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

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| **A.G., Appellant** | ) | |
| **and** | ) | **Docket No. 17-1398** |
| | ) | **Issued: December 6, 2017** |
| **DEPARTMENT OF STATE, BUREAU OF CONSULAR, Houston, TX, 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
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On June 12, 2017 appellant filed a timely appeal from a June 1, 2017 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 to consider the merits of this case.

### ***ISSUE***

The issue is whether appellant has met her burden of proof to establish an allergic reaction causally related to an accepted February 23, 2017 employment incident.

### ***FACTUAL HISTORY***

On February 27, 2017 appellant, then a 38-year-old passport specialist, filed a traumatic injury claim (Form CA-1), alleging that on February 23, 2017, while working on passport applications, she touched an application that contained "mold or spores" which caused hives on

[1] 5 U.S.C. § 8101 *et seq.*

her hands, arms, and neck. She stopped work on February 23, 2017 and returned on February 27, 2017.

Appellant was treated on February 24, 2017 in St. Luke's emergency room by Dr. Stuart E. Boss, Board-certified in emergency medicine, who diagnosed hives and recommended appellant follow up with her primary care physician in two days. She was provided discharge instructions from a nurse practitioner for an allergic reaction with skin rash and hives of unknown cause. In an activity restriction form dated February 24, 2017, the nurse practitioner noted that appellant could return to work in four days.

By letter dated March 6, 2017, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a reasoned physician's opinion addressing the relationship of her claimed condition and specific employment factors. It noted that medical evidence must be submitted by a qualified physician and that a physician assistant is not considered a qualified physician under FECA.

Appellant submitted a February 24, 2017 emergency room report from Dr. Boss who noted that she presented with an itchy rash on both elbows, upper back, and right and left chest which started the previous day. She reported no new or abnormal exposure, no tongue swelling, or wheezing. Appellant noted taking Benadryl with significant improvement. Dr. Boss noted findings on physical examination of no respiratory distress, no wheezing, and erythema (hives) to flexor elbows. He diagnosed urticarial and mild hives and advised that appellant was stable.

On February 24, 2017 appellant was treated by Dr. Karen Richardson, a Board-certified emergency room physician, for an allergic reaction which began the day before. Appellant reported facial swelling, throat swelling, dyspnea, itchy and painful skin rash consisting of hives located on the face, neck, back, chest, and abdomen. She reported no recent medication, insect bite, food exposure or exposure to poison ivy or poison oak. Appellant indicated that she had similar symptoms many times before. She noted recent treatment at another facility for the same condition. Dr. Richardson noted findings of a rash on the right and left abdomen, right and left back, both arms, elbow, and forearm. She noted that appellant was well oriented and had no motor or sensory deficits. Dr. Richardson diagnosed generalized allergic reaction with skin rash and hives of unknown cause. She discharged appellant in improved and stable condition and recommended she return to work in four days and follow up with her healthcare provider.

By letter dated April 11, 2017, OWCP again advised appellant of the type of evidence needed to establish her claim.

Appellant submitted an undated statement and indicated that on February 23, 2017 she handled an application that contained mold spores which caused an allergic reaction with large hives and redness on her neck, arms, and wrist. She was treated by an employing establishment nurse who gave her Benadryl. Appellant indicated that the hives spread and she sought treatment in the emergency room. She had not sustained any other injuries since the work incident. Appellant noted having allergies and asthma, but asserted that February 23, 2017 was the first time she experienced hives and redness. She indicated that her hands were exposed by touching a birth certificate attached to an application that she was handling. Appellant was not wearing gloves or a mask. She noted being exposed to applications from all over the world from people

who may have them stored in places where mold, water, dust, or fire could come in contact with them. Appellant advised that she had worked 8 to 10 hours a day, five to six days a week, since August 17, 2008 and had never previously experienced an episode like this. She noted skin irritants outside of work as mosquito bites, touching grass or trees, and coming into contact with an irradiant and car wash cleaner. Appellant noted allergies to dust, pollen, and mold and asserted that the rash and hives were caused by touching the mold spores. She advised that her symptoms included rashes, redness, hives, swelling, difficulty breathing, and closing of the throat depending on to what allergen she was exposed. Appellant indicated that she receives asthma shots, allergy shots, daily allergy pills, nose spray, breathing treatments, and inhalers to keep her allergies under control. She reported having allergies to certain foods, medicines, and other substances such as mold, pollen, air fresheners, cologne, lotions, and soap.

Appellant submitted a February 24, 2017 report from Dr. Carlos J. Vital, a Board-certified allergist, who treated her for hives, itchy skin, watery eyes, and facial and body swelling. She reported that her symptoms started the day before while she was at work and handling documents attached to an application where she noticed "mold or spores" on a birth certificate. Appellant noted immediately developing hives, swelling, and redness of her hands, face, arms, and neck. She indicated that she went to the employee nurses' station and clinic where she was given Benadryl. Appellant noted that after going home and sleeping for over 12 hours she awoke to swelling of both arms, itching and hives spreading to her chest, back, and abdomen. Her history was significant for asthma where she used a bronchodilator, inhaler, and nebulizer to control her symptoms. Dr. Vital noted findings on examination of mild respiratory distress, suborbital venous congestion, mild congestion, and bilateral coarse inspiratory and expiratory wheezes. He noted areas of telangiectasia on face, erythema of eyelids bilaterally, erythema around ears, erythematous macules and papules of the head and neck, circumferential, and erythematous lesions throughout the trunk, arms, and legs. Dr. Vital diagnosed angioneurotic edema, allergic urticarial, severe persistent asthma, and allergic rhinitis due to pollen. He opined that appellant appeared to have angioedema secondary to severe allergic disease due to occupational exposure which progressed to a diffuse reaction to environmental allergens.

