evidence did not establish that her diagnosed condition of toxic encephalopathy or multiple chemical sensitivity resulted from her exposure to a coworker's cologne. Appellant requested an oral hearing. On July 11, 2007 the hearing representative remanded the case for additional development and doubling of her claims. The Office doubled the claims on July 10, 2007.

By decision dated September 24, 2007, the Office denied appellant's claim for an occupational disease. It found that the weight of the medical opinion evidence rested with the opinion of Dr. Thomas C. Bruff, Board-certified in preventative medicine and an Office referral physician. Dr. Bruff found that appellant's condition was not causally related to cologne exposure at work. Appellant appealed this decision to the Board. In an August 14, 2008 decision, the Board found an unresolved conflict between Dr. Bruff and appellant's physicians Dr. Kaye H. Kilburn, Board-certified in preventative medicine, and Dr. Jeffrey Bruce Gordon, a Board-certified family practitioner. The Board remanded the case for the Office to refer appellant for an impartial medical examination. The facts of the case as set out in the Board's prior decision are incorporated herein by reference.

The Office referred appellant, a statement of accepted facts and list of questions for an impartial medical evaluation to Dr. Michael J. Welch, a Board-certified allergist and immunologist of professorial rank. In a March 30, 2009 report, Dr. Welch provided a detailed

² On November 3, 2006 appellant, filed a notice of traumatic injury alleging that on October 18, 2006 she developed a throbbing headache, numbness on the side of her body, shortness of breathe and ringing in her ears due to exposure to noxious chemical odors from scented products (File No. xxxxxx700). By decision dated December 19, 2006, the Office accepted her claim for temporary aggravation of toxic encephalopathy which resolved by October 30, 2006.

Appellant filed a second traumatic-injury claim for exposure to noxious chemicals on December 15, 2006 alleging on December 5, 2006 she developed shortness of breath, throbbing headache, numbness on the side of her face, ringing in her ears and "problems with her right eye" (File No. xxxxxx091). By decision dated September 6, 2007, the Office denied appellant's claim finding that the medical evidence submitted was not sufficient to establish a diagnosed condition.

Appellant filed a claim for chemical exposure on January 27, 2007 alleging that she was exposed to noxious chemical odors from scented products (File No. xxxxxx353). By decision dated September 25, 2007, the Office denied her claim finding that she had not established the employment exposure alleged. Appellant, through her attorney, requested a telephonic hearing on September 29, 2007. By decision dated March 21, 2008, the Branch of Hearings and Review denied appellant's claim finding that she had not established that she was exposed to cologne on January 27, 2007. Appellant requested a second telephonic hearing on March 29, 2008. By decision dated June 9, 2008, the Branch of Hearings and Review denied appellant's request for an oral hearing as a hearing had previously been held on this issue of this claim.

For final adverse decisions of the Office issued prior to November 19, 2008, the Board's review authority is limited to appeals which are filed within one year from the date of issuance of the Office's decision. *See* 20 C.F.R. § 501.3(d)(2). As preceding decisions of it were issued more than one-year prior to January 6, 2010, the date appellant filed her appeal to the Board, the Board lacks jurisdiction to consider these decisions.

review of the medical records and noted that all blood tests and x-rays were reported as normal except for a brain imaging study on November 6, 2006 that found “slight asymmetric decreased uptake involving the temporal lobes, left side greater than the right side.” He noted that appellant retired in September 2008 but still experienced episodes of headaches, shortness of breath, palpitations and fatigue triggered by exposure to aromas, perfumes or irritants. Dr. Welch found that her physical examination was normal with unremarkable findings in her head, eyes, ears, nose and throat. Allergy skin testing was negative and pulmonary function testing was normal. Dr. Welch diagnosed probable somatization disorder with histrionic personality, migraines, allergic rhinitis, recurrent sinusitis, increased sensitivity to irritants such as smells and perfumes, smell and taste differences and a history of right-sided central serous retinopathy, resolved. He noted that migraines triggered by perfume beginning in 2006 could be associated with various nonheadache neurological symptoms such as vision changes and numbness. Appellant had a long-standing history of upper respiratory tract symptoms predating 1999 and had prior diagnoses of perennial allergic rhinoconjunctivitis and inhalant allergy as well as recurrent sinusitis in 2002. Dr. Welch stated that, by history, appellant had an altered or heightened sensitivity to chemicals, smells and irritants as well as increased sensitivity to irritants. Appellant symptoms were likely either confused with migraines or sinus problems or greatly exaggerated by her psychosomatic disorder with histrionic personality as diagnosed on June 29, 2006.

