United States Department of Labor
Employees' Compensation Appeals Board

K.T., Appellant	)	
and	)	**Docket No. 15-0099**
	)	**Issued: October 15, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Honolulu, HI, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 20, 2014 appellant filed a timely appeal from an October 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish an allergic condition in the performance of duty.

[1] 5 U.S.C. §§ 8101-8193.

[2] Appellant submitted physical evidence after OWCP's October 8, 2014 decision, but the Board cannot consider such additional evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On July 18, 2013 appellant, then a 63-year-old postal clerk/data collection technician, filed a traumatic injury claim (Form CA-1) alleging that she developed a severe allergic reaction due to exposure to allergens at work between 1:45 p.m. and 4:30 p.m. on July 15, 2013. She stated that on July 15, 2013 she reported to work for her first day in a new office which formerly had been a reproduction room. Appellant asserted that the room contained two dusty copy machines, and shelves, cabinets, computers, computer desks, and other dusty furniture which had been there when it was a reproduction room. She indicated that the carpet had not been properly dried prior to when employees moved into the office. Appellant alleged that she sustained an allergic reaction to dust and mold from the air conditioning vent and the carpet. Her symptoms included sneezing, watery and runny eyes/nose, and difficulty breathing and talking. Appellant stopped work on July 15, 2013. On the same form, appellant's supervisor stated that the air conditioning coils were cleaned and the carpet was fully dried before employees moved into the office.

Appellant submitted medical evidence in support of her claim. In a July 17, 2013 report, Dr. Ronald Kienitz, an attending osteopath and Board-certified occupational medicine physician, stated that appellant presented with vague allergic-type symptoms and complained that she was ordered into a new area of her office that was musty and had "old carpeting and old ventilation." He indicated that upon examination appellant's posterior oropharynx showed minimal redness, but there were no other signs of inflammation in the eyes, ears, nose, and throat and the mucous membranes of her nostrils were normal. Appellant's skin showed no evidence of rash or allergic reaction. Dr. Kienitz diagnosed dust allergy and probable odor aversion syndrome and returned her to regular work.[3]

In an August 7, 2013 report, Dr. Darwin Chan, an attending Board-certified preventive medicine physician, stated that upon examination appellant exhibited no inflammation of her eyes, ears, nose, and throat, her tympanic membranes were clear bilaterally, her sinuses were nontender, and her nostrils were clear. He diagnosed allergic reaction to environmental dust and mold and found that appellant could return to work, but should avoid the work area which caused her problems. Appellant submitted other reports of Dr. Kienitz and Dr. Chan which documented her periodic visits with these physicians through September 2013.

OWCP requested by letter dated October 2, 2013 that appellant submit additional factual and medical evidence in support of her claim. Appellant was asked to clarify whether she was claiming a traumatic injury or occupational disease and was given a definition of these two types of injuries.

Appellant submitted an October 21, 2013 statement in which she indicated that, when she moved into the new office on July 15, 2013 between 1:45 p.m. and 4:30 p.m., she began to experience sneezing, runny nose, watery eyes, and a burning sensation involving her lips, nose, and throat. She indicated that this traumatic allergy episode got progressively worse while she

[3] Dr. Kienitz encouraged appellant to work in a clean environment with clean air. Appellant returned to work on July 17, 2013 and avoided spending any significant amount of time in the office where the claimed July 15, 2013 injury occurred. She wore a mask when she did enter the office for brief periods.

was in the office on that day and she began to cough, developed a raspy voice, and had difficulty breathing. Appellant could only speculate that she was having a traumatic allergic reaction to dust and dust mites from the air vents and carpet, or a reaction to toner from the two copy machines. Based on the definition provided to her by OWCP, she would characterize her claim as a traumatic injury claim given the immediate allergic reaction she experienced. Appellant asserted that a work order to vacuum and shampoo the carpet prior to her moving in the new office was completed while the furniture and copiers were still in the room. When she inquired as to how the work was done with all the furniture still in the office, she was told that the cleaning was performed around the furniture. Appellant noted that there had been speculation that there also was a mold problem from the carpet given the musty odor coming from the carpet and the lack of proper ventilation in the office.[4] She claimed that she generally worked outside of the office for the duration of her shift and only returned for brief periods, while wearing a mask, to retrieve and return computer equipment and test schedules. Appellant alleged that she had previously experienced sinus problems due to weather changes and exposure to volcanic volatile compounds.

