United States Department of Labor
Employees' Compensation Appeals Board

V.T., Appellant	)	
and	)	**Docket No. 14-875**
	)	**Issued: October 20, 2014**
U.S. POSTAL SERVICE, DISTRIBUTION CENTER, Memphis, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 7, 2014 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) October 7, 2013 merit decision denying her occupational disease claim and December 19, 2013 nonmerit decision denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a respiratory condition causally related to factors of her federal employment; and (2) whether OWCP properly denied her request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that her claim was incorrectly denied based on the alleged belief that she has asthma. She states that she submitted evidence to rebut her daughter's

[1] 5 U.S.C. § 8101 *et seq.*

statement that she has asthma and there is no medical evidence that establishes she has this condition. Appellant contends that she submitted medical documentation, which establishes that she has allergies and her respiratory problems are due to dust and mold at the employing establishment. Lastly, she contended that, even if she had a history of asthma, the dust, mold and fumes at the employing establishment aggravated her preexisting condition and rendering her condition compensable.

FACTUAL HISTORY

On July 25, 2013 appellant, then a 49-year-old mail handler, filed an occupational disease claim alleging that she first became aware of her chronic asthma on December 20, 2012. She further alleged that she first realized that her condition was caused or aggravated by her employment on that same date. In undated statements, appellant related that she was exposed to dust, mold, dirt, filth, chemical fumes and asbestos in the building where she worked. She stated that her first asthma attack was at work in December 2012. Appellant related that her second asthma attack was at home. She had more attacks as she left work commencing on February 9, 2013. Appellant was off work on intermittent dates from February 13 to June 11, 2013 due to her asthma, allergies and chest pain and tightness for which she sought medical treatment.

Hospital records dated December 2, 2012, including a report from Dr. Lawrence Gross, a Board-certified family practitioner, noted that appellant presented with difficulty breathing and that she had been previously intubated. Dr. Gross obtained a history of her medical, family and social background. He listed examination findings and test results. Dr. Gross diagnosed asthma with status asthmaticus.

In an April 27, 2013 medical report, Dr. Randy J. Horras, a Board-certified radiologist, advised that a chest x-ray was negative.

An April 28, 2013 emergency department report contained an illegible signature and stated that appellant had asthma and bronchitis.

In a May 1, 2013 attending physician's statement, Dr. Larry M. Walker, a family practitioner, advised that appellant had asthma and that she was unable to report to her regular job until May 4, 2013. In a May 24, 2013 attending physician's statement, he advised that she was unable to report to her regular job until May 26, 2013. In a July 3, 2013 attending physician's statement, Dr. Walker reiterated that his prior diagnosis of asthma and advised that appellant was unable to report to her regular job until July 5, 2013. In an attending physician's report (Form CA-20) dated July 11, 2013, he advised that her asthma was due to her occupational environment. Dr. Walker explained that staying in this environment would be detrimental to appellant's health due to her chronic asthma. He recommended that she be moved to another department because dust caused shortness of breath, wheezing and coughing, which led to asthma attacks.

Laboratory reports dated May 22, June 5 and July 19, 2013 provided blood test results.

An unsigned coding summary dated June 5, 2013 contained the printed name of Paulette R. Abraham and stated that appellant had unspecified asthma and other dyspnea and respiratory abnormality. An unsigned discharge summary dated June 5, 2013 stated that appellant was evaluated for asthma, dyspnea and shortness of breath.

In a June 5, 2013 report, Dr. Salil P. Parikh, a Board-certified radiologist, advised that a chest x-ray showed no acute findings.

In a June 6, 2013 report, Dr. Roger D. Criner, Jr., a Board-certified family practitioner, obtained a history of appellant's respiratory symptoms, medical treatment, social and family background. He listed findings on physical and x-ray examination and blood test results. Dr. Criner diagnosed dyspnea and asthma.

Hospital admission records dated June 9, 2013 contained a provider's and a nurse's illegible signatures and stated that appellant had acute asthma, dyspnea and wheezing.

