United States Department of Labor
Employees' Compensation Appeals Board

P.Y., Appellant	)	
and	)	**Docket No. 16-1324**
	)	**Issued: July 24, 2017**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, ALASKA REGIONAL OFFICE, Anchorage, AK, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 10, 2016 appellant filed a timely appeal from the April 29, 2016 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.

ISSUE

The issue is whether appellant has established that her diagnosed condition of dysphonia was causally related to the accepted September 16, 2014 employment events.

On appeal, appellant alleges that the evidence establishes that her voice problems are causally related to her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 9, 2014 appellant, then a 55-year-old human resources personnel security assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2014, as she attempted to pick up and unpack boxes from an office move, she collapsed from fumes. She noted that when she began to fall, she dropped a box on her feet, and pulled a five foot lamp that broke and hit her on the right side of her face. Appellant stated that the bulk of the injury was to her left foot, but that she also experienced headaches, difficulty breathing, dry heaves/coughing, nasal dripping, irritated eyes, and minor bruises and soreness.

In a September 18, 2014 note, Dr. Michael Fischer, a Board-certified family practitioner, indicated that appellant was seen in connection with her reaction and near syncope possibly related to materials used in the painting and recarpeting of her office. He noted that it was his impression that she had a reaction to one of the agents involved, but noted that he did not have the expertise to sort out these questions for her with regard to either specific diagnosis or treatment, and was therefore referring her to Alaska Allergy and Immunology for a consultation. Dr. Fischer noted that he was retiring on September 30, 2014 and that appellant would receive follow-up care with the providers at Summit Family Practice.

In an October 15, 2014 report, Dr. Elizabeth Lafleur, a Board-certified family practitioner, noted that she was appellant's new physician and would be managing referrals and conducting further evaluations. In an attending physician's report dated October 30, 2014, she diagnosed: "Allergy (no diagnosis from injury)," and checked a box marked "yes" indicating that the condition was caused by the alleged employment events. Dr. Lafleur noted that appellant did not have any limitations from the injury. In a report of the same date, she diagnosed suspected exposure to potentially hazardous chemicals. Dr. Lafleur referred appellant for pulmonary function studies which were conducted on November 12, 2014 by Dr. Marek A. Martynowicz, a pulmonologist, and interpreted as a normal study.

On November 13, 2014 appellant filed a claim for recurrence of disability (Form CA-2a), alleging a recurrence of the alleged September 16, 2014 injury on October 17, 2014. She stated that, due to chemical reactions, she had to work from home, and traveled back and forth to pick up and deliver work. Appellant alleged that on October 17, 2014 she entered the building and almost immediately began to feel a reaction, and after being in the building for approximately 10 minutes her headache began, her voice changed, and her throat felt like it had been singed.

On November 20, 2014 a building assessment was conducted by Dan Pohland of J.L. Properties. He concluded that her office did reveal some accumulated dust on office furnishings, but did not reveal any potential odors or fumes; that no significant level of airborne particulates were measured; that the temperature, relative humidity, carbon dioxide, and carbon monoxide levels were within the recommended range; and that the overall results indicated that the environmental conditions in the building were generally within acceptable levels.

On December 3, 2014 OWCP informed appellant that further medical information was necessary to support her claim and afforded 30 days to submit the information.

In a December 16, 2014 report, Dr. Lafleur again diagnosed suspected exposure to potentially hazardous chemicals. She discussed appellant's episode on September 16, 2014, and indicated that appellant was currently working from home. Dr. Lafleur noted that there was no clear diagnosis, noting no foot pain or restrictions or limitations and that the pulmonary testing came back negative.

By decision dated January 5, 2015, OWCP accepted that the alleged events occurred as described, but denied appellant's claim as she failed to establish a medical diagnosis causally related to the accepted employment factors.

Following OWCP's decision, it received a November 18, 2014 report in which Dr. Beth A. Baker, a Board-certified pulmonologist, conducted a normal methacholine challenge test which did not demonstrate hyperresponsive airways.

