

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

M.B., Appellant)	
)	
and)	Docket No. 15-0638
)	Issued: August 21, 2015
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Long Beach, CA, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2015¹ appellant filed a timely appeal of a July 30, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from July 30, 2014, the date of OWCP's last decision was January 26, 2015. Since using January 27, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 24, 2015, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

³ Appellant submitted new evidence in support of her claim on appeal. As OWCP did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she developed an occupational disease due to factors of her federal employment.

FACTUAL HISTORY

On January 21, 2014 appellant, then a 59-year-old medical support assistant, filed an occupational disease claim, Form CA-2, alleging that she developed respiratory, eye, throat, and lung conditions due to working in the transition center booth on August 20, 2012. She stated that the booth was located in an open public area underneath a blowing ventilation system. Appellant asserted that, due to exposures to circulating vapors, she developed constriction of her breathing, burning eyes, or burning of her skin.

In notes dated February 5 and December 21, 2013, Dr. Ghan S. Lohiya, a physician Board-certified in preventative and occupational medicine, stated that appellant had allergies to multiple environmental allergens, asthma, allergic rhinitis, and atopic dermatitis. He stated that she was a hypersusceptible worker with symptom exacerbation by occupational exposure to dusts, odors, perfumes, air-fresheners, service dogs, and carpet. Dr. Lohiya recommended that appellant employ a respirator, work from home or work in areas relatively free of her allergens.

In a letter dated February 13, 2014, OWCP requested that appellant provide additional factual and medical evidence in support of her claim. It also requested factual evidence from the employing establishment in a letter dated February 13, 2014.

On August 5, 2005 appellant was reassigned for medical reasons to a carpet-free and latex-free environment.

Appellant's supervisor provided appellant with notice on October 23, 2012 that she was not to wear a gas mask or any device that obstructed her face or prevented her from speaking with staff and patients during her tour of duty.

Dr. Anoshie Ratnayake, a pediatrician, diagnosed asthma on July 19, 2012 and stated that appellant was sensitive to airborne irritants and recommended that she work the night shift. On August 6, 2012 he again stated that she had asthma that was triggered by airborne irritants and recommended that if she is exposed to these irritants that she wear a mask during exposure.

Dr. Judson Schoendorf, an allergist, completed a note on July 16, 2013, stating that appellant had asthma that was triggered by airborne irritants such as perfumes, air fresheners, cigarette smoke, grasses, trees, cats, and dogs. He stated that, if she was exposed to these allergens, she should wear a sealed respirator mask. Dr. Schoendorf approved telework for six months due to environmental allergens.

Appellant submitted an e-mail dated July 24, 2013 from James Lohaus, coworker, noting that on June 24, 2013 the cologne that he applied at 7:30 a.m. caused a worker at 9:30 a.m. to repeatedly exclaim that his cologne was impacting her, leave her duty station, notify her supervisor, document the impact, and send him an e-mail. Mr. Lohaus stated that the worker was wearing a surgical mask.

In an e-mail dated July 11, 2013, appellant stated that her current job duties consisted of operating a computer as her telephone lines had been removed in July 2012. Mr. Lohaus' first task was to set up the high efficiency particular assentance air cleaning system for purification within cubicle one, her work area. Appellant was then to startup the application for daily arrivals and recalls.

On August 7, 2013 appellant requested reasonable accommodations including working the night shift and the ability to telework.

On November 27, 2013 appellant reported exposures to chemicals, vapors, heavy perfumes, colognes resulting in constriction, and blurry vision.

The employing establishment responded to OWCP's requested for information on February 21, 2014. It denied that appellant had any exposure to potentially harmful substances and submitted information from an industrial hygienist. In a report dated February 25, 2014, James M. Bachman, an industrial hygienist, stated that an indoor air quality investigation was conducted on August 20, 2012 at the employing establishment and the general air quality parameters were within acceptable levels and not expected to cause any adverse effects to employees working in the area. He further stated that there were no chemicals used in the area, no carpet, and the overhead air handling system provided 12 air changes per hour, twice the number of changes per hour required in an office area. Mr. Bachman stated, "This Indoor Air Quality Investigation has revealed that there are no environmental conditions in the work area that would cause the complaints that were made by worker(s) in the area."

