United States Department of Labor
Employees' Compensation Appeals Board

B.I., Appellant	)	
and	)	**Docket No. 18-1123**
	)	**Issued: February 6, 2019**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Andover, MA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 14, 2018 appellant filed a timely appeal from a January 18, 2018 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish allergic and respiratory conditions causally related to a June 2, 2017 employment incident.

FACTUAL HISTORY

On June 6, 2017 appellant, then a 57-year-old examining technician, filed a traumatic injury claim (Form CA-1) alleging that she sustained dyspnea on June 2, 2017 due to exposure to hazardous materials at work. She indicated that she thought that the cleaning person was only cleaning a coworker's office on that date, but that she started coughing and had trouble breathing. Appellant asserted that her throat felt raw and her arms became very itchy. She further claimed that she smelled bug spray on June 2, 2017. Appellant stopped work on the date of injury.[3]

In June 5 and 15, 2017 notes, Dr. Christen P. Fragala, an attending Board-certified family practitioner, indicated that appellant was disabled from work. In an attending physician's report (Form CA-20) dated June 14, 2017, she cited exposure to bug spray and diagnosed asthma due to fume inhalation. In a June 21, 2017 report, Dr. Fragala noted that a chest x-ray was normal. She further noted that appellant was prescribed Prednisone and that she attempted to work on June 13, 2017, but had another reaction and stopped work.

In a June 8, 2017 memorandum, the employing establishment addressed a complaint filed with the Occupational Safety and Health Administration (OSHA) regarding office exposure to pesticides. It noted that, on May 21, 2017, a pesticide was applied at the employing establishment because of bed bugs, but that employees were not present when the pesticide was applied. The employing establishment also indicated that, since 2015, the carpet cleaner Nilodor was used at the employing establishment, most recently on June 2, 2017. A material safety data sheet (MSDS) for Nilodor indicated that the product can irritate the eyes and respiratory system.

In a July 13, 2017 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported work conditions/exposures caused or aggravated a medical condition. It also requested that she complete and return an attached questionnaire which posed various questions regarding the employment factors which she believed caused or aggravated her claimed condition.

Appellant subsequently submitted a June 5, 2017 report in which Dr. Fragala diagnosed asthma in connection with exposure to bug spray at work. In a July 3, 2017 report, Dr. David Gruenberg, a Board-certified allergist, noted a history of asthma symptoms for several years and rhinitis for several months. In a report dated July 10, 2017, he diagnosed rhinitis due to possible mold at work, noting appellant had allergies to dogs and mold.

In a report dated June 27, 2017, Dr. Zaffar K. Haque, a Board-certified pulmonologist, indicated that appellant was leaving employment with the employing establishment for a position

[3] On the reverse side of the claim form, appellant's immediate supervisor, A.S., contended that appellant's injury did not occur in the performance of duty.

with another agency. He noted a history of exposure to carpet cleaner and bug spray at the employing establishment. Dr. Haque diagnosed occupational asthma and reactive airway disease. In a July 21, 2017 form report, he diagnosed hives and indicated that it was employment related.

In a statement dated July 26, 2017, E.B., a coworker, noted that she had noticed a strong odor at work on June 2, 2017 that smelled like "Raid" insect spray. She indicated that she had no ill effects from such odor, while appellant did become ill.

In a report dated August 9, 2017, Dr. Gruenberg noted that a pulmonary function test was normal. Appellant tested positive for allergy to dogs and mold. He indicated that, upon physical examination, she exhibited wheezing and a rash. Dr. Gruenberg diagnosed asthma and allergic rhinitis. He referenced a history of workplace exposure to fumes and noted that there was no history of asthma prior to June 2, 2017.

In an August 31, 2017 statement, A.S., appellant's immediate supervisor, noted that she did not smell bug spray in the office.

By decision dated August 31, 2017, OWCP denied appellant's claim for an employment-related injury on June 2, 2017. It denied her claim because the evidence of record did not support causal relationship between accepted exposure to fumes at work and the diagnosed allergic or respiratory conditions. OWCP found that there was no documented exposure to mold or bug spray on June 2, 2017 and noted that the attending physicians did not provide medical rationale in support of causal relationship regarding appellant's exposure to cleaning products.

Appellant subsequently requested a review of the written record by a representative of OWCP's Branch of Hearings and Review and submitted additional evidence. In a September 23, 2017 letter, she noted that on June 2, 2017 she was exposed to Nilodor spot remover (carpet cleaner) resulting in coughing and shortness of breath. Appellant noted that the MSDS for Nilodor spot remover showed the product could irritate the respiratory system. She submitted a copy of a report she filed with the employing establishment for exposure to chemical fumes at her worksite. Appellant also submitted copies of e-mails between herself and A.S. which were dated between June 2 and 7, 2017. In the e-mails, she asserted that she smelled bug spray in the office after a nearby cubicle was cleaned, and that the cleaning solution used in the office contained irritants. Appellant indicated that an MSDS for "All Natural Green" cleaner noted that potential hazards included eye irritation, skin irritation, and aspiration hazard.