In a January 8, 2015 report, Dr. Jeffrey G. Demain, a physician Board-certified in allergy and immunology, indicated that appellant had suspected allergic contact dermatitis. He noted no evidence of primary pulmonary process or hypersensitivity pneumonitis at this time. Dr. Demain discussed her work environment and noted that appellant's history and interpretation of audio recordings was most consistent with Extrathoracic Airway Dysfunction/Vocal Cord Dysfunction that were provoked by exposure to irritant aerosols in her work environment during remodeling. He noted that a follow-up was needed.

In a January 13, 2015 report, Dr. Lafleur again noted suspected exposure to potentially hazardous chemicals and contended that it was an Americans with Disabilities Act (ADA) case, not a workers' compensation case. She encouraged appellant to work within guidelines of the ADA to pursue any special accommodations. Dr. Lafleur noted that the podiatrist cleared appellant of any traumatic injury. She also found that her allergist did agree that appellant had sensitivity to some chemicals in the carpeting.

On January 29, 2015 appellant filed a second claim for recurrence of disability (Form CA-2a) alleging a recurrence of the alleged September 16, 2014 injury on January 12, 2015. She stated that, after returning to work, within a two and a half-hour period she experienced irritation of the eyes and shortly thereafter a feeling of a headache followed by hoarseness.

On February 4, 2015 appellant also requested reconsideration of the January 5, 2015 decision.

By decision dated April 9, 2015, OWCP determined that, although appellant had now established a medical diagnosis, she had failed to establish that the work exposure on September 16, 2014 caused or contributed to her diagnosis. Accordingly, appellant's claim was denied.

On June 9, 2015 Dr. Sverre Vedal, a Board-certified pulmonologist, evaluated appellant for persistent problems with her voice. He recommended speech therapy.

In a June 9, 2015 report, Dr. Allen D. Hillel, a Board-certified otolaryngologist, noted that appellant has had voice complaints since a remodel at her employment with application of a new carpet and that, since that time, she has had persistent difficult with her voice. He noted that

appellant's presentation was unusual. Dr. Hillel found that exposure was generally not as reliably repetitive as the patient reports; rather it has a much less defined pattern. He indicated that speech therapy was the only treatment that she would recommend. Dr. Hillel did not think appellant would benefit from working a half day schedule, but did discuss the option of an occupational evaluation.

In a July 15, 2015 report, Dr. Shilpa N. Gowda, a resident physician, found a potential irritant process, exacerbated by workplace exposure. She diagnosed dysphonia and irritable larynx. Dr. Gowda opined, "We feel that the irritable larynx and spasmodic dysphonia are due to inhalational exposure that occurred during remodeling of [appellant's] workplace." She noted that temporality and biological plausibility supported the relatedness of appellant's symptoms to work on a more probable than not basis. Dr. Gowda opined that given the ubiquitous nature of potentially offending agents, she felt that the best approach would be to modify appellant's response to the offending irritant rather than modifying the workplace and its particular exposure, and therefore she did not recommend any adjustments at this time. She noted that it was difficult to surmise the exact causative agent of appellant's irritant symptoms from appellant's history alone, and knowing the causative agent would allow better recommendations. Dr. Gowda recommended that appellant continue with speech therapy and continue to see Dr. Lafleur for management of depression and anxiety, which may also help with her current irritant symptoms. She noted that appellant likely had an autonomous irritancy reaction to workplace exposure, but that it was difficult to surmise the exact causative agent of appellant's irritant symptoms from workplace exposure alone.

Dr. Vedal, in an attending note attached to Dr. Gowda's report, indicated that he evaluated appellant with Dr. Gowda and that he agreed with her evaluation report with only minor edits. He noted that appellant had dysphonia and historical features of irritant-induced irritable larynx syndrome, and that, in their opinion, this was caused by her occupational exposure during renovation to a more probable than not degree of medical certainty. Dr. Vedal noted that persistence of symptoms in the absence of exposure to the causative agent is typical. He also noted symptoms of untreated GERD.

On September 1, 2015 appellant requested reconsideration.

Kristina M. Warring, speech therapist, evaluated appellant from August 24 through October 1, 2015 and discussed with appellant behavioral and qualitative analysis of resonance and voice.