As to the diagnosis of multiple chemical sensitivity, Dr. Welch reviewed the medical literature and concluded that this was not a legitimate diagnosis.³ He suggested that appellant’s migraine condition, allergic rhinitis and tendency for recurrent sinusitis were associated with increased sensitivity to smells and irritants in the environment which could aggravate her conditions. Dr. Welch found no factual basis for the diagnosis of toxic encephalopathy, noting that appellant was not exposed to any toxic chemical. The only abnormality was on the brain scan which was very mildly abnormal and not substantiated through any clinical correlation. Dr. Welch found that the record documented the diagnosis of central serous retinopathy in the right eye, but that there was no evidence that this condition was due to an occupational exposure or chemical or toxin exposure.

Dr. Welch opined that none of the medical conditions diagnosed in the record were caused by work-related exposure to cologne or fragrances, as they were present before February 2006. Appellant had a lifelong chemical sensitivity, allergic rhinitis and recurrent sinusitis dating back to 2002 as well as a previous history of headaches. Dr. Welch stated that there was no evidence to support that a permanent aggravation occurred. He noted that appellant could have sustained a temporary aggravation of her upper respiratory allergies due to exposure to cologne and perfume at work, but stated, “In addition, in my experience, any aggravation of allergy symptoms from irritants rarely leads to a person needing to stop work, either on a temporary or certainly, on a permanent basis.” In regard to her migraines, Dr. Welch opined that annoying perfumes could lead to a situation where appellant would have temporary disability due to a severe migraine and that her disability during May and June 2006 due to a migraine was

³ Dr. Welch included copies of the medical publications with his report.

reasonable.⁴ He concluded that she could work in an environment where her coworkers minimized the use of perfume and cologne and other chemicals in the workplace were kept to a minimum.

By decision dated May 14, 2009, the Office denied appellant's claim for multiple chemical sensitivity and toxic encephalopathy based on Dr. Welch's opinion.

On May 19, 2009 appellant, through her attorney, requested a telephonic hearing that was held on September 22, 2009. She testified that she retired on September 12, 2008 and that her conditions had improved. Appellant stated that Dr. Welch did not perform any allergy testing for perfumes or chemicals. Her attorney contended that Dr. Welch's report was insufficient to represent the weight of medical opinion because he did not perform appropriate testing and had a prejudice against finding multiple chemical sensitivity. Dr. Welch argued that appellant's claim should be accepted.

By decision dated December 9, 2009, an Office hearing representative found that appellant's diagnosed conditions were not caused or permanently aggravated by her accepted employment exposures.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁶ 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.⁷

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 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 evidence required to establish causal relationship is rationalized medical opinion evidence,

⁴ The Office has not issued a final decision addressing this issue and the Board will not consider this for the first time on appeal. 20 C.F.R. § 501.2(c).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989).

based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁸

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹ Medical rationale 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 activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.¹⁰

