United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 17-0819**
	)	**Issued: April 12, 2018**
DEPARTMENT OF THE NAVY, WASHINGTON NAVY YARD, Washington, DC, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 27, 2016 appellant filed a timely appeal from a November 9, 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 claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that her diagnosed pulmonary and/or neurological conditions were causally related to her accepted employment exposure.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 30, 2015 appellant, then a 48-year-old executive secretary, filed an occupational disease claim (Form CA-2) alleging that she developed breathing problems, headaches, memory loss, and diarrhea, which arose in the performance of duty on or about May 11, 2015. She first became aware that her condition was employment related on June 12, 2015 at which time she reported it to her supervisor. The Form CA-2 indicated that she first received medical treatment for her claimed condition(s) on June 12, 2015. Appellant explained that the roof of the building (B-166, Suite 301) where she worked had been under repair, and for about a month there was a strong odor of tar coming through the overhead ventilation system in her office. She indicated that management was aware of the uncomfortable odor. Appellant stated that her physician had prescribed an inhaler for her breathing problems. She stopped work on June 19, 2015.

A June 3, 2015 memorandum from the employing establishment summarized the results of a May 15, 2015 indoor environmental quality (IEQ) survey regarding "odors coming from the roof tarring being performed…." The memorandum noted that several employees had reported nausea and headache beginning at the start of the project. There was also a marked odor of tar and bitumen upon entering the facility (B-166). The discussion portion of the memorandum indicated that, due to the low odor threshold of bitumen and coal tar, it was quite probable that employees became sensitive to the odor as it came through the building. The memorandum further noted that using hot roof tar can easily cause odor complaints because the odor is strong and can be smelled at very low concentrations in the air. The recommendations section of the memorandum indicated that if employees continued to become ill, it could have become necessary to relocate them temporarily while the work continues.

OWCP also received material safety data sheets regarding various roofing materials, including industrial and roofing asphalts.

A June 29, 2015 report from Kaiser Permanente titled, "OPL Referral Form Verification of Treatment" indicated there was evidence that appellant's condition was work related, and further noted that the injury/illness occurred on or about May 11, 2015.[2] The report also noted that appellant received treatment for her disability/illness on June 12 and 18, 2015, and that she was evaluated by a neurologist and a pulmonologist on June 22, 2015. Her conditions included exposure to potentially hazardous chemicals and fumes, exposure to hazardous aromatic components, headache, chemical pneumonitis/bronchitis, neuralgia, memory loss/cognitive memory loss, reactive airway disease, and restrictive lung function. Diagnostic testing included a chest x-ray, pulmonary function studies, and head and chest computerized tomography (CT) scans. The report indicated there was evidence of restrictive lung changes, reactive airway disease, and cognitive deficits on neurological testing. It was also noted that appellant's disability/illness had kept her from work since June 22, 2015. Both the internist and specialist jointly recommended that appellant remain out of work for a period of time to aid in her prognosis and recovery. Additional neurological testing was recommended, as well as a six-month follow up with Neurology. It was also recommended that, upon returning to work, appellant be transferred to

[2] The healthcare provider's signature was illegible. However, the handwritten printed name beneath the signature line identified the individual as Hutcheson, Wendy-Ann. The identity of the Kaiser Permanente healthcare provider was consistent with information included on the June 30, 2015 Form CA-2.

another building. The June 29, 2015 report listed appellant's then-current medications, which included two prescribed inhalers (QVAR and ProAir).

On July 30, 2015 OWCP requested additional information from both appellant and the employing establishment. With respect to the latter, it requested information regarding appellant's alleged exposure and precautions the employing establishment may have taken to minimize the effects of the alleged exposure. OWCP similarly asked appellant if she was aware of any precautionary measures. It also inquired about the extent and duration of her exposure and whether she had a prior smoking history or a prior history of pulmonary/respiratory conditions. Additionally, OWCP requested that appellant submit a well-rationalized medical opinion from her physician, which included specific diagnoses and an explanation of how the work exposure either caused or contributed to the diagnosed condition(s).

