

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

R.M., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
BROADVIEW HEIGHTS VETERANS)
MEDICAL CENTER, Brecksville, OH, Employer)**

**Docket No. 10-1709
Issued: March 17, 2011**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 15, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 26, 2010 denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act¹ and 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 to establish that she sustained an occupational disease in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 4, 2009 appellant, then a 47-year-old registered nurse, filed an occupational disease claim alleging that the working conditions caused an exacerbation of her Tourette's syndrome and post-traumatic stress disorder. She stated that the nurse-to-patient ratio and the needs of the spinal cord injury population created emotional, physical and psychological demands which became overwhelming. Appellant was first aware of her condition on May 13, 1995 and that it was caused or aggravated by her employment on August 17, 2009. She stopped work on May 20, 2009.

In an August 14, 2009 letter, the Office informed appellant that the evidence of record was insufficient to support her occupational disease claim. It advised her as to the additional factual and medical evidence necessary and allowed 30 days for submission of the requested information. No evidence was received.

By decision dated September 17, 2009, the Office denied appellant's claim on the grounds that she failed to establish fact of injury.

The Office received a September 18, 2009 statement from appellant which discussed her employment duties. Appellant noted that she was not claiming post-traumatic stress disorder but that her Tourette's syndrome became worse. She stated that her physician was in the process of completing the required medical documentation.

In a September 14, 2009 letter, the employing establishment advised that appellant had been employed at the medical center since July 23, 1995 and voluntarily joined the spinal cord unit in January or February 2009. It noted that her absence from work might be connected to administrative matters as she had received a report of contact from her supervisor on April 21, 2009 related to her failure to document the "Activity of Daily Living and Treatment" notes for several patients.

In a September 28, 2009 letter, appellant's attorney requested a telephonic hearing, which was held January 6, 2010. At the hearing, appellant testified as to the work duties she believed led to an exacerbation of her Tourette's syndrome and contended that the day to day stress from her duties caused her condition to worsen. Appellant and her attorney were advised of the medical evidence necessary to establish her claim and the record was held open for 30 days to allow for the submission of additional evidence.

In a January 5, 2010 letter, appellant stated that the date of injury was May 13, 2009. On February 1, 2010 the Office received a copy of a January 19, 2010 letter in which appellant requested copies of her psychotherapy notes for the period March 1 to December 15, 2009. However, no medical evidence was submitted to the record.

In a January 29, 2010 letter, the employer advised that appellant worked on the spinal cord unit from February 1, 2009 through May 21, 2009 and was off work in a non pay status from May 22, 2009 until October 30, 2009 when she returned to duty at reduced hours. It asserted that appellant's absence from work beginning in May 2009 was due to self-generated stress she felt in connection with her concerns over being written up for performance and

conduct problems. The employer provided documents that noted appellant's concern over the number of people who were getting written up or counseled for error in the unit. While the record indicates appellant received a report of contact on April 20, 2009, there is no indication that appellant received any discipline.

By decision dated March 26, 2010, an Office hearing representative affirmed the denial of appellant's claim. The hearing representative found that her job included the constant monitoring of paralyzed patients; but appellant failed to submit medical evidence to establish that her Tourette's syndrome was related to her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his 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.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

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (Occupational disease or Illness and Traumatic injury defined).

⁵ *See S.P.*, 59 ECAB 184, 188 (2007).

⁶ *See R.R.*, 60 ECAB ____ (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁸ An award of compensation may not be based on appellant's belief of causal relationship.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁰

ANALYSIS

The Office accepted that appellant's job included monitoring paralyzed patients. The Board finds there is no medical evidence of record to establish that appellant's work as a nurse caused or aggravated her Tourette's syndrome.

Appellant contended that her Tourette's syndrome was exacerbated by the working conditions of the spinal cord unit. 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.¹¹ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹² Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report, which described her symptoms, diagnostic test results, provided a firm diagnosis, treatment and a physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit medical evidence in response to the Office's request. She did not submit any medical evidence addressing how particular duties or aspects of her job aggravated her Tourette's syndrome. There is no probative, rationalized medical opinion on whether her claimed condition was caused or aggravated by her employment. Appellant has not met her burden of proof to establish her claim.

⁷ *I.J.*, 59 ECAB 408, 415 (2008).

⁸ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁰ *Id.*

¹¹ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an occupational disease in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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