Dr. Vital noted that appellant was exposed to the mold on the paper at her work and developed angioedema and urticaria. On April 5, 2017 he indicated that appellant had a history of angioedema, urticaria, allergic asthma, and allergic sinus disease. Dr. Vital treated appellant on February 24, 2017 for angioedema and urticaria secondary to exposure to indoor environmental allergens, specifically, mold on paperwork. He noted that appellant also had severe persistent asthma and was given steroid injections and breathing treatments to help with her symptoms. Dr. Vital opined that appellant had "some type of occupational exposure to mold or some other type of allergen or irritant resulting in angioedema, urticaria, allergic asthma, and elements of immediate and delayed hypersensitivity reactions." He recommended continued treatment and monitoring and opined that appellant would not have long-term sequelae due to this occupational exposure.

In a June 1, 2017 decision, OWCP accepted exposure to "mold or spores" on a passport application, but denied appellant's claim for compensation because the medical evidence of record was insufficient to establish a medical condition causally related to the accepted exposure.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[2] has the burden of proof to establish 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 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 is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[5]

## ***ANALYSIS***

It is undisputed that on February 23, 2017 appellant was working as a passport specialist which included the handling of paper applications and was exposed to "mold or spores." However, she has failed to submit sufficient medical evidence to establish that her diagnosed medical conditions were causally related to the February 23, 2017 employment incident.

Appellant submitted a February 24, 2017 report from Dr. Vital who treated her for hives, itchy skin, watery eyes, facial and body swelling. She reported that her symptoms started the day before while she was at work handling documents attached to an application where she noticed "mold or spores" on a birth certificate. Appellant noted immediately developing hives, swelling, redness of her hands, face, arms, and neck which later spread to her chest, back, and abdomen. Dr. Vital noted findings and diagnosed angioneurotic edema, allergic urticarial, severe persistent asthma, and allergic rhinitis due to pollen. He opined that appellant appeared to have angioedema secondary to severe allergic disease due to occupational exposure which progressed to a diffuse reaction to environmental allergens. Dr. Vital noted that appellant was exposed to the mold on the paper at her work and developed angioedema and urticaria. However, Dr. Vital

[2] *Id*.

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *T.H.*, 59 ECAB 388 (2008).

[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. To the extent that he is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's development of hives and asthma and the accepted work incident.[6] Therefore, this report is insufficient to meet her burden of proof.

On April 5, 2017 Dr. Vital noted his treatment of appellant and opined that appellant "had some type of occupational exposure to mold or some other type of allergen or irritant resulting in angioedema, urticaria, allergic asthma, and elements of immediate and delayed hypersensitivity reactions." The Board finds that, although Dr. Vital supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's angioedema, urticaria, allergic asthma and the February 23, 2017 work incident.[7] Dr. Vital did not explain the process by which exposure to mold or other allergens caused the diagnosed conditions and why such condition would not be due to any nonwork factors. Specific medical rationale is particularly necessary given that appellant had preexisting allergies and asthma. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it is insufficient to meet appellant's burden of proof.[8]

Appellant submitted emergency room treatment records from Dr. Boss dated February 24, 2017 who noted that appellant presented with an itchy rash on both elbows, the upper back, and right and left chest which began the day before. She reported no recent new or abnormal exposure, no tongue swelling, or wheezing. Appellant noted taking Benadryl with significant improvement. Dr. Boss noted findings and diagnosed urticarial and hives. Similarly, on February 24, 2017 appellant was treated by Dr. Richardson for an allergic reaction which began the day before. She reported her symptoms and indicated that she had similar symptoms many times before. Dr. Richardson diagnosed generalized allergic reaction with skin rash and hives of unknown cause. Drs. Boss and Richardson's notes are insufficient to establish the claim as they did not provide specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[9]

[6] *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).

[7] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[8] *J.M.*, 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof to establish a work-related right wrist condition where his physician provided only conclusory support for causal relationship and did not identify any of the job duties appellant performed at the employing establishment which he believed were responsible for appellant's condition or explain how his work duties at the employing establishment caused or contributed to his condition. Medical rationale was particularly necessary given that appellant injured his wrist while lifting luggage in private employment.

[9] *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant submitted discharge instructions and an activity restriction form from a nurse practitioner. The Board has held that treatment notes signed by nurse practitioners are not considered medical evidence as these providers are not a physician under FECA.[10]

Consequently, the Board finds that appellant has failed to submit sufficient medical evidence to establish that her accepted work exposure on February 23, 2017 caused or aggravated a diagnosed medical 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 has not met her burden of proof to establish that her allergic reaction was causally related to the accepted February 23, 2017 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).