On June 10, 2013 Dr. Joe R. Krisle, Jr., a Board-certified radiologist, reported that a chest x-ray showed no pulmonary infiltrate.

An unsigned report dated June 10, 2013, contained the printed name of Dr. Umer Farooq, a Board-certified internist. The report described the cause of asthma, listed home care instructions for the condition and recommended appellant's medication.

In a report dated July 16, 2013, Dr. Brian S. England, a Board-certified radiologist, stated that appellant presented with shortness of breath. He obtained a history of asthma. Dr. England listed findings on physical examination. He also reviewed emergency department records and laboratory and diagnostic test results. Appellant underwent an intubation procedure. Dr. England diagnosed status asthmaticus, hypoxia and acute respiratory failure.

In another report dated July 16, 2013, Dr. Luis C. Murillo, a Board-certified internist, obtained a history from appellant's daughter that appellant had a long history of asthma since childhood. He also obtained a history of appellant's medical treatment, family and social background. Dr. Murillo listed examination findings and assessed her as having, among other things, status asthmaticus and hypokalemia.

On July 19, 2013 Dr. Philip Rowe Weber, a Board-certified radiologist, reported that a chest x-ray showed no acute cardiopulmonary abnormality.

In a July 19, 2013 discharge summary report, Dr. Gregory Phelps, Board-certified in family practice and occupational medicine, described appellant's hospital course and indicated that discharge diagnoses were respiratory failure, status asthmaticus, possible mitral valve lesion, hypokalemia and respiratory alkalosis. He stated that she associated her symptoms largely to her work as a postal worker in a warehouse handling bulk shipments of chemicals and other various inhalants. Appellant reported that she infrequently had symptoms at home and almost never needed her bronchodilators outside of her work environment. Dr. Phelps discussed types of masks that may minimize her inhalatory exposures and help her symptoms.

A hospital report dated July 23, 2013, was illegible and contained a nurse practitioner's illegible signature.

By letter dated August 5, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence. OWCP also requested that the employing establishment submit evidence in response to appellant's claim.

In an August 2, 2013 report, Dr. Phelps stated that appellant was hospitalized under his care from July 16 to 19, 2013. Appellant had severe reactive airway disease and was on several medications. Dr. Phelps stated that unfortunately she continued to have severe symptoms which she attributed to her current work environment. Given the severity of appellant's illness on presentation requiring intubation for respiratory failure, he advised her to seek reassignment to a new work position. Appellant informed Dr. Phelps that her job involved a fair amount of exposure to dust, chemicals, *etc*. Until she could be reassigned, he advised her to wear a certain facemask to minimize inhalational exposures.

In a September 7, 2013 e-mail, David L. Hines, supervisor of distribution operations, stated that appellant's statements were correct. He stated that the building was dirty and dusty. Appellant was exposed to dirt and dust that was all over the building. Mr. Hines stated that floor fans blew throughout the building. He related that the air conditioning system was located in overhead ducts. Mr. Hines further related that appellant worked as a supervisor and mail handler on an eight-hour shift. As a supervisor appellant walked from area to area to check mail and make sure her employees correctly performed their duties. As a mail handler she loaded vans. Mr. Hines noted that when the vans were driven they caused dust and dirt to blow. He related that appellant wore a mask to minimize her exposure to dirt and dust, but doing so did not prevent a recurrence of her asthma attacks. A copy of appellant's mail handler position description was submitted.

In an undated statement, appellant related that her claimed exposure was eight hours a day, five days a week. She stated that she first noticed her claimed condition on December 2, 2012. Appellant related that her symptoms included coughing, wheezing, chest pain and shortness of breath. They worsened with dust and mold in the building where she worked. Appellant stated that the air quality was poor and a fan blew dust while she worked. She wore a mask eight hours a day, five days a week. Appellant stated that her medication, breathing machine and not being in her work environment made her condition better. She stated that she never had asthma. Appellant related that she had bronchitis as a baby and did not suffer from any of the stated conditions as a teenager. She contended that since she had been employed at the employing establishment, dust, dirt, paper mites and asbestos aggravated her illness. Appellant concluded that she had never smoked cigarettes or a pipe and had never been around smokers.

