

ISSUE

The issue is whether appellant has met her burden of proof to establish that her reactive airway disease (RAD) and asthma conditions were caused or aggravated by the accepted factors of her federal employment.

FACTUAL HISTORY

On April 20, 2018 appellant, then a 47-year-old financial education program analyst, filed an occupational disease claim (Form CA-2) for asthma/RAD that she attributed to working at a new headquarters building and two incidents in March 2018 involving exposure to toxic fumes while in the performance of duty. She reported symptoms of a runny nose, cough, sore throat, chest tightness, and headaches. Appellant noted that she submitted a request for a reasonable accommodation in October 2017, which included requests for an air purifier and for her carpet to be vacuumed. She indicated that she first became aware of her condition and first realized it resulted from factors of her federal employment on October 6, 2017.

In a narrative statement, appellant related that during the first week of moving into the employing establishment's new headquarters she experienced a runny nose, sinus pressure, cough, sore throat, chest tightness, and headaches due to dust and construction particulates in the air. She explained that the building was still under construction when they moved in and that their desks, file cabinets, and carpet were often covered in dust or debris. Appellant also noted that rat droppings and rat traps were seen throughout the building. She further described a March 20, 2018 incident when the building was evacuated because "the fumes were too strong." Appellant indicated that on March 22, 2018 she was examined by her physician and was advised that her breathing problems would continue as long as she continued to work in that building. She noted that she was first diagnosed with RAD on December 27, 2011. Appellant also reported that she had suffered a similar condition in 2014 when she had crown molding installed and painted in her house.

Appellant submitted medical evidence along with her claim. In a January 3, 2014 examination note, Jennifer McIntyre, a nurse practitioner, reported diagnoses of multiple allergies and shortness of breath.

In an October 6, 2017 urgent care report and treatment note, Dr. Robert Antoniuk, Board-certified in emergency medicine, related that appellant presented with an upper respiratory infection for approximately three to four days. He noted that she had informed him that they were doing construction at her workplace and felt that the fine dust was perhaps the cause of the symptoms. Dr. Antoniuk reported that examination of appellant's chest showed no respiratory distress and unlabored breathing. He diagnosed pharyngitis. Dr. Antoniuk recommended that appellant not return to work for three days and that she use a high-efficiency particulate air (HEPA) air-filter in her office.

In an October 17, 2017 report, Dr. Susan E. Deren, a Board-certified internist, noted that appellant was evaluated for asthma and prescribed new medication.

In a March 22, 2018 letter to the employing establishment, Dr. Deren requested information about the chemical or product that was used on the parking deck on specific dates. She also provided a March 22, 2018 work status note, which indicated that appellant had asthma and needed to telework until construction was completed.

OWCP received several examination notes and laboratory results dated from September 2, 2015 to April 12, 2018, which indicated that appellant had a history of asthma.

Appellant submitted several e-mails regarding a March 15, 2018 incident of strong fumes and smells in the employing establishment's building. The employing establishment informed its employees that on March 15, 2018 vapors had permeated throughout the office spaces and stairwells when traffic deck coating was being applied to the parking level. It noted that the air quality was measured and tested and determined to be within safe limits.

OWCP received safety data sheets for the materials vulkem primer, vulkem 360 NF quick cure cat, vulkem 951 CAT 1 gal, vulkem 950 NF, vulkem 360 NF, vulkem 951 NF limestone 3.75 gallon, which indicated that it may cause allergy or asthma symptoms or breathing difficulties if inhaled.

By development letter dated April 25, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence necessary to support her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested information. It sent a similar letter of even date requesting additional information from the employing establishment.

In a May 14, 2018 letter, P.C., deputy assistant director at the employing establishment, responded to OWCP's development letter and indicated that he concurred with appellant's allegations. He explained that he had personally witnessed that appellant had a runny nose, coughing, and headaches when she came into the office. P.C. also confirmed that on March 15 and 20, 2018 a contractor began sealing the garage, which resulted in a smell that affected a number of employees. He provided a position description for a financial education program analyst.

OWCP received an undated statement from a reasonable accommodations (RA) program specialist for the employing establishment. The RA specialist related that in October 2017 appellant submitted a reasonable accommodation request for an air purifier along with a doctor's note. She indicated that in April 2018 appellant requested that she telework until the construction was complete. Both requests were granted.