By decision dated January 18, 2018, a hearing representative affirmed OWCP's August 31, 2017 decision, noting that appellant had not met her burden of proof to establish an employment-related injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA, that the 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.[4]

To determine whether a federal employee 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 and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.[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 established employment factors.[7]

Where an injury is claimed in connection with chemical exposure, the treating physician must explain in detail how workplace exposures caused or contributed to diagnosed conditions.[8] The coincidence in time between the onset of symptoms and the fact that an employee was working in an office environment is speculative where there is no rationalized explanation that the condition was caused by the work environment.[9]

Where there is a preexisting condition affecting the same part of the body where a work injury or illness is claimed, the attending physician must provide a rationalized medical opinion which differentiates between the effects of the employment-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish allergic and respiratory conditions causally related to a June 2, 2017 employment incident.

The Board notes that the case record reflects that, on June 2, 2017, the Andover office where appellant worked had been cleaned with the cleaning/odor removal substances Nilodor carpet cleaner and All Natural Green. The employing establishment has not disputed appellant's

[4] 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *P.B.*, Docket No. 18-1322 (issued January 2, 2019); *T.H.*, 59 ECAB 388 (2008).

[6] *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

[7] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

[8] *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

[9] *Id.*

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

assertion that Nilodor carpet cleaner and All Natural Green were used to clean the Andover office on June 2, 2017 and appellant's exposure to these substances has been established. The case record further reflects that, on May 21, 2017, a pesticide was used in the Andover office when no employees were present. A coworker, E.B., indicated that she thought she smelled something like a commercial insect spray on June 2, 2017, but this statement was contradicted by a statement from A.S., who smelled no such odor. Appellant has not presented probative evidence, such as an environmental report, to meet her burden of proof to establish that residuals of the pesticide were present in her workplace on June 2, 2017.[11] Therefore, she has not established exposure to "bug spray" on June 2, 2017, as alleged. In addition, appellant has not submitted probative evidence documenting exposure to mold at the Andover office. In summary, the case record establishes that only she was exposed to fumes or odors from Nilodor carpet cleaner and All Natural Green cleaner on June 2, 2017.

The Board finds that appellant failed to meet her burden of proof to submit a rationalized medical opinion relating the accepted employment exposure to a diagnosed medical condition. The reports of appellant's attending physicians are of limited probative value on the underlying issue of this case because these physicians did not provide a rationalized medical opinion relating appellant's exposure to Nilodor carper cleaner or All Natural Green to a specific allergic or pulmonary condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment factor could have caused or aggravated a medical condition.[12]

In a June 5 and 14, 2017 reports, Dr. Fragala noted that appellant had been exposed to bug spray, an exposure which has not been accepted in this case, and she generally attributed an asthma condition to inhalation of fumes at work. However, she did not specify the precise nature of these fumes or otherwise provide a clear rationalized opinion that appellant's diagnosed condition was related to her exposure to Nilodor carper cleaner or All Natural Green.[13] Dr. Fragala did not explain why appellant's current complaints were not solely due to preexisting allergic/ pulmonary conditions, rather than being due to exposure to Nilodor carper cleaner or All Natural Green.[14]

In July 10 and August 9, 2017 reports, Dr. Gruenberg indicated that appellant had been exposed to mold at work, an exposure which has not been accepted in this case, and he only generally referenced exposure to fumes at work. In reports dated July 3 and 10, and August 9, 2017, he variously diagnosed asthma and rhinitis. In the July 10, 2017 report, Dr. Gruenberg related the rhinitis diagnosis to mold at work. His reports also are of limited probative value due to his failure to provide a rationalized opinion on causal relationship.[15] The Board notes that

[11] *See supra* note 5 regarding the claimant's burden of proof to establish the factual aspect of a traumatic injury claim.

[12] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[13] *See D.R.*, Docket No. 16-0528 (issued August 24, 2016) (finding that a report is of limited probative value regarding causal relationship without medical rationale explaining the relationship between a given employment activity and a diagnosed medical condition).

[14] *See supra* note 6.

[15] *See supra* note 7.

Dr. Gruenberg's opinion is of limited probative value for the further reason that it was not based on a complete and accurate factual and medical history. Dr. Gruenberg indicated in his July 3, 2017 report that appellant had asthma for several years, but he contradictorily advised in his August 9, 2017 report that appellant had no prior history of asthma. The Board has held that an opinion on a given medical question is of limited probative value if it is not based on a complete and accurate factual and medical history.[16]

In addition, Dr. Haque indicated in a June 27, 2017 report that appellant had been exposed to mold at work, an exposure which has not been accepted in this case. He also referenced her exposure to carpet cleaner and related her condition to this substance. Dr. Haque's opinion is of limited probative value on the underlying issue of this case because the Board has held that a conclusory opinion on causal relationship, lacking adequate medical rationale, is insufficient to meet a claimant's burden of proof to establish a claim.[17] Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[18] Dr. Haque did not provide medical rationale explaining how the specific ingredients in Nilodor carpet cleaner affected appellant's allergic or pulmonary condition.[19]

For these reasons, appellant has not met her burden of proof to establish causal relationship between the accepted employment-related exposure on June 2, 2017 and 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 allergic and respiratory conditions causally related to a June 2, 2017 employment incident.

[16] *E.R.*, Docket No. 15-1046 (issued November 12, 2015).

[17] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[18] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[19] In a July 21, 2017 form report, Dr. Haque diagnosed hives and indicated that this condition was employment related. However, he did not provide any explanation for this opinion.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2019
Washington, DC

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

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

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