



## **FACTUAL HISTORY**

On April 16, 2009 appellant filed a traumatic injury claim alleging that she experienced headaches and irritation of her eyes, throat, nose mouth and lungs due to exposure to chlorine vapors at work on April 9, 2009.

In an April 10, 2009 report, Dr. Jeff P. Honderich, a Board-certified osteopath, specializing in family medicine, diagnosed severe laryngitis secondary to chlorine exposure in the workplace. He stated that appellant was experiencing severe burning in her respiratory tract and was unable to talk loud enough for him to understand her. On examination, appellant was short of breath and exhibited decreased breathing sounds in the lungs. Her throat was red and swollen. Appellant's abdomen was protuberant and diffusely tender to palpation in all quadrants. Dr. Honderich assessed "exposure to chlorine gas with laryngitis and shortness of breath."

The record contains a November 3, 2009 memorandum to the file indicating that appellant filed a July 1, 2009 claim alleging a similar injury. According to the memorandum, OWCP denied the claim by decision dated September 17, 2009.

OWCP contacted the employing establishment regarding the accuracy of appellant's allegation of chemical exposure in the workplace. On November 2, 2009 appellant's supervisor informed OWCP that, in addition to appellant, two other employees had left work as a result of the effects of chlorine vapor exposure. The supervisor stated that appellant had a hypersensitivity to the "sodium-type chlorine" that was used at the facility.

In a November 3, 2009 letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her that she had not submitted a medical report that contained a diagnosis of any condition that resulted from the claimed April 9, 2009 incident. Appellant was advised to submit medical evidence which provided a diagnosis and a rationalized opinion explaining how the alleged exposure caused the diagnosed condition.

By decision dated December 10, 2009, OWCP denied appellant's claim on the grounds that there was no medical evidence that provided a definitive diagnosis that could be connected to the established exposure. The claims examiner stated that the only evidence received in appellant's claim included a notice of traumatic injury and claim for compensation, Form CA-1a and claim for compensation, Form CA-7a.

On October 7, 2010 appellant requested reconsideration.

Appellant submitted reports dated July 10 and 24, 2009 from Dr. Dennis A. Estep, Board-certified in the field of occupational medicine, who treated her for complaints of breathing difficulty, dizziness and chest pain, as well as irritation of the eyes, nose, throat and lungs. On July 10, 2009 pulmonary function testing revealed 45 percent of what was predicted. A chest x-ray revealed significant infiltrate associated throughout the lung fields, as well as significant coarseness. Dr. Estep noted a mild respiratory wheeze and coughing. He diagnosed chemical pneumonitis and severe pulmonary restriction, probably due to chemical exposure. Dr. Estep opined that the results of pulmonary function testing were more consistent with chemical

pneumonitis than a smoker. He indicated that appellant was able to work but should not be exposed to chlorine gas, pneumonia gas or methane. On July 24, 2009 Dr. Estep noted that appellant had undergone a computerized tomography (CT) scan, which revealed no evidence of active infiltrate or effusion and no evidence of chemical pneumonitis.

In an October 13, 2010 report, Dr. Rayetta Eaton, a Board-certified family practitioner, related appellant's reported history of chemical pneumonitis due to employment-related chemical exposure. She opined that appellant qualified for overnight oxygen, based on the results of an overnight pulse oximetry.

By decision dated February 10, 2011, OWCP denied modification of its December 10, 2009 decision, finding that the evidence of record was insufficient to establish that appellant developed a diagnosed condition as a result of a chemical exposure at work.

### **LEGAL PRECEDENT**

FECA provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the performance of duty.<sup>2</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>3</sup>

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place, and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.<sup>5</sup>

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

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>4</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>5</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003). *See also Deborah L. Beatty*, 54 ECAB 340 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

specific employment incident or to specific conditions of employment.<sup>6</sup> An award of compensation may not be based on appellant's belief of causal relationship.<sup>7</sup> 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.<sup>8</sup> Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury due to employment-related chemical exposure on April 9, 2009.

Appellant 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 her claimed chemical exposure. As part of this burden, she must present rationalized medical opinion evidence establishing causal relationship.<sup>11</sup>

OWCP accepted that appellant was exposed to high chlorine vapors at work on April 9, 2009 as alleged, but found that evidence of record was insufficient to establish that she developed a diagnosed condition as a result of the established exposure. The Board finds that she did not meet her burden of proof.

In his April 10, 2009 report, Dr. Honderich diagnosed severe laryngitis secondary to chlorine exposure in the workplace. He provided examination findings and opined that appellant's condition was due to exposure to chlorine gas. Dr. Honderich stated that she was experiencing severe burning in her respiratory tract and was unable to talk loud enough for him to understand her. Appellant was short of breath and exhibited decreased breathing sounds in the

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<sup>6</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>8</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>9</sup> 20 C.F.R. § 10.303(a).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

lungs. Her throat was red and swollen. Appellant's abdomen was protuberant and diffusely tender to palpation in all quadrants. Although he referenced the chlorine exposure, he did not explain how the exposure was competent to have caused appellant's diagnosed condition.<sup>12</sup>

The remaining medical evidence of record is supportive of appellant's claim but insufficient to meet her burden of proof. Dr. Estep provided examination findings and results of x-rays and pulmonary function testing. He diagnosed chemical pneumonitis and severe pulmonary restriction, probably due to chemical exposure. Dr. Estep's opinion is not definitive or rationalized and is three months after the incident.<sup>13</sup> Dr. Eaton related appellant's reported history of chemical pneumonitis due to employment-related chemical exposure and opined that she qualified for overnight oxygen, based on the results of an overnight pulse oximetry. Dr. Eaton's report did not provide an opinion regarding the cause of her condition and therefore is insufficient to establish that she developed a medical condition as a result of chemical exposure.

The Board finds none of the reports of appellant's attending physicians sufficient to meet her burden of proof to establish her claim.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish an injury in the performance of duty.

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<sup>12</sup> *Linda L. Mendenhall*, 41 ECAB 532 (1990). The Board notes that such testing does not, by reason of its promptness, necessarily document the injury claimed by the employee, who might well have sustained the condition before the date of the alleged injury and under circumstances not covered by FECA. *Id.*

<sup>13</sup> *See Linda L. Mendenhall*, 41 ECAB 532 (1990).

<sup>14</sup> *See Virginia Richard*, *supra* note 10; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 10, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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