

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

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M.W., Appellant

and

TENNESSEE VALLEY AUTHORITY,  
Tuscumbia, AL, Employer  
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**Docket No. 10-377  
Issued: January 10, 2011**

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 23, 2009 appellant filed a timely appeal from an October 29, 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 of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish an exacerbation of her asthma condition by work exposure on June 23, 2008.

**FACTUAL HISTORY**

On August 12, 2008 appellant, a 52-year-old mechanical technician, traumatic injury claim alleging that her preexisting asthma condition was aggravated by exposure to dust and other materials at the employing establishment on June 23, 2008. She stated that her asthma flared up

when she walked down the sidewalk or passed the railroad track adjacent to the worksite, entered the machine shop and went to the nurse's station.<sup>1</sup>

By letter dated August 26, 2008, the Office asked appellant to provide additional factual and medical evidence in support of her claim. It requested that she submit a comprehensive medical report from a treating physician containing a diagnosis of her condition and an explanation of how the June 23, 2008 work exposure caused or aggravated her claimed condition.

Appellant submitted medical records dated January 2005 through June 2008 for treatment of her asthma condition. In a January 31, 2005 report, Dr. Danny McFall, Board-certified in internal medicine, stated that appellant had asthma and underwent pulmonary function studies which revealed decreased total lung capacity. He recommended that she be referred to a pulmonary specialist for examination. In a March 4, 2008 report, Dr. McFall advised that appellant had asthma and chronic lung disease. He noted that she worked around dust at work.

In a statement to the record, appellant asserted that her asthma condition had been aggravated by exposure to various irritants, including coal and particle dust, welding and ammonal fumes, asbestos fibers, solvent vapors and sulfur dioxide. With regard to the June 23, 2008 exposure, she stated that her asthma episode started while in the parking lot at 6:50 a.m.: "As I was walking toward the turnstile (Main Gate), a slight wind blew from the direction of the plant into my face and that air made me feel as though I were smothering." Appellant caught her breath and went through the gate. A second puff of wind blew from the plant had her breathing again became worse. When appellant walked through the machine shop and "This time there was no prior warning of in impending episode (odors, fumes, no stressful activity, dust etc.) No chest tightness, just all of a sudden it felt like something was smothering or trying to suffocate me. I thought maybe it would subside but it didn't, it just kept getting worse." Appellant's condition improved by the time she entered the locker room and prepared for her work shift; however, her asthma began to flare up again when the plant nurse came into the room to check up on her. An employing establishment physician examined her, provided a pulmonary function test and placed her off work for two days.

In a June 26, 2008 report, Dr. Gary W. Daniel, a Board-certified family practitioner, advised that appellant was recently treated for an asthma exacerbation which he did not consider work related. Appellant's breathing improved and that her attending physician released her to return to work as of June 25, 2008. Dr. Daniel recommended that appellant avoid working conditions which exposed her to dust, flumes, odors and extreme changes in temperatures. He approved the use of a respirator at work.

In a July 1, 2008 report, Dr. Albert L. Ridgeway, Board-certified in internal medicine, advised that appellant was referred to him for evaluation of her asthma condition. He obtained a history that she worked in a dusty environment and experienced shortness of breath. Appellant also experienced obstructive sleep apnea, vertigo, sinus drainage and acid reflux. Dr. Ridgeway noted that pulmonary function studies showed moderate restriction with normal diffusion capacity and significant improvement with bronchodilators. A chest x-ray showed no acute infiltrate. Dr. Ridgeway recommended that appellant continue with her medication.

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<sup>1</sup> The Office adjudicated the claim as one based on a traumatic injury.

On August 22, 2008 Dr. Daniel stated that appellant's asthma condition continued to worsen as of June 26, 2008. He recommended that she discontinue using a respirator due to the deterioration of her condition. On August 25, 2008 Dr. Daniel reiterated that appellant's asthma condition was not related to her federal employment. He noted that appellant's asthma preexisted her employment, which made it extremely difficult to determine any factor that could be aggravating it. Dr. Daniel stated that an exacerbation of asthma stemmed from multiple causes and exposures and that pinpointing the exact cause of appellant's current condition was almost impossible.<sup>2</sup>

In a September 23, 2008 statement, B. Doug Keeling, the plant maintenance manager, asserted that appellant's asthma flare-up did not occur in the performance of duty and that she failed to specify any work-related exposure to harmful irritants.