Appellant submitted notes from a physician assistant dated July 9, 2013 and May 20, 2014.

By decision dated July 30, 2014, OWCP denied appellant's claim finding that she failed to submit the necessary factual or medical evidence to establish her claim for exposure to her known allergens in the performance of her job duties.

LEGAL PRECEDENT

OWCP regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.

⁴ 20 C.F.R. § 10.5(q).

The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁵

ANALYSIS

Appellant has submitted medical evidence from Dr. Lohiya, Dr. Ratnayake, and Dr. Schoendorf diagnosing allergies and asthma which are exacerbated by exposure to her allergens including cigarette smoke, dust, odors, perfumes, air-fresheners, service dogs, cats, and carpet. She alleged that she was exposed to these allergens in the performance of duty.

The Board finds that appellant did not submit sufficient factual evidence to establish the occurrence or aggravation of her diagnosed conditions.

The employing establishment disputed appellant's assertion of allergen exposures in the performance of duty. It submitted a report from an industrial hygienist, Mr. Bachman, stating that her work area did not contain carpet, which reduced dust, that no chemicals were used in the area, and the overhead air handling system provided 12 air changes per hour, twice the number of changes per hour required in an office area. Mr. Bachman stated that the general air quality parameters were within acceptable levels and not expected to cause any adverse effects to employees working in the area. Appellant has not provided any specific factual evidence to contradict that provided by the employing establishment and has not established exposure to allergens in the performance of her job duties.⁶

The Board finds that appellant has not provided the necessary factual evidence to establish exposure to allergens in the performance of duty. Appellant has not submitted any factual evidence substantiating her allegations that she was exposed to specific allergens at the employing establishment and the employing establishment has submitted evidence to dispute her general allegations.

Dr. Schoendorf stated that appellant had asthma triggered by airborne irritants such as perfumes, air fresheners, cigarette smoke, grasses, trees, cats and, dogs. Dr. Ratnayake diagnosed asthma on July 19, 2012 and stated that she was sensitive to airborne irritants and recommended that she work the night shift or that she wear a mask during exposure to airborne irritants. The Board finds that neither Dr. Schoendorf nor Dr. Ratnayake provided a clear opinion based on a proper factual background supporting appellant's claim that her asthma was caused or irritated by workplace exposures. Neither physician explained the basis of their opinions that she was exposed to irritants at work and neither physician offered any factual support that irritants were present in her workplace.

Dr. Lohiya stated that appellant was a hypersusceptible worker with symptom exacerbation by occupational exposure to dusts, odors, perfumes, air-fresheners, service dogs, and carpet. The Board finds that this report is not based on a proper factual background as the industrial hygienist, Mr. Bachman, stated that her work area did not contain carpet, that dust was reduced, and that no chemicals were used in the area. The record does not support Dr. Lohiya's

⁵ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁶ *S.B.*, Docket No. 08-2447 (issued November 20, 2009).

allegations that appellant was exposed to her listed allergens and therefore his unsupported opinion appellant's exposure to her allergens exacerbated her symptoms is not sufficient to meet her burden of proof. As appellant has not established employment exposures to her diagnosed allergens, the medical evidence she submitted is not based on a proper factual background⁷ and lacks the probative value necessary to establish her claim.

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 met her burden of proof in establishing that she sustained a respiratory condition or an aggravation of her preexisting allergies or asthma due to exposures to allergens at the employing establishment.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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

⁷ A physician's opinion must be based on a complete factual and medical background. *M.S.*, Docket No. 14-1079 (issued July 29, 2015) (finding that when the record does not substantiate a physician's representation of a claimant's history, his report lacks probative value). *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).