

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

N.O., Appellant)

and)

**SOCIAL SECURITY ADMINISTRATION, SSA)
REGION IV, RPO HUMAN RESOURCES)
OFFICE, Atlanta, GA, Employer)**

**Docket No. 15-1110
Issued: September 10, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 20, 2015 appellant filed a timely appeal from a December 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on October 31, 2013, as alleged.

FACTUAL HISTORY

On November 7, 2013 appellant, then a 52-year-old social insurance specialist claims representative, filed a traumatic injury claim (Form CA-1) alleging that on October 31, 2013 she

¹ 5 U.S.C. § 8101 *et seq.*

sustained an asthma attack due to exposure to dust from a faulty vacuum and chemicals which irritated her lungs while she was performing her job duties. She stated that this exposure caused her to have an asthma attack resulting in a hospital stay on November 5 and 6, 2013.

In support of her claim, appellant submitted a November 5, 2013 prescription note and a Memorial Hospital Admission Note listing her medications at discharge.

By letter dated February 6, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit this evidence within 30 days. In another letter of the same date, OWCP requested that the employing establishment respond to questions pertaining to the factual circumstances surrounding the incident.

In a February 26, 2014 narrative statement, appellant responded to OWCP's questionnaire stating that on October 31, 2013 she was processing a claim at her cubicle at approximately 3:00 pm. She stated that the cleaning crew would come in around that time, but usually did not vacuum while the staff was interviewing due to noise and dust that the vacuum emitted. Appellant explained that the vacuum did not work properly and emitted dust from the canister. On this day, the cleaning man vacuumed the area behind her and she immediately felt as if she was choking, she began to cough violently, and had to use her rescue pump Albuterol. Appellant then went to the bathroom to wash her face but the situation worsened because a perfume based product was used to clean the bathroom. She explained that the cleaning crew was not supposed to use these products and management had designated a list of approved products. Appellant then went back to her desk around 3:30 pm and a fumigator was spraying the exterior of her desk for ants, which was not supposed to be done until the staff left the office for the day. This caused her chest to tighten and required the use of her inhaler again. Appellant stated that on the afternoon of October 31, 2013 she was exposed to chemicals and fumes for approximately 30 minutes at her cubicle and in the ladies bathroom.

Appellant stated that her condition continued to deteriorate as days passed. The earliest appointment she could get with her treating physician, Dr. Zevy Landman, a specialist in allergy and immunology, was on November 5, 2013. At the appointment, Dr. Landman was concerned about her condition and referred her to the emergency room (ER). Appellant sought treatment at the ER on that date and was required to stay overnight due to difficulty stabilizing her condition. She was treated with a high dosage of steroids and released on November 6, 2013. Appellant stated that she had a history of asthma since she was 27 years old, if subjected to dust or any chemical smell, but her condition was controlled when she stayed away from dust and used her inhaler twice daily for prevention. She was not a smoker.

In support of her claim, appellant submitted a November 14, 2014 return to work note for asthma exacerbation and a November 22, 2013 Allergen Lab Report.

By decision dated March 14, 2014, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that she sustained an injury because she did not submit any medical evidence containing a medical diagnosis in connection with the accepted October 31, 2013 employment exposure.

On April 10, 2014 appellant requested an oral hearing before the Branch of Hearings and Review.

In a February 27, 2014 letter, the employing establishment stated that appellant was performing her regular duties as a claims representative on the date of incident. A position description was provided. The employing establishment further explained that, on the day in question, the cleaning crew began to operate the vacuum in appellant's area while she was working. The employing establishment stated that it did not agree with her allegations because she was asked whether she wanted the cleaning crew to continue and she responded yes. It noted that the vacuum cleaner did emit an odor on the day that it was being used around appellant's desk and the landlord had since replaced it with a new vacuum. The following day appellant became very sensitive to the cleaning materials that were used in the women's restroom. The landlord used the following cleaning supplies: Aroma Shine Glass Cleaner; Lysol Power and Fresh Multi-Surface Cleaner, and CLR Bath and Kitchen Cleaner.

In a November 5, 2013 medical report, Dr. Landman reported that appellant had asthma since 1982 which worsened with odors and weather changes. He explained that last Friday her office was cleaned with Clorox and her asthma was exacerbated by perfumes and possibly dust. Dr. Landman noted that the asthma was not food or animal related. He diagnosed asthma and allergic rhinitis due to other allergen and referred her to the ER.

In a November 5, 2013 ER report, Dr. Thomas Logan, Board-certified in emergency medicine, reported that appellant presented to the ER with an asthma attack and complained of wheezing, lightheadedness, and chest tightness which began five days ago. Appellant was admitted and diagnosed with asthma exacerbation. Review of chest x-rays revealed normal findings. Appellant was treated with an IV and steroids and released the following day by Dr. Jaynier Moya Hecchevaria, Board-certified in internal medicine.

In a November 14, 2013 report, Precy Kochiparambath, a physician assistant, reported that appellant came in for a follow-up appointment for an episode which began on October 31, 2013 after she was exposed to dust at work from vacuuming and also exposed to fumigating the following day. Lab reports dated November 5 and 14, 2013 were submitted.