In a May 17, 2018 letter, Dr. Deren related that on October 17, 2017 she treated appellant for cough, congestion, sore throat, post-nasal drip and headaches for several days after moving into a new building at work. She noted that the building was still under construction and had a lot of dust. Dr. Deren related that appellant was previously treated in urgent care and recommended a HEPA filter. She explained that appellant was treated again on March 22, 2018 after being exposed to fumes at work on March 20, 2018.³ Dr. Deren indicated that appellant also suffered from anxiety and that this incident had increased her symptoms. She further reported that appellant

³ The report erroneously indicated a date of March 20, 2017, which the Board notes to be a typographical error.

informed her that the building was rat infested and explained that this can also increase appellant's asthma and anxiety symptoms. Dr. Deren opined that "this exposure caused her symptoms."

By decision dated June 13, 2018, OWCP denied appellant's occupational disease claim. It accepted that she was exposed to toxic fumes and construction debris as described, but denied her claim because the medical evidence of record failed to establish a medical diagnosis causally related to the accepted employment exposure. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

By letter postmarked July 6, 2018, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on November 8, 2018.

On December 10, 2018 appellant submitted an updated response to the hearing transcript. Appellant asserted that since being exposed to the construction debris, her allergies and asthma were triggered a lot easier.

In a December 14, 2018 letter, the employing establishment responded to the hearing transcript. It indicated that it was submitting e-mails as proof of its efforts of safety and awareness during the wrap up and close out of building renovations. The employing establishment noted that the air quality was safe at its building and that appellant was provided a reasonable accommodation based on her supporting medical documentation. It submitted e-mails dated March 20 to December 13, 2018, which advised employees of the efforts by the employing establishment and GSA to test and monitor the air quality and to control pests.

By decision dated January 22, 2019, the hearing representative modified OWCP's June 13, 2018 decision denying appellant's claim. She noted that the medical evidence of record in fact provided a medical diagnosis of preexisting RAD and asthma. The hearing representative, however, continued to deny appellant's claim because the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to

⁴ *Supra* note 2.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁶ 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.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

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ 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 factor(s).¹¹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her RAD and asthma conditions were caused or aggravated by the accepted factors of her federal employment.

In an October 6, 2017 urgent care report, Dr. Antoniuk indicated that appellant was evaluated for an upper respiratory infection, which she felt resulted from being exposed to fine dust from the construction at her workplace. He provided examination findings and diagnosed pharyngitis. While Dr. Antoniuk provided a medical diagnosis, he did not offer a specific opinion

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *Id.*

¹² *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

as to whether appellant's employment caused or aggravated her condition.¹³ Rather, he merely communicated appellant's belief that her condition resulted from exposure to construction dust at work.¹⁴ Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁵ As Dr. Antoniuk's report does not provide an opinion on causal relationship, it is insufficient to meet appellant's burden of proof.

OWCP received a series of reports and letters from Dr. Deren. In a May 17, 2018 letter, Dr. Deren related that she had treated appellant for cough, congestion, sore throat, post-nasal drip and headaches for several days after moving into a new building at work that was still under construction. She indicated that appellant was evaluated against on March 22, 2018 after she was exposed to toxic fumes at work on March 20, 2018. Dr. Deren further reported that appellant informed her that the building was rat infested and explained that this can also increase appellant's asthma and anxiety symptoms. She opined that "this exposure caused her symptoms." Dr. Deren did not, however, explain why or how exposure to fumes at work or to fine dust and debris from construction would have caused or contributed to appellant's RAD and asthma conditions.¹⁶ She did not explain the pathophysiological process by which inhaling the fumes or dust resulted in RAD or asthma.¹⁷ 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.¹⁸ Therefore, these reports of Dr. Deren are insufficient to establish appellant's claim.

The January 3, 2014 examination note by Ms. McIntyre, a nurse practitioner, also fails to establish appellant's claim as nurse practitioners are not considered physicians under FECA.¹⁹ Consequently, her medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²⁰

On appeal counsel alleges that OWCP failed to adjudicate the claim in accordance with the proper standard of causation and failed to give due deference to the findings of the treating

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *K.W.*, Docket No. 10-0098 (issued September 10, 2010); see *P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

¹⁵ *Supra* note 13.

¹⁶ See *M.M.*, Docket No. 18-1522 (issued April 22, 2019).

¹⁷ See *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *S.W.*, Docket No. 18-1489 (issued June 25, 2019).

¹⁸ *V.B.*, Docket No. 17-1847 (issued April 4, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁹ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *O.R.*, Docket No. 18-1458 (issued August 2, 2019) (nurse practitioner).

²⁰ *O.R.*, *id.*; *M.F.*, Docket No. 17-1973 (issued December 31, 2018).

physician. As explained above, however, the medical evidence of record is insufficient to establish that appellant's exposure to toxic fumes in March 2018 and to construction dust at work caused or contributed to her RAD and asthma conditions.

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 RAD and asthma conditions were caused or aggravated by the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2019 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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