In an October 7, 2013 decision, OWCP denied appellant's occupational disease claim. It found that she had not factually established the occurrence of the alleged event(s) as she failed to clarify the development of her claimed condition as requested and there were inconsistencies in the evidence regarding this matter. OWCP further found that there was no medical evidence to establish a diagnosed condition causally related to the work injury or event.

On October 28, 2013 appellant requested an oral hearing before an OWCP hearing representative.

In an undated letter, appellant stated that she was waiting on paperwork from her physician.

Appellant submitted an illegible claim (Form CA-2a) dated October 29, 2013 alleging that she sustained a recurrence of disability.

By letter dated December 3, 2013, appellant withdrew her request for an oral hearing and instead requested reconsideration of the October 7, 2013 decision.

In a December 19, 2013 decision, OWCP denied appellant's request for reconsideration without further merit review. It found that the evidence submitted was irrelevant or immaterial and insufficient to warrant further merit review of its October 7, 2013 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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 on 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 a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.[5] Neither the fact that appellant's

[2] *Id*.

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.[6]

ANALYSIS -- ISSUE 1

The issue is whether appellant established that she sustained an occupational disease causally related to factors of her federal employment. OWCP denied the claim on the grounds that she did not submit a sufficiently detailed statement clarifying the development of her condition.

The Board finds that appellant has established the factual requirements of her occupational disease claim. While appellant and her daughter provided inconsistent statements as to whether appellant had a preexisting asthma condition, she has been consistent in identifying the work factors that she believed caused or aggravated her claimed employment injury. In her claim form and subsequent statements, appellant specifically identified her work exposures that she believed caused her respiratory condition. She was in fact exposed to dust, mold, dirt, filth, chemical fumes and asbestos while working at the employing establishment. Appellant's statements regarding her work exposure are relatively consistent with each other. Moreover, Mr. Hines, a supervisor of distribution operations, stated that she was exposed to dirt and dust that was blown around by floor fans located throughout the building where she worked. He related that, as a supervisor, appellant walked from one area to another to check on the mail and her employees. Mr. Hines further related that, as a mail handler, she was also exposed to dirt and dust that blew while driving a van. The Board finds that appellant has sufficiently identified and established the employment factors that she believed caused an employment injury.[7]

Although appellant established the factual aspect of her claim, she still has the burden to show that she sustained a resulting injury due to her employment factors.[8]

The reports from Drs. Walker and Phelps found that appellant had asthma, respiratory failure, status asthmaticus, possible mitral valve lesion, hypokalemia, respiratory alkalosis and severe reactive airway disease due to the established work exposures and that she was disabled for work from May 24 to July 4, 2013. Dr. Walker explained that dust caused shortness of breath, wheezing and coughing which would lead to asthma attacks. He recommended that appellant move to another department at work to avoid worsening of her condition. Dr. Phelps did not explain why or how her respiratory symptoms were caused by the established work exposures. The Board notes that, while none of the reports of Drs. Walker and Phelps is completely rationalized, they are consistent in indicating that appellant sustained an employment-related respiratory condition and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to

[6] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[7] *See Louise F. Garnett*, 47 ECAB 639 (1996); *Loise G. Moore*, 20 ECAB 165 (1968).

[8] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

establish her claim, they raise an uncontroverted inference between her respiratory condition and the established employment factors.[9]

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[10]

On remand, OWCP should refer the case record for review by an OWCP medical adviser. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.[11]

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant sustained a respiratory condition causally related to factors of her federal employment.

[9] *See E.J.*, Docket No. 09-1481 (issued February 10, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *L.C.*, Docket No. 12-941 (issued October 1, 2012); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

[11] In light of the Board's resolution of the first issue, the second issue is moot and appellant's arguments on appeal will not be addressed.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2013 decision of the Office of Workers' Compensation Programs is set aside. The October 7, 2013 decision is affirmed as modified to reflect established work exposures and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 20, 2014
Washington, DC

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

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

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