On August 25, 2015 Dr. Lafleur diagnosed dysphonia. She recommended that appellant follow up with counseling recommendations. Dr. Lafleur recommended no significant changes to her plan of care. She indicated that occupational medicine instructed that the plan of care should not be an adjustment to appellant's workplace, but instead focus on mitigating her response through counseling and speech therapy. Dr. Lafleur noted that appellant alleged that she had another episode on a work trip when everyone was using markers, but that this episode of hoarseness lasted only three days. She noted that appellant continued to be able to sing in the church choir.

In a November 2, 2015 decision, OWCP denied modification of its earlier decisions as the evidence of record failed to establish a causal relationship between appellant's work factors and her diagnosed medical condition.

On February 10, 2016 appellant again requested reconsideration.

In a November 7, 2015 report, Dr. Gowda noted that the symptoms with which appellant presented at the clinic, as well as the videostroboscopy, were consistent with vocal cord dysfunction. She continued, "Furthermore, we feel that the work relatedness of [appellant's] vocal cord dysfunction is more probable than not." Although they had not identified a specific agent responsible, Dr. Gowda opined that identification of this inciting agent is not necessary for establishing the work relatedness of the claim, as the temporality to work of a well-established diagnosis of vocal cord dysfunction would be sufficient. She also noted that while psychological overlay of her vocal cord dysfunction is likely, the psychological overlay does not negate the work relatedness of her vocal cord disorder.

In a December 16, 2015 report, Dr. Demain listed appellant's diagnosis as dysphonia and nonallergic vasomotor rhinitis. He recommended that she continue therapy.

On January 6, 2016 Dr. David Moeller, a Board-certified radiologist, conducted an esophagram and found a small amount of gastroesophageal reflux with the water siphon test.

Appellant continued treatment with Ms. Warring on October 14, 2015. She also saw Karen Drake, a speech language pathologist, on January 14, 2016 for a consultation. Appellant was given warm up voice and breathing exercises, and exercises to work toward relaxing muscles whiles symptomatic.

In a February 3, 2016 note, Dr. Christopher Gay, a Board-certified anesthesiologist, noted that appellant was evaluated for pain, muscle spasms, and headaches. He noted that she has a chronic vocal cord dysfunction which has been determined to be related to environmental factors at work, and that given the locational trigger of her symptoms, interventional treatments of her pains are not recommended. Dr. Gay suggested that appellant be allowed to telecommute five days a week and noted that, while there may be occasional instances where she would be required to come into the workplace, this would alleviate the anxiety and stress associated with the vocal cord dysfunction, as well as remove her from any offending agents.

In a February 17, 2016 report, Dr. Demain listed appellant's diagnoses as dysphonia, originally following chemical exposure, but that her symptoms continued to worsen when she returned to her workplace. He discussed possible medication trials.

In an April 29, 2016 decision, OWCP denied modification of its prior decisions. It found that the evidence of record remained insufficient to establish that the diagnosed medical condition was causally related to the employment events of September 16, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish that 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 caused 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.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. 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.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The issue is whether the accepted employment events on September 16, 2014 caused her diagnosed medical condition. The determination of whether an employment incident/event caused an injury is generally established by medical evidence.[9] The Board finds that the medical evidence of record is devoid of a well-rationalized medical opinion linking appellant's diagnosed voice condition of dysphonia to the employment events of September 16, 2014.

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[2] *Id*.

[3] *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams,* 41 ECAB 345 (1989).

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

[6] *Id.*

[7] *I.J.*, 59 ECAB 408 (2008).

[8] *James Mack*, 43 ECAB 321 (1991).

[9] *N.S.*, Docket No. 15-1955 (issued June 23, 2016).

Dr. Fischer first examined appellant on September 18, 2014, and indicated that he saw her for her reaction and near syncope which had occurred at work, that his impression was that she had a true reaction to one of the agents involved, but noted that he did not have the expertise to sort out the questions with regard to a specific diagnosis or treatment. He referred her to other physicians for follow-up treatment. Dr. Fischer's opinion, which does not contain a medical diagnosis or a rationalized opinion on causal relationship, is insufficient to establish causal relationship.[10]

After Dr. Fischer's retirement, appellant received treatment from Dr. Lafleur, who on October 30, 2014, by checking a box marked "yes" diagnosed suspected exposure to potentially hazardous chemicals. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question is of little probative value.[11] Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship. In the December 16, 2014 report, Dr. Lafleur again diagnosed suspected exposure to potentially hazardous chemicals, noted the September 16, 2014 episode, and reported that there was no clear diagnosis. On January 13, 2015 she indicated that this was an ADA case, not a workers' compensation case. The Board finds that Dr. Lafleur has failed to provide a rationalized medical opinion explaining how appellant sustained a diagnosed condition causally related to her employment on September 16, 2014.[12] In fact, Dr. Lafleur infers that there was no such causal relationship.