Appellant submitted statements from three coworkers, dated in September 2013, detailing their concerns that the air quality in the new office was poor due to various sources, including the carpet and the copy machines. She also submitted a July 30, 2013 letter she had sent to an employing establishment safety officer and a September 12, 2013 letter she had sent to the Occupational Safety and Health Administration (OSHA) in which she discussed the environmental conditions of the new office. In an October 9, 2013 report, Dr. Chan detailed his treatment of appellant's allergic condition and returned appellant to work with avoidance of exposure to dust and molds.

In an August 26, 2013 letter, a senior plant manager for the employing establishment noted that the office housed RICOH-MP1350 copy machines purchased as new equipment in October 2008 and that representatives of RICOH USA provided maintenance services. The manager noted that the room was ventilated with cool air by an Internal I-WAG system and increased airflow was maintained by two exhaust fans. In addition, two personal fans were placed in the room to be used for personal preferences. The manager noted that an employing establishment safety manager used a digital psychrometer to record temperature and humidity levels -- the temperature readings on August 20, 2013 maximized at 75.2 degrees Fahrenheit with relative humidity at 48.7 percent.

In a November 19, 2013 decision, OWCP denied appellant's claim that she had sustained an allergic condition in the performance of duty.[5] It found that appellant had not established the factual aspects of her claim. Appellant had made various claims about the environmental condition of the office, including claims regarding dust, mold, and other allergens found on the carpet, copy machines, furniture, and air conditioning system, but OWCP found that she did not

[4] Appellant also claimed that the office was not adequately cooled.

[5] OWCP initially issued a November 1, 2013 decision denying appellant's claim because she had not established the factual aspects of her traumatic injury claim. In its November 19, 2013 decision, it stated this decision superseded its November 1, 2013 decision because evidence had been submitted prior to November 1, 2013 which had not been considered.

submit evidence establishing the existence of specific irritants. It discussed the documents submitted by the employing establishment which countered a number of the assertions made by appellant.

Appellant requested reconsideration on July 11, 2014. She submitted a March 6, 2014 letter in which an OSHA official had responded to her September 12, 2013 letter. The official reported that the findings of February 28, 2014 testing showed no sources of harmful exposures in the office and noted that employees had been moved from the office in January 2014. In an April 21, 2014 letter, a union official asserted that the office in which appellant had worked on July 15, 2013 had not undergone an adequate cleaning of its carpet and air conditioning system. Appellant also submitted poor quality photocopies of photographs of the office (which she claimed showed allergens on furniture and the air conditioning/ventilation system), documents from the early stages of a union grievance, and copies of work orders.[6] Additional medical reports, including progress reports of Dr. Kienitz and Dr. Chan were added to the record.

In an October 8, 2014 decision, OWCP denied modification of its November 19, 2013 decision denying appellant's claim for a work-related allergy condition. It again found that appellant had not established the factual aspects of her claim.

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 of FECA, that an injury was sustained 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.[7] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[9] Second, the employee must submit

[6] The record contains a December 17, 2013 e-mail from appellant to an employing establishment official with handwritten notations by a "group leader" regarding the cleaning of the carpet prior to employees moving into the new office. It was indicated that, after cleaning, the carpet was left to dry overnight and custodians confirmed that it was dry before employees moved in. It was also noted that not all the furniture had to be moved to clean the carpet.