The employing establishment did not respond to OWCP's July 30, 2015 request for additional factual information regarding appellant's claimed exposure.

In an August 24, 2015 statement, appellant indicated, *inter alia*, that her office was located on the top floor of a three-story building that was undergoing roof repairs in May 2015. She stated that she could smell the roofing tar through the overhead vents in her office. There were no precautionary measures taken. Appellant also noted she never smoked, and she did not have a prior history of pulmonary/respiratory conditions. She specifically denied any prior history of allergies, asthma, or bronchitis.

Dr. Wendy-Ann J. Hutchenson, a Board-certified family practitioner, provided an August 7, 2015 report (OPL Referral Form Verification of Treatment), which reiterated much of the same information previously reported on June 29, 2015. She noted that there was initial evidence of restrictive lung changes, but final findings revealed reactive airway disease, as well as cognitive deficits on neurological testing. Dr. Hutcheson further indicated that appellant had presented with symptoms and findings associated with an inhalation injury from toxic fumes.[3] Her symptoms included headache, shortness of breath, cough, wheezing, and memory loss. Dr. Hutcheson indicated that appellant's preliminary diagnosis was chemical pneumonitis/ bronchitis, and her final diagnosis was reactive airway disease and memory loss/cognitive memory loss. She further advised that appellant had been disabled since June 22, 2015, and that she could return to work on September 9, 2015, with the only accommodation being that appellant work at another building.

By decision dated August 31, 2015, OWCP denied appellant's claim finding that the medical evidence of record did not contain a diagnosis in connection with the accepted injury and/or event(s). It noted that the identity of the author of the various medical reports was unclear given the illegible signature. Thus, it was unclear whether the reports were authored by a qualified physician.

[3] Dr. Hutcheson referenced appellant's exposure to toxic fumes at work, which included tar or other chemicals documented in the material data sheet.

On September 21, 2015 appellant requested reconsideration. She submitted another version of the August 7, 2015 medical report, which included a typewritten signature line, below the actual signature, that identified Wendy-Ann J. Hutcheson, M.D., as the healthcare provider.

By decision dated December 17, 2015, OWCP denied appellant's request for reconsideration. It noted that appellant submitted a duplicate copy of the August 7, 2015 medical report. It determined that this evidence had already been considered and, therefore, appellant had not established a basis for further merit review.

On January 28, 2016 OWCP received additional medical evidence, which included a June 12, 2015 chest x-ray, a June 18, 2018 head CT scan, a June 22, 2015 pulmonary function study, and a June 22, 2015 chest CT scan. The head CT scan revealed no acute intracranial process. Appellant's chest x-ray showed no acute cardiopulmonary process, and the chest CT scan revealed no evidence of interstitial lung disease. The June 22, 2015 pulmonary function study showed normal flow volume loop, a moderately reduced gas exchange, no obstructive defect, and a moderate restrictive defect based on lung volumes.

OWCP also received a June 22, 2015 progress note from Dr. Tajender S. Vasu, a Board-certified internist and pulmonologist.[4] Appellant reported that beginning in May 2015 the building where she worked had undergone repairs. She worked there seven to eight hours per day and was exposed to chemicals (tar). Appellant also reported that other coworkers had gotten sick. She had been having headaches for a few weeks, as well as memory issues. Dr. Vasu noted that appellant was scheduled to see a neurologist later that same day. He also noted that since May 2015 appellant complained of breathing issues, which included shortness of breath, chest discomfort, and occasional wheezing. Appellant also complained of a dry cough, with occasional phlegm. Dr. Vasu noted no history of asthma. He also reported that Dr. Hutcheson prescribed albuterol, which helped appellant's breathing.[5] Dr. Vasu related that appellant never smoked, had no known allergies, and no history of tuberculosis or exposure to asbestos. Also, there was no family history of asthma or obstructive sleep apnea. Appellant's past medical history included hypertension and morbid obesity. Dr. Vasu reviewed the results of appellant's June 12, 2015 chest x-ray, as well as her June 22, 2015 pulmonary function study. He provided a differential diagnosis of restrictive airway disease (RAD)/asthma. Dr. Vasu also diagnosed morbid obesity. The treatment plan included QVAR and albuterol. He discussed appellant's pulmonary function study results with her, and noted that the restrictive defect and low diffusion capacity (DLCO) could be related to her weight. Dr. Vasu recommended a high-resolution CT scan of the chest to rule out interstitial lung disease. He also discussed sleep apnea and noted that appellant did not want to be checked for the condition.