Appellant saw a series of specialists in the course of her treatment. Dr. Demain diagnosed dysphonia and nonallergic vasomotor rhinitis. However, he did not explain the pathophysiological process by which appellant's employment incident of September 16, 2014 would have caused or aggravated her condition.[13] Dr. Hillel recommended speech therapy. He noted that appellant's presentation was unusual in that her difficulty with exposure was generally not as reliably repetitive as appellant reported, but had a much less defined pattern. Dr. Hillel did not provide a rationalized medical opinion linking appellant's diagnosed voice issues with the accepted employment events on September 16, 2014. Dr. Gay noted that appellant's chronic vocal cord dysfunction had been determined to be related to environmental factors at work. However, the Board finds that he did not provide a rationalized medical explanation of causal relationship, but rather made a brief conclusory statement.[14]

Appellant was also evaluated by Dr. Gowda and Dr. Vedal. In a July 15, 2015 note, Dr. Gowda noted that appellant likely had an autonomous irritancy reaction to workplace exposure, but that it was difficult to surmise the exact causative agent of appellant's irritant symptoms from workplace exposure alone. She followed up on November 7, 2015, and found that more probably than not appellant's vocal cord dysfunction was related to her employment

[10] *Supra* note 7.

[11] *L.D.*, Docket No. 16-1289 (issued December 8, 2016).

[12] *Supra* note 7.

[13] *T.O.*, Docket No. 16-9423 (issued June 20, 2016).

[14] *See F.H.*, Docket No. 09-0255 (issued September 10, 2009).

due to the temporality of her symptoms with work. Dr. Gowda also noted that while psychological overlay of her vocal cord dysfunction was likely, the psychological overlay does not negate the work relatedness of her vocal cord disorder.

Dr. Vedal added a diagnosis of dysphonia and historical features of irritant-induced irritable larynx syndrome, and opined to a more probable than not degree of medical certainty that this was caused by her occupational exposure during a renovation. These reports from Dr. Gowda and Dr. Vedal are speculative in nature as the physicians qualify their support by noting that a causal relationship between the medical condition and appellant's employment was likely or more probable than not. Therefore, these reports have little probative value.[15] Further, neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment events is sufficient to establish causal relationship.[16]

Appellant had multiple objectively normal studies. Dr. Martynowicz noted a normal pulmonary function study on November 12, 2014. On November 18, 2014 Dr. Baker conducted a methacholine challenge test and determined that it did not demonstrate hyperresponsive airways. Dr. Moeller found a small amount of gastroesophageal reflux with water siphon test on his esophagram of January 6, 2016. Accordingly, the diagnostic studies have no probative value as to the cause of her accepted diagnosis. Furthermore, none of these physicians addressed causal relationship within their medical reports. These reports are therefore of no probative value.[17]

Ms. Warring and Ms. Drake are speech pathologists, not medical doctors. A speech pathologist is not considered a physician under FECA and therefore these opinions are of no probative medical value.[18]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.[19] Because she failed to provide medical opinion evidence clearly explaining how her diagnosed condition is causally related to the employment events of September 16, 2014 she has failed to meet his burden of proof and OWCP properly denied her claim for compensation.

[15] *Ricky S. Storms*, 52 ECAB 349 (2001) (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).

[16] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[17] *R.C.*, Docket No. 16-1272 (issued December 2, 2016).

[18] 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. 5 U.S.C. § 8102(2); *D.P.*, Docket No. 09-2065 (issued August 4, 2010) (a speech pathologist is not a physician as defined under FECA).

[19] *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

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 established that her diagnosed medical condition of dysphonia on September 16, 2014 was causally related to the accepted employment events of September 16, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 29, 2016 is affirmed.

Issued: July 24, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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