United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 10-421**
	)	**Issued: October 22, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Leavenworth, KS, Employer	)	

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 30, 2009 appellant filed a timely appeal from the November 16, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

FACTUAL HISTORY

On October 28, 2008 appellant, then a 51-year-old supervisory medical administrative program specialist, filed an occupational disease claim alleging that she sustained a rash on her

upper body, a raspy cough and dry mouth after moving into a new office.[1] She alleged that she first became aware of the condition on October 20, 2008. Appellant did not stop work.

In letters dated November 17, 2004, the Office requested additional factual and medical evidence from appellant and the employing establishment.

In an undated response received by the Office on January 2, 2009, appellant noted that her first day of work was October 19, 2008. She noted that her rash began on October 20, 2008 together with a raspy cough and dry mouth. Appellant stated that her throat felt like it was closing shut and she had to take Benadryl.

In an October 28, 2008 e-mail, Jacqueline Roemer, a supervisor, confirmed that the office space was not entirely cleaned before employees moved in. She advised that it was quite dusty and needed additional cleaning. In a January 6, 2008 e-mail, Sherrie Mailen, the chief of health administration, noted that appellant was moved into a new office on October 16 or 17, 2008. At that time, appellant was on leave and returned on October 18, 2008 to the new office. Ms. Mailen confirmed that the office was not cleaned prior to relocating and that additional cleaning was needed.

In an October 28, 2008 report, Dr. Alexander Hallock, a Board-certified internist, noted that appellant reported to the emergency department with an itchy rash which occurred at work and resolved after going home. He diagnosed macular rash. In notes also dated October 28, 2008, a nurse advised that appellant related that her symptoms began when she moved to a different office. The Office received nurse notes dated November 17, 24 and December 1, 2008. Appellant also submitted a November 25, 2008 respiratory allergy profile test results.

The employing establishment submitted laboratory reports dated November 11 and 12, 2008 pertaining to microbial testing and sampling. The reports found no significant interior mold.

In a February 4, 2009 decision, the Office denied appellant's claim finding that she did not submit sufficient medical evidence to establish that the claimed rash or allergic condition was related to the accepted move to a new office.

Appellant requested reconsideration on April 20 and June 1, 2009. She noted that Dr. Hallock saw her rash and stated that it was environmental.

In a November 24, 2008 report, Dr. Chet Strehlow, Board-certified in family medicine, noted that appellant was exposed to mold in her office. Appellant related that shortly after getting to the office, she would break out in hives, feel tightness in her chest and numbness on the left side of her face. Dr. Strehlow noted that she indicated that the symptoms would be relieved at home and recur once she returned to the building. He diagnosed "allergic reaction, possible mold exposure." In a December 1, 2008 report, Dr. Strehlow reiterated the history of

[1] The record reflects that appellant has several claims with the Office. She has an appeal on a separate issue in a different claim that is pending under Docket No. 10-214.

injury and diagnosed "probable recent allergic reaction, unknown etiology" and "mold exposure, unknown correlation."

By decision dated July 24, 2009, the Office denied modification of its February 4, 2009 decision. It found that the medical evidence did not establish a causal relationship between the diagnosed condition and factors of her federal employment.

Appellant submitted additional evidence, including previously submitted reports. The Office received nurse notes dated October 28, 2008 to July 8, 2009.

In a July 16, 2009 e-mail, Ms. Mailen confirmed that appellant was relocated to her current office space in December 2008. The space had not been thoroughly cleaned prior to the move, and appellant had expressed concerns about being ill with upper respiratory symptoms and headache. Appellant was removed from the space and it was cleaned and painted; however, upon returning to the space, she again began to experience the respiratory symptoms. She noted that the space had water leaks above the ceiling, which had been repaired.

In a July 31, 2009 e-mail, appellant reiterated that she experienced dry mouth, headaches and a raspy cough whenever she was in her new office.

The Office received an indoor air quality assessments dated July 26 and August 22, 2009 that revealed the current ventilation system was not adequate to keep the temperature, relative humidity and dew point within recommended limits. The employing establishment was advised to increase the flow of fresh air within the building.

Appellant requested reconsideration on October 1, 2009. She enclosed a September 2, 2009 note from a nurse.