ANALYSIS

The Board previously found a conflict of medical opinion. The Office referred appellant to Dr. Welch, a Board-certified allergist and immunologist of professorial rank. In a March 30, 2009 report, Dr. Welch provided a detailed review of appellant's medical records, treatment noting normal diagnostic blood studies and x-rays. He found that the only abnormal test was a brain imaging study of November 6, 2006 which noted a slight asymmetric decreased uptake involving the temporal lobes, greater on the left side. Dr. Welch examined appellant and found no abnormalities, noting that she retired in September 2008 but still had episodes of headaches, respiratory symptoms and fatigue triggered by exposure to smells, perfumes or irritants. He performed allergy skin testing as well as pulmonary function testing and found the results to be normal. Dr. Welch provided several diagnoses, including probable somatization disorder with histrionic personality, migraines, allergic rhinitis, recurrent sinusitis, increased sensitivity to irritants such as smells and perfumes, smell and taste differences and history of right-sided central serous retinopathy, resolved.

Dr. Welch discussed each diagnosis and noted that the majority predated the May 12, 2006 claim of injury. He disagreed with the diagnosis of multiple chemical sensitivity, stating that it was not generally accepted by the medical community. Dr. Welch suggested that appellant's migraine condition, allergic rhinitis and tendency for recurrent sinusitis were associated with increased sensitivity to smells and irritants and predated her 2006 employment injury. He concluded that appellant's respiratory and other symptoms were likely confused with migraines or sinus problems or greatly exaggerated by her psychosomatic disorder with histrionic personality. Dr. Welch did not find a basis for the diagnosis of toxic encephalopathy and noted that appellant was not exposed to any toxic chemicals. He also emphasized that the brain scan was very mildly abnormal and that these findings were not substantiated through

⁸ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁹ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

¹⁰ *A.D.*, 58 ECAB 149 (2006).

clinical correlation. Dr. Welch concluded that appellant's central serous retinopathy in the right eye was not due to an occupational exposure or chemical or toxin exposure based on the medical records.

Dr. Welch found no evidence to support that appellant had sustained a permanent aggravation which occurred of her migraines, allergic rhinitis and recurrent sinusitis. He concluded that she sustained temporary aggravation of her upper respiratory allergies due to exposure to cologne and perfume at work and stated, "In addition, in my experience, any aggravation of allergy symptoms form irritants rarely leads to a person needing to stop work, either on a temporary or, certainly, on a permanent basis." Dr. Welch opined that appellant could have sustained temporary disability due to migraines based on exposure to annoying perfumes and found that her intermittent disability during May and June 2006 due to migraines was reasonable.

The Board finds that Dr. Welch's report is entitled to the special weight of the medical evidence and resolved the conflict of medical opinion evidence. Dr. Welch provided a very detailed and comprehensive report addressing appellant's diagnosed conditions. He concluded that none of these conditions were caused or permanently aggravated by her work exposures to perfumes and colognes. Dr. Welch based his conclusion on an extensive review of the medical records as well as providing reasoning for each of his conclusions. He relied on the medical literature in finding that appellant did not sustain a multiple chemical sensitivity due to her employment and also found that there was no confirmed objective evidence of toxic encephalopathy. Dr. Welch also noted that the remainder of appellant's conditions including migraines, allergic rhinitis, recurrent sinusitis and increased sensitivity to irritants such as smells and perfumes predated her employment exposure in 2006 based on his review of the medical records. He offered his opinion that these conditions were not permanently aggravated by appellant's employment exposures. Dr. Welch based his opinion on his extensive medical expertise and the medical records. The Board finds that this report contains the proper factual history, detailed findings and medical reasoning in support of the conclusions to constitute the weight of the medical evidence. The Board further finds that the Office properly denied appellant's claim for multiple chemical sensitivity and toxic encephalopathy based on Dr. Welch's report.¹¹

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed either multiple chemical sensitivity or toxic encephalopathy due to exposures during her federal employment.

¹¹ The Board notes that Dr. Welch supported intermittent periods of total disability in May and June 2006 due to a temporary aggravation of appellant's preexisting migraines due to the accepted exposures to perfume and cologne.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2009 decision of Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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