In an October 2, 2008 decision, the Office denied appellant's claim for compensation. It reviewed the medical evidence of record and found that it was insufficient to establish that her asthma condition was exacerbated by her federal employment on June 23, 2008.

In an August 11, 2008 report, received by the Office on October 3, 2008, Dr. Ridgeway stated that appellant had a markedly elevated immunoglobulin level. He recommended that she avoid working in a dusty, congested air environment at the employing establishment.

Appellant submitted treatment records dated June 23 to September 5, 2008 which noted findings on examination, listed the status of her asthma condition and described her symptoms. She also submitted the results of diagnostic tests obtained on June 23 and July 1, 2008.

On October 30, 2008 appellant's attorney requested an oral hearing, which was held on February 11, 2009. In a December 28, 2008 statement she reiterated her contentions. She noted that she asked for a respirator when she began work at the employing establishment in 1993 but was not fitted for one until 2008. Appellant stopped work on June 23, 2008 and had not returned as her medical restrictions could not be accommodated.

Appellant alleged that her asthma was initially aggravated on June 23, 2008 when she experienced a suffocating sensation while walking in the parking lot toward the worksite; she became sick when she inhaled dust emanating from a tractor mower on the lawn adjacent to the plant. She walked through the plant and alleged exposure to airborne dust and coal dust from an open door located near the nursing unit.

In a March 4, 2009 statement, Mr. Keeling denied appellant's assertion that air circulation at the plant was tainted by dusty air flow from an open door inside the plant or the nursing unit.

In a January 21, 2009 report, Mike Bradford, an industrial hygienist, addressed whether appellant was exposed to toxic elements at the worksite. The assessments of exposure to dust, arsenic, lead, welding fumes, asbestos and other contaminants experienced by plant personnel performing the same or similar work activities as appellant's exposure below the current

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<sup>2</sup> Appellant submitted statements from coworkers addressing her symptoms at work. David Harris noted that he could not recall any odors coming from the plant when he assisted appellant on June 23, 2008.

permissible limits established by the Occupational Safety and Health Administration (OSHA). Mr. Bradford advised that air monitoring results for respirable coal dust taken from the employing establishment data base consistently showed exposure below OSHA and industry standards for safe working environments.

In a March 3, 2009 report, Dr. Matthew J. Reardon, Board-certified in preventive medicine, stated that appellant experienced asthma exacerbated by various tasks associated with her job at the power plant. Appellant had a history of preexisting asthma since childhood that was exacerbated in 2001 when she was assigned to the Tuscumbia power plant. She was given a respirator which initially helped control her asthma until she was temporarily released from work by one of her treating physicians, who indicated that her condition had worsened despite the use of the respirator. Dr. Reardon stated that appellant had frequent symptoms of anterior chest tightness occasionally relieved by medication. Appellant's symptoms grew worse at work due to the wafting of coal dust near air preheaters as well as grinding fumes and cleaning solvents. Her last workday at work was on June 23, 2008 because management could not accommodate her restrictions. Dr. Reardon stated that various photos of the plant showed considerable buildup of old dusts, worn equipment, exposed insulation, and fluid areas on flooring; there was also evidence of substantial quantities of asbestos insulation although chest x-ray and computerized axial tomography reports were negative for parenchymal or pleural pathology. He noted that spirometry reports reflected a downward trend in obstructive components consistent with a concomitant increase in her asthma medication. Dr. Reardon concluded that appellant's history and medical records suggested a work-related exacerbation or aggravation component.

By decision dated October 29, 2009, the Office denied modification of the October 24, 2008 decision.

