

FACTUAL HISTORY

On February 24, 2011 appellant, then a 38-year-old registered nurse, filed an occupational disease claim alleging an exacerbation of her asthma as a result of her federal duties. In a prior claim on October 6, 2010, OWCP accepted that appellant had an employment-related exacerbation of allergic asthma which had resolved.²

In a letter dated March 16, 2011, OWCP advised appellant to submit further evidence to establish that she experienced the employment factors alleged to have caused the injury.

Appellant submitted statements dated February 28 and March 21, 2011, detailing her employment activities. She alleged issues with air circulation and air quality at the employing establishment. Appellant began work at the Wilmington Outreach Center at the end of summer 2010 and spent most of her time in a back conference room with numerous windows that could open. After January 1, 2011, she was placed in a closed room. Appellant was symptom free until January 19, 2011, when she developed a cough, congestion, fever, sore throat and shortness of breath. There was also a visible drop in her peak flow readings, which she checked daily. Appellant took Prednisone every other week. She noted that on February 16, 2011 an engineer came into the clinic to work on a vent in the medication room. When he removed the vent from the ceiling, he told her that the ventilation system was very poorly placed, was not set up for a clinic setting and that some of the vents were glued shut. The return vents for outside air were either not attached to an outside source or covered in insulation. Appellant became ill the following week and stopped work.

In an April 13, 2011 letter, a human resources specialist at the employing establishment indicated that a professional engineer found that no air vents were ever blocked. Even though the system filters were found to be in a clean condition upon inspection, they were changed. A March 29, 2011 report by Ryan Jeter, assistant chief, engineering service, stated that no air vents were ever blocked, but that the system filters were changed despite being clean and that a fresh air intake and rebalance system was added.

In an undated statement, Sam Campbell, an air conditioning mechanic, advised that he installed vents in the air conditioning system in two storage rooms. While inspecting the air handler for proper operation, he noticed that the return grills in the ceiling were open to the ceiling plenum space and not connected to any duct. There was also a fire damper return plenum at the air intake for the furnace. Mr. Campbell stated that the furnace was clean, filters were clean, and everything appeared to be operating properly. The inlet air passed through a washable metal mesh pre-filter, then through an electrostatic filter. Mr. Campbell did not observe any visible outside air inlet except for the building itself, but that this was not unusual for the type of furnace installation. He saw some loose bat insulation that was lying on the hallway ceiling grid that he moved to allow sufficient room to put the duct work in place. Mr. Campbell concluded that the air distribution system was clean, well maintained and appeared to operate properly.

In a memorandum dated May 26, 2011, Mr. Jeter stated that the outpatient clinic was constructed in compliance with a commercial building permit and was never a residence. An

² OWCP File No. xxxxxx094. Appellant claimed on July 9, 2009 that she was exposed to toxins at work.

inspection occurred when the system was approved for installation and was equipped with additional electrostatic filtration equipment which was above and beyond what was required by the code. Mr. Jeter stated that no vents were found to be damaged or nonfunctional. As designed, the building was not equipped with an outside air supply, and that the employing establishment later elected to install an outside supply. No vents were found to be covered by insulation. Mr. Jeter stated that the heating ventilation and air conditioning system in the building was fully functional, code complaint, clean and in good working order. He also commented that opening windows in a fully climate controlled building such as appellant's clinic defeated the benefits of the air filtration system and introduced additional pollen, dust and other constituents present in the summer environment. This statement was countersigned by Dr. Thomas Oommen, a Board-certified internist, the primary and preventive care line manager for Ambulatory Care and health physician for the employing establishment.

By decision dated September 1, 2011, OWCP denied appellant's claim. It found that the evidence did not support that the occupational exposure occurred as alleged.

On September 8, 2011 appellant requested a hearing before an OWCP hearing representative that was held on December 16, 2011. She testified that she returned to work in 2009 as a float nurse. When she returned to work, appellant had to take injections every two weeks in order to breathe. On January 19, 2011 appellant had an exacerbation of symptoms as there was no air flow at work. She experienced a sore throat, sneezing, coughing, fever, and had to start back on Prednisone for her lungs. Appellant stated that her peak flows were considerably worse by the end of her workday.

By decision dated February 29, 2012, OWCP affirmed the September 1, 2011 decision. It found that appellant did not establish that the area in which she worked had poor air flow or poor air quality.

On April 30, 2012 appellant requested reconsideration and submitted additional medical evidence. In a November 20, 2012 letter, she advised that she had an allergy to formaldehyde and that the employing establishment had not provided her with the results from an air quality test. In a letter dated February 9, 2013, appellant stated that she has a prior claim accepted by OWCP for allergic extrinsic asthma in October 2010. She discussed an April 8, 2011 air quality test at the employing establishment, and argued that the results supported evidence of *Alternaria* species, *Basidiospores*, *Cladosporium* species, *Epicoccum* species and *Stachybotrys/Memnoniella*-Like spores.

By decision dated March 8, 2013, OWCP denied modification of the February 29, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 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

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁸

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 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, 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.⁹

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

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

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

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁷ *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

OWCP found that there was insufficient evidence to establish that appellant's occupational exposure to bad air quality occurred at the time, place and in the manner alleged. Appellant claimed an aggravation of her asthma, with symptoms of cough congestion, fever, sore throat and shortness of breath, due to poor air quality at the employing establishment.

The Board finds that appellant has not met her burden of proof to establish the employment exposure alleged. Appellant made numerous allegations that the air quality at her place of employment was poor. The employing establishment rebutted appellant's statements. Appellant alleged that the air circulation system was designed for a residence, but Mr. Jeter, an engineer, stated that the building had always been an outpatient clinic and was constructed in compliance with a commercial building permit. She contended that she was told that the return vents were either not attached to an outside source or were covered in insulation. Mr. Jeter, however, stated that the building was not originally designed with an outside air supply, and later the employing establishment elected to install one. Mr. Jeter stated that no vents were found to be covered by insulation. Mr. Campbell also indicated that, although he did not see any visible outside air inlet except for the building itself, this was not unusual for the type of furnace installation. The employing establishment submitted statements supporting that the air quality was acceptable. Mr. Campbell addressed that the air distribution system was clean, well maintained and appeared to operate properly. Mr. Jeter stated that the heating and air conditioning system was fully functional, code compliant, clean and in good working order. Appellant's allegations also addressed an air quality study that she stated supported her claim, but there is no study of record that supports her assertions of poor air quality at the employing establishment. Therefore, appellant has not established that she was exposed to the work factors she alleged. Since she has not established that the employment exposure occurred as alleged, the Board will not address the medical evidence on the issue of causal relationship between an employment incident and the diagnosed condition.

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 has not established that she sustained an exacerbation of asthma causally related to her federal employment, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2013 is affirmed.

Issued: December 17, 2013
Washington, DC

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

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

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