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

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| **K.G., Appellant** | ) | |
| **and** | ) | **Docket No. 15-0669** |
| | ) | **Issued: April 8, 2016** |
| **DEPARTMENT OF THE NAVY, NAVAL SUPPLY SYSTEMS COMMAND, Norfolk, VA, Employer** | ) | |

*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
ALEC J. KOROMILAS, Alternate Judge

## ***JURISDICTION***

On February 9, 2015 appellant filed a timely appeal from an August 11, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] The Board notes that, following the issuance of the August 11, 2014 OWCP decision, appellant submitted new evidence. The Board, however, is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

[2] 5 U.S.C. § 8101 *et seq.*

[3] Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated December 9, 2015, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument,* Docket No. 15-0669 (issued December 9, 2015).

## ***ISSUE***

The issue is whether appellant met her burden of proof to establish a recurrence of her medical condition causally related to her September 20, 2012 employment injury.

On appeal, appellant contends that there were a vast number of actions overlooked or delayed during her case, including a medical bill for a pulmonary function test performed on June 27, 2014 that was not paid by OWCP.

## ***FACTUAL HISTORY***

On October 18, 2012 appellant, a 60-year-old supervisory inventory management specialist, filed a traumatic injury claim (Form CA-1), alleging that she was injured on September 20, 2012 as a result of being exposed to gas fumes in the performance of duty. She did not stop work.

In an e-mail message dated November 19, 2012, the employing establishment indicated that appellant was exposed to fuel fumes at work on September 20, 2012.

Appellant submitted reports dated October 31 and November 29, 2012 from Dr. Vanessa Duncombe, a Board-certified family practitioner, who asserted that appellant inhaled diesel and jet fuel fumes on September 20, 2012 as she went to pick up papers at a military fuel station in the performance of duty. She stated that the fumes hit her immediately and then she left immediately back out. Before the end of the day, appellant noticed her eyes were affected and she had a headache. The next day, she saw an eye doctor who prescribed eye drops. Appellant complained of headaches, nausea, nervousness, neck pain, bilateral earache, mucus, chest pain, chest tightness, irritated throat, pain in back of head, abdominal pain, pain in arms, numbness in fingers and hands, elevated blood pressure, inability to taste foods, diarrhea, pain and irritation in the left eye, and bilateral eye pressure. Dr. Duncombe conducted a physical examination and found both eyes with conjunctival injection, mild lymphoid plaquing with erythema, no exudate, supple neck, and a clear chest. She diagnosed exposure and allergic rhinitis. Dr. Duncombe diagnosed optic track exposure and allergic rhinitis. She opined that appellant's exposure did not affect her blood pressure directly and noted that "her anxiety about the whole thing [was] more of the problem."

By decision dated December 26, 2012, OWCP accepted the claim for allergic rhinitis due to other allergen, bilateral. It indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. OWCP stated that it had reopened the claim for consideration because the medical bills had exceeded $1,500.00.

In a letter dated August 20, 2013, OWCP requested a medical opinion from Dr. Duncombe regarding the nature and extent of appellant's accepted condition and afforded her 30 days to respond. Dr. Duncombe did not respond.

In a letter dated October 25, 2013, OWCP again requested a medical opinion from Dr. Duncombe regarding the nature and extent of appellant's accepted condition and afforded her 30 days to respond.

In response, Dr. Duncombe submitted a report dated September 3, 2013 in which she opined that appellant's allergic rhinitis had resolved. She asserted that appellant reported no further conditions related to her September 20, 2012 employment injury and had not required any further treatment related to her accepted condition. Dr. Duncombe concluded that appellant had reached maximum medical improvement.

On June 16, 2014 appellant filed a notice of recurrence (Form CA-2a) requesting authorization for medical treatment. She indicated that she continued to suffer residuals of her employment injury and never received approval from OWCP for her pulmonary function test. Appellant did not stop work.

In a July 2, 2014 letter, OWCP advised appellant of the deficiencies of her recurrence claim. It requested additional evidence in support of the claim and afforded appellant 30 days to respond to its inquiries.

Subsequently, appellant submitted an April 2, 2013 report from Dr. Jennifer Rippon, a Board-certified internist, who diagnosed shortness of breath and scant hemoptysis. Dr. Rippon noted that appellant had no history of smoking or any personal history of cancer. Appellant also had no systemic symptoms, but given that the hemoptysis was still present, Dr. Rippon opined that this was indicated. She noted appellant's occupational exposure to noxious chemicals in September 2012 after which her respiratory symptoms started, and she explained that this would be very consistent with a diagnosis of reactive airway dysfunction syndrome (RADS). Dr. Rippon prescribed an inhaler and ordered pulmonary function tests.