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

[8] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

[9] *Julie B. Hawkins*, 38 ECAB 393 (1987).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[10]

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.[11] 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 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.[12]

ANALYSIS

On July 18, 2013 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained a severe allergic reaction due to exposure to allergens at work between 1:45 p.m. and 4:30 p.m. on July 15, 2013. She stated that on July 15, 2013 she reported to work for her first day in a new office and asserted that she sustained an immediate and acute allergic condition due to exposure to harmful substances to the office. OWCP denied appellant's claim for a traumatic work-related allergic condition because she did not establish the factual aspects of her claim.[13]

The Board finds that appellant had not established the factual aspects of her claim that she sustained an allergic condition in the performance of duty. Appellant asserted that she sustained an allergic condition due to exposure to dust, dust mites, mold, and other harmful substances on July 15, 2013, but she did not submit sufficient evidence to establish the existence of these substances as alleged.

Appellant could only speculate that on July 15, 2013 she was having a traumatic allergic reaction to dust and dust mites from the air vents and carpet, or a reaction to toner from the two copy machines. She did not present evidence adequately supporting these assertions. The employing establishment verified that the air vents and the carpet were fully cleaned before employees moved into the office on July 15, 2013. Appellant, however, claimed that the carpet was wet and musty when she entered the office. The record contains a statement indicating that, after cleaning, the carpet was left to dry overnight and custodians confirmed that it was dry

[10] *John J. Carlone*, 41 ECAB 354 (1989).

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

[12] *Betty J. Smith*, 54 ECAB 174 (2002).

[13] The Board notes that OWCP properly developed appellant's claim as a traumatic injury claim. Appellant filed a traumatic injury claim (Form CA-1) on July 18, 2013 and emphasized the immediate and acute nature of the allergic reaction she allegedly sustained when working in the new office for several hours on July 15, 2013. Although she reentered the office for brief periods on days after July 15, 2013, she wore a mask to avoid exposure to potential harmful substances and did not claim that these instances caused injury. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift, in this case July 15, 2013, whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift.

before employees moved in.[14] Appellant asserted that the two copy machines in the room were from the 1990s and emitted toner into the air, but the employing establishment indicated that new copy machines were purchased in October 2008 and were periodically maintained by representatives of the manufacturer.

Appellant claimed that the office contained large amounts of dust and dust mites and that it was not adequately ventilated and cooled. She failed to submit evidence to substantiate these claims. Appellant claimed it had been speculated that the office contained mold, but she did not identify the basis for this speculation or submit evidence showing the existence of mold. The employing establishment noted that the office was ventilated with cool air by an Internal I-WAG system and increased airflow was maintained by two exhaust fans as well as two smaller fans. An employing establishment safety manager used a digital psychrometer to record temperature and humidity levels -- the temperature readings on August 20, 2013 maximized at 75.2 degrees Fahrenheit with relative humidity at 48.7 percent.[15] Appellant submitted other documents in support of her claim, such as statements in which union officials and coworkers discussed their beliefs that the new office had harmful allergens.[16] However, these documents contain vague assertions regarding the condition of the office and would not constitute probative evidence supporting appellant's claim.

Because appellant did not establish the factual aspects of her claim, it is not necessary to consider the medical evidence of record.[17] For these reasons, OWCP properly denied her claim for a work-related allergic 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 did not meet her burden of proof to establish an allergic condition in the performance of duty.

[14] This employee also indicated that not all the furniture had to be moved to clean the carpet, but it is noted that the fact that some of the furniture might not have been moved does not establish that the portion of the carpet that was exposed to appellant contained harmful allergens.

[15] On appeal, appellant argued that these test findings did not memorialize the conditions when she worked in the office on July 15, 2013, but these test findings represent the temperature and humidity findings of record which were taken closest to July 15, 2013.

[16] Appellant also submitted poor quality photocopies of photographs of the office which she claimed showed allergens on furniture and the air conditioning/ventilation system. These photocopies do not establish appellant's assertions regarding allergens.

[17] *See supra* notes 10 and 11 regarding the two components of establishing a traumatic injury, the first involving the establishment of an employment incident and the second involving the submission of medical evidence establishing that an employment incident caused a personal injury.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board