On August 11, 2016 appellant again requested reconsideration of OWCP's August 31, 2015 merit decision.

[4] Dr. Vasu is also Board-certified in critical care medicine and sleep medicine.

[5] Dr. Vasu also noted that, in 2014, another physician, Dr. Mayo, prescribed Singulair, which appellant took for a week.

By decision dated November 9, 2016, OWCP modified its prior decision to find that appellant established a medical diagnosis in connection with the accepted employment exposure. However, it denied her occupational disease claim because the medical evidence of record failed to establish causal relationship.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[8]

ANALYSIS

It is undisputed that appellant was exposed to fumes on or about May 11, 2015 when the roof of the building in which she was employed was under repair and a strong odor came through the overhead ventilation system in her office. However, the Board finds that appellant has not met her burden of proof to establish that her diagnosed medical conditions were causally related to her accepted employment exposures.

In support of her claim, appellant submitted medical reports of Dr. Hutcheson who noted the history of the injury or illness which occurred on or about May 11, 2015. Dr. Hutcheson noted appellant's conditions included exposure to potentially hazardous chemicals and fumes, exposure to hazardous aromatic components, headache, chemical pneumonitis/bronchitis, neuralgia, memory loss/cognitive memory loss, reactive airway disease, and restrictive lung function. She noted diagnostic testing included a chest x-ray, pulmonary function studies, and head and chest computerized tomography (CT) scans and indicated that appellant's disability/illness had kept her from work since June 22, 2015. Dr. Hutcheson recommended that appellant remain out of work for a period of time to aid in her prognosis and recovery, followed by a transfer to another building

[6] *See supra* note 1.

[7] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[8] *Victor J. Woodhams*, *id*.

upon her return to work. Additional neurological testing was recommended, as well as a six-month follow up with Neurology. These reports are found to be insufficient to establish appellant's claim as they do not provide an opinion on the cause of appellant's medical conditions. The Board has held that 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.[9] Dr. Hutcheson did not explain how or why exposure to the odors at work would cause or contribute to appellant's diagnosed conditions and resultant disability from work. Therefore, these reports are insufficient to establish appellant's claim.

Appellant also submitted a progress note of Dr. Vasu dated June 22, 2015. Dr. Vasu noted a history of the employment exposure, noted her past medical and social history, and findings on examination. He provided a differential diagnosis of restrictive airway disease (RAD)/asthma and a diagnosis of morbid obesity. Dr. Vasu's treatment plan included QVAR and albuterol. He discussed appellant's pulmonary function study results with her, and noted that the restrictive defect and low diffusion capacity (DLCO) could be related to her weight. Dr. Vasu recommended additional diagnostic testing could be performed. This report is also found to be insufficient to establish appellant's claim as it does not provide an opinion on the cause of appellant's medical conditions.[10] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[11]

Finally, material safety data sheets for roofing materials along with diagnostic testing results were provided in support of appellant's claim. Diagnostic studies and material safety data sheets are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[12]

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship. Appellant has failed to submit rationalized medical evidence to meet his burden of proof on causal relationship.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish that her accepted work exposure caused or aggravated a diagnosed medical condition.

[9] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[10] *Id*.

[11] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[12] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017); *see also T.M.*, Docket No. 10-440 (issued October 15, 2010).

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 failed to meet her burden of proof to establish that her diagnosed pulmonary and/or neurological conditions were causally related to her accepted employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2018
Washington, DC

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

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

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