On September 2, 2009 Dr. Vivek Sahgal, a Board-certified internist, noted that appellant was seen for complaints of shortness of breath and a substernal chest pressure-like sensation. Appellant related that she had developed her condition since moving to a new office where there was "a lot of mold" and where her coworkers were also sick. Dr. Sahgal related that appellant believed that she "may have had mold exposure." He discussed this at length with appellant and related that "a mold infection of the lungs is very unlikely as the immune system is intact." Dr. Sahgal diagnosed chest pain and atypical features and a probable anxiety episode. He explained that the "likelihood of invasive mold or fungal infection is extremely low in a patient who is immunocompetent." Dr. Sahgal provided a clinical report of the same date which revealed precordial chest pain.

In a September 3, 2009 report, Dr. Ravi Bhagat, a Board-certified internist, noted that appellant presented to the emergency room with dyspnea. He noted that she had risk factors for pulmonary embolism given her history of estrogen use and a recent three-hour flight. Dr. Bhagat advised that appellant had a history of mild nonobstructive coronary artery disease, mild sinus tachycardia, hypertension, dyslipidemia and history of fibromyalgia.

By decision dated November 16, 2009, the Office denied modification of the February 4, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 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 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, generally, is rationalized medical opinion 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.

ANALYSIS

The Board finds that appellant failed to establish that she developed an allergic condition in the performance of duty. The employing establishment confirmed that she was moved to a

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[5] *Id.*

[6] *Id.*

new office which was not adequately cleaned prior to the move but subsequently cleaned after the move. The employing establishment provided copies of environmental testing that found no significant interior mold. The July 26 and August 22, 2009 results of air quality assessments at appellant's work site were indicative of an inadequate ventilation system. The employing establishment was advised to increase the flow of fresh air within the building. Appellant, however, has not established that her rash or other allergic conditions were causally related to this exposure in her employment.

Appellant submitted medical reports documenting her rash symptoms. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[7] The reports submitted by appellant do not adequately explain how factors of her employment caused or aggravated a rash or other allergic conditions.

On October 28, 2008 Dr. Hallock noted that appellant reported to the emergency department with an itchy rash which occurred at work and resolved after going home. He diagnosed macular rash. However, Dr. Hallock did not offer any opinion regarding the cause of appellant's condition. He did not address how any work exposure on or after October 19, 2008 caused the symptoms he treated. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8]

In a November 24, 2008 report, Dr. Strehlow noted that appellant was exposed to mold in her office. Appellant described breaking out in hives, feel tightness in her chest and numbness on the left side of her face when she returned to her building. Dr. Strehlow found that appellant had an "allergic reaction, possible mold exposure." The Board notes that he did not offer any specific opinion regarding the cause of appellant's condition. The opinion that appellant had possible mold exposure is speculative or equivocal in character and of diminished probative value.[9] Furthermore, Dr. Strehlow opined in his December 1, 2008 report that the cause of her condition was unknown. He diagnosed "probable recent allergic reaction, unknown etiology" and "mold exposure, unknown correlation." As Dr. Strehlow opined that the etiology of appellant's condition was unknown, his reports are of limited probative value.

In reports dated September 2, 2009, Dr. Sahgal noted that appellant was seen with complaints of shortness of breath and substernal chest pressure like sensation. Appellant related that she believed that her condition developed since moving to a new office where there was "a lot of mold" and where her coworkers were also sick.[10] However, Dr. Sahgal explained that "a mold infection of the lungs is very unlikely as the immune system is intact." He attributed appellant's condition to a probable anxiety episode. Dr. Sahgal opined that the "likelihood of

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

[8] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

[9] *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009).

[10] Dr. Sahgal's finding that appellant encountered "a lot" of mold at work appears to be inaccurate. A November 12, 2008 report of microbial sampling and testing at the employing establishment reported total fungal spores in the tested locations to be at or below outdoor ambient levels.

invasive mold or fungal infection is extremely low in a patient who is immunocompetent." He did not find that specific work exposures at particular time periods caused or aggravated her claimed conditions.

A September 3, 2009 report from Dr. Bhagat noted that appellant presented to the emergency room with dyspnea. He did not offer any opinion that appellant suffered a rash or cough from work-related exposures. Dr. Bhagat's report is of limited probative value. The other medical reports submitted by appellant do not address causal relationship.

Appellant also provided several nurse notes. However, health care providers such as nurses are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[11]

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 her condition and her employment factors.[12]

The Board finds that the medical reports of record are insufficient to establish a causal relationship between appellant's diagnosed conditions and accepted employment factors. The physicians did not provide sufficient explanation to support how her condition was caused by exposure to dusts or molds in appellant's workplace.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

[11] *Jane A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2).

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

ORDER

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

Issued: October 22, 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