

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE L. KING and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

*Docket No. 98-2162; Submitted on the Record;
Issued March 17, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury on or about August 5, 1997 in the performance of duty.

On January 3, 1998 appellant, then a 56-year-old automation clerk, filed a claim for compensation alleging that her doctor advised her that "dust and fumes aggravated" her chronic lung disease. She stated that she was first aware of her condition and that it was caused by her employment on August 5, 1997. Appellant did not return to work after January 3, 1998.

By letter dated February 17, 1998, the Office of Workers' Compensation Programs advised appellant that she needed to submit additional information regarding her claim for compensation, including a detailed narrative describing the employment-related exposure or contact which she believed contributed to her condition.

In a medical report dated March 13, 1998, Dr. Luis A. La Luz, appellant's treating physician and Board-certified in family practice, stated that she had been a patient at the Kaiser Bonita Clinic since 1994 and that she had been seen most recently for a chronic obstructive lung disease. He noted her subjective complaints of "workplace irritants," noting a recent exacerbation brought on by a "particularly dusty day at work."

By decision dated May 21, 1998, the Office denied appellant's claim on the grounds that there was insufficient evidence in the file regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged.

The Board has duly reviewed the case record in this case and finds that appellant has failed to establish that she sustained an injury in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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

employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹

There is no evidence of exposure to dust or fumes at the worksite. In the absence of probative evidence establishing exposure to specific contaminants, what tasks she performed which required exposure to the contaminants, how often and for how long she was exposed and exposure to nonwork contaminants, the Board finds that the case record contains insufficient evidence to establish whether the claimed event, incident or exposure occurred at the time, place and in the manner alleged.

The only medical report of record consists of a March 13, 1998 from Dr. La Luz who stated that appellant had been treated recently for a chronic obstructive lung disease. However, he merely related appellant's concerns about irritants in the workplace. However, Dr. La Luz provided no rationalized medical opinion relating appellant's condition to her work environment. Further, his conclusion that dust was a likely cause of her condition is mere speculation and of no probative value.

The May 21, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.²

Dated, Washington, D.C.
March 17, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹ *Claudia A. Dixon*, 47 ECAB 168 (1995).

² The Board notes that, subsequent to the Office's May 21, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).