### **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 an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first to be established is whether the employee actually experienced the

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<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).

employment incident that is alleged to have occurred. The employee must also submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</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 her employment is sufficient to establish causal relationship.<sup>7</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

Appellant alleged that she sustained an exacerbation of her underlying asthma condition on June 23, 2008 at work. The Board finds that she has not established the factual element of her claim that she experienced an employment-related exposure at a given time, place or in a given manner on the day in question. Appellant stated that she experienced several asthmatic episodes on that day, first in the parking lot upon her arrival at work and when she approached the plant.<sup>8</sup> She noted generally that there were grass cuttings and dust emanating from a lawn tractor operating on a hill adjacent to her worksite.<sup>9</sup> She noted several instances in which the wind blew apparently from the direction of the plant and her breathing became worse. Once in the machine shop, she again described an episode of something smothering her. Appellant noted, however, there was "no prior warning": no odors, fumes, stressful activity, or dust. In this respect, her allegation of no odors, fumes or dusts is not wholly consistent with her claim of exposure that day to dusts and other irritants in the workplace or with the medical histories provided to her attending physicians.

Dr. Reardon noted that he reviewed photos of appellant's worksite that showed accumulated dusts, worn equipment, exposed insulation and fluid areas on flooring. There is insufficient and conflicting evidence pertaining to her traumatic exposure on June 23, 2008 as alleged. Appellant's allegations of excessive levels of airborne dust, coal dust, chemical fumes and other irritants were contradicted by Mr. Keeling, the plant maintenance manager, and Mr. Bradford, an industrial hygienist. Mr. Keeling disputed appellant's exposure from dusty air flowing from open doors as described. Mr. Bradford noted that the workplace had been surveyed and that occupational exposure levels were within permissible limits as established by OSHA for safe working environments.

Appellant was unable to identify the actual source or specific nature of the substances which she believed caused an exacerbation of her asthma condition on June 23, 2008. The Board finds that she provided insufficient factual evidence to support her exposure to any precise dust,

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<sup>6</sup> See *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Richard O'Brien*, 53 ECAB 234 (2001).

<sup>8</sup> A traumatic injury is defined as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee).

<sup>9</sup> The mere fact a condition manifests itself during a period of employment does not raise an inference of causal relationship. *Roy L. Humphrey*, 57 ECAB 238 (2005).

fume, or other irritant at work that day. Her general description of contaminants in the workplace, such as dust, arsenic, lead, welding fumes, asbestos might be relevant to a claim of occupational disease; however, she has not established the presence of any specific irritant on June 23, 2008 as factual with regard to time, place or manner of exposure.

Moreover, the medical evidence of record does not support her claim of a traumatic asthmatic episode. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>10</sup> The reports submitted by appellant do not adequately describe a history of exposure to any specific chemical or irritant on June 23, 2008 or explain how her employment that day aggravated or exacerbated her asthma condition.

Dr. McFall, her treating physician, documented her preexisting asthma condition and noted generally that she worked around dust at work. His reports do not provide a specific history of traumatic exposure on June 23, 2008, as alleged. Dr. Daniel noted on June 26, 2008 that appellant was treated for a recent exacerbation of her asthma condition, but did not consider it to be work related. He advised that appellant's asthma could stem from multiple causes or exposures and that it was almost impossible to pinpoint the cause of her current condition. Dr. Ridgeway noted the results of diagnostic testing and noted generally that appellant worked in a dusty environment. He did not obtain a history of exposure on June 23, 2008 and noted that she had other medical conditions, such as acid reflux, that could make her asthma difficult to control. Dr. Reardon stated that appellant's asthma exacerbation was by various tasks associated with her job and recorded a history of coal dust wafting near air preheaters and located near exposed insulation. He did not address appellant's traumatic exposure claim on June 23, 2008 and advised that her history and medical records "suggested" a work-related exacerbation.

The medical evidence is deficient and many of the reports are based on a general history of occupational exposure to dust or fumes, rather than the traumatic exposure alleged in this claim. 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 appellant's condition and her employment factors.<sup>11</sup> Moreover, the opinions on causal relationship are speculative as the physicians of record did not provide sufficient explanation or rationale to support their stated conclusions.<sup>12</sup> The Board will affirm the October 29, 2009 decision.

### **CONCLUSION**

The Board finds that appellant failed to establish an exacerbation of her asthma condition on June 23, 2008, as alleged.

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<sup>10</sup> See *Steven S. Saleh*, 55 ECAB 169 (2003); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>12</sup> See *Anna M. Delaney*, 53 ECAB 384 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 29, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 10, 2011  
Washington, DC

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

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

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