A December 3, 2013 attending physician's report was also submitted from an unspecified allergy and immunology specialist. The signature was not legible. The report noted that exposure to dust/vacuum at work on October 31, 2013 resulted in asthma symptoms which worsened the next day after fumigating at work. Findings were made of bronchospasm after exposure to fumes, noting that appellant had a history of asthma which may have been triggered by exposure to fumes.

A hearing was held on November 12, 2014 where appellant testified that her condition was caused by her work exposure. She was instructed that fact of injury had been established and advised of the medical evidence needed to establish causal relationship. The record was held open for 30 days.

Following the hearing, appellant submitted a November 24, 2014 medical report from Dr. Cheryl Case-Diaz, Board-certified in internal medicine. Dr. Case-Diaz stated that she had

been treating appellant since May 1993 and appellant was known to suffer with asthma. She explained that this was a medical condition in which dust or chemical exposure can trigger an acute episode.

By decision dated December 18, 2014, the Branch of Hearings and Review affirmed the March 14, 2014 decision, as modified, finding that appellant established a firm medical diagnosis. It denied the claim, however, finding that the medical evidence of record failed to establish that the diagnosed condition was causally related to the accepted October 31, 2013 employment exposure.

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 filed within the applicable time limitation; that an injury was sustained while 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.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ The opinion of the physician 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 specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability,

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Elaine Pendleton, *supra* note 2.

⁵ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

OWCP accepted that appellant was exposed to chemicals and dust on October 31, 2013 while in the performance of duty. It denied her claim, however, because it found she had not met her burden of proof to establish a causal relationship between the employment exposure and her pulmonary condition. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury causally related to the October 31, 2013 employment exposure.

In a November 5, 2013 medical report, Dr. Landman reported that appellant had been diagnosed with asthma since 1982. The condition worsened with odors and weather changes. Dr. Landman explained that on the day in question appellant's office has been cleaned with Clorox. In addition, appellant's asthma was exacerbated by perfumes and possibly dust. Dr. Landman diagnosed asthma and allergic rhinitis due to other allergen and sent appellant to the ER.

The Board finds that the opinion of Dr. Landman is not well rationalized. While Dr. Landman provided a sufficient diagnosis of asthma and allergic rhinitis, he failed to explain how appellant's condition has been exacerbated other than generally suggesting perfumes, possibly dust, and by noting that her office was cleaned with Clorox. This vague description is not entirely consistent with her allegations regarding the history of her injury. For example, appellant did not allege that her office was cleaned with Clorox and she alleged that she was definitely exposed to dust emitted from a vacuum. Moreover, Clorox is not specifically mentioned by the employing establishment when the cleaning materials were identified.

The need for a medical rationale on causal relationship is particularly important in view of appellant's history of asthma.⁷ Without explaining how specific exposures caused or contributed to the diagnosed conditions, Dr. Landman's opinion is insufficient to meet appellant's burden of proof.⁸

Dr. Logan and Dr. Hecchevaria's November 5 and 6, 2013 ER reports are also insufficient because they failed to provide any opinion that appellant's pulmonary condition was caused by her work.⁹ Without medical reasoning explaining how appellant's employment

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ *W.L.*, Docket No. 13-1727 (issued February 4, 2014).

⁸ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

⁹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

exposure might have caused or exacerbated her asthma, the ER reports are insufficient to meet her burden of proof.¹⁰

Dr. Case-Diaz' November 24, 2014 report is also insufficient because she provided no diagnosis which could be related to an incident on October 31, 2013.¹¹ Rather, she generally reported that appellant was known to suffer from asthma which could be triggered by dust or chemical exposure. Without a diagnosis and explanation on causation, Dr. Case-Diaz' does not support that employment exposure caused an injury. Her report is not probative because it lacks a clear diagnosis and fails to adequately explain the cause of appellant's condition.¹²

The remaining medical evidence is also insufficient. Appellant submitted documents that were illegibly signed or did not contain signatures. The author of those papers could not be determined. Consequently, it cannot be discerned whether a physician signed or authored the documents.¹³ Mr. Kochiparambath's November 14, 2013 report is also insufficient to establish appellant's claim because the author was not a physician. Registered nurses, physical therapists, and physician assistants, are not considered physicians as defined under FECA and their medical opinions are of no probative value.¹⁴

The Board finds that the medical evidence does not establish that appellant's pulmonary condition is causally related to her October 31, 2013 employment exposure. An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.¹⁵

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the accepted October 31, 2013 employment exposure and appellant's pulmonary condition. Thus, appellant has failed to meet her burden of proof.¹⁶ She 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.

¹⁰ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹¹ *H.A.*, Docket No. 13-1265 (issued November 4, 2013).

¹² *Id.*

¹³ *See also Sheila A. Johnson*, 46 ECAB 323, 327 (1994); *see Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁴ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁵ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁶ *Supra* note 7.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on October 31, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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