In a July 30, 2014 narrative statement, appellant indicated that she was referred to Dr. Rippon who was required to register with OWCP before she could have a pulmonary function test performed, but Dr. Rippon was unable to get registered because she would not be practicing out of the office and would be moving into the Garden Park Hospital as a pulmonologist during the month of June 2013. She submitted a copy of a pulmonary function test performed on June 27, 2014.

Appellant further submitted a July 29, 2013 bone density x-ray for an evaluation of osteoporosis and a November 11, 2013 oximetry report.

By decision dated August 11, 2014, OWCP denied appellant's recurrence claim as the medical evidence of record was insufficient to establish that she sustained a recurrence of her medical condition, causally related to her September 20, 2012 employment injury.

## ***LEGAL PRECEDENT***

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of proof to establish by the weight of reliable, probative, and

substantial evidence that the recurrence of disability is causally related to the original injury.[4] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[5] Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.[7] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[8] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

## ***ANALYSIS***

OWCP accepted that appellant sustained allergic rhinitis as a result of inhaling fuel fumes at work on September 20, 2012. However, the medical record lacks a well-reasoned narrative from appellant's physicians relating her claimed recurrent conditions to her accepted employment injury.

In her reports, Dr. Duncombe noted appellant's complaints, but only diagnosed exposure and allergic rhinitis. She found bilateral eyes with conjunctival injection and mild lymphoid plaquing with erythema upon examination, but provided no other medical diagnoses causally related to the September 20, 2012 employment incident. Dr. Duncombe opined that appellant's exposure did not affect her blood pressure directly and noted that "her anxiety about the whole thing [was] more of the problem." The Board finds that Dr. Duncombe failed to provide sufficient medical rationale explaining how appellant's symptoms were causally related to the September 20, 2012 employment injury, without an intervening injury or new exposure. Moreover, the September 3, 2013 report from Dr. Duncombe did not specifically address causal relationship between appellant's accepted condition and her claimed recurrence of disability or conditions. Rather, Dr. Duncombe concluded that appellant had reached maximum medical

[4] *See Robert H. St. Onge*, 43 ECAB 1169 (1992).

[5] Section 10.104(a)(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, she should arrange for the attending physician to submit a detailed medical report. The report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.104.

[6] *See supra* note 4.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013); *see supra* note 4.

[8] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

[9] *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

improvement and her accepted allergic rhinitis condition had resolved. Thus, the Board finds that Dr. Duncombe's reports are insufficient to establish that appellant sustained a recurrence of her accepted medical condition.

In her April 2, 2013 report, Dr. Rippon diagnosed shortness of breath and scant hemoptysis. She noted appellant's occupational exposure to noxious chemicals in September 2012 after which her respiratory symptoms began and she explained that this would be very consistent with a diagnosis of RADS. Dr. Rippon's report is insufficient to establish that appellant sustained a recurrence of her accepted medical condition. She failed to provide sufficient medical rationale explaining how appellant's symptoms were causally related to the September 20, 2012 employment injury. Moreover, OWCP has not accepted shortness of breath, hemoptysis, or RADS in this case. The Board thus finds that the report from Dr. Rippon is insufficient to establish a new intervening traumatic injury or a consequential injury which was caused or aggravated by factors of appellant's federal employment. Therefore, this medical evidence is insufficient to expand appellant's list of accepted conditions or establish her claim for a recurrence.[10]

The July 29, 2013 bone density x-ray, the November 11, 2013 oximetry report, and the June 27, 2014 pulmonary function test are of limited probative medical value as they do not specifically address whether appellant's claimed recurrent conditions are attributable to her accepted work injury.[11]

On appeal, appellant contends that there were a vast number of actions overlooked or delayed during her case, including a medical bill for a pulmonary function test performed on June 27, 2014 that was not paid by OWCP. The Board finds that the evidence submitted by appellant lacks adequate rationale to establish a causal connection between the alleged recurrence of her medical condition and the accepted employment injury. Appellant had the burden of submitting sufficient medical evidence to document the need for further medical treatment for her accepted employment-related condition. She did not submit such evidence as required and failed to establish a need for continuing medical treatment.[12]

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.

[10] *See Amanda Johnson*, Docket No. 04-849 (issued July 22, 2004) (where OWCP accepted that the employee experienced paint fume inhalation at work, but the Board denied her claim for a recurrence because the medical evidence lacked a well-reasoned narrative from her physicians relating her claimed recurrent condition to her accepted employment injury).

[11] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] *See J.F.*, 58 ECAB 331 (2006).

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish a recurrence of her medical condition causally related to her September 20, 2012 employment injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2016
Washington, DC

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

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

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