

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TINA COLE and NATIONAL INSTITUTES OF HEALTH,  
HUMAN RESOURCE PROGRAM SUPPORT, Bethesda, MD

*Docket No. 02-554; Submitted on the Record;  
Issued August 20, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that her respiratory condition was causally related to employment factors.

On August 24, 2001 appellant, then a 34-year-old secretary, filed a traumatic injury claim, Form CA-1, alleging that on August 9, 2001 she had shortness of breath, severe nausea, tightness in her chest, dry mouth and light-headedness due to breathing gasoline fumes from the landscape machinery which went into the air intake valves in her building.

Accompanying appellant's claim were an August 15, 2001 report by Dr. Ursula Poydras, an attending physician, and employing establishment progress notes for August 9, 2001. In the August 15, 2001 report, Dr. Poydras noted appellant had recently experienced headaches, dizziness and increasing shortness of breath. She informed Dr. Poydras that she had "a history of repeated toxin exposure at work." The progress notes noted that appellant stated she smelled fumes and then she started to feel nauseous and light-headed.

By letter dated September 20, 2001, the Office of Workers' Compensation Programs requested additional medical evidence from appellant, stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised her of the type of medical evidence needed to establish her claim.

By decision dated December 17, 2001, the Office denied appellant's claim on the basis that the record contained no medical evidence supporting a causal relationship between her disability and any employment factors.

The Board finds that appellant has not established that she sustained an injury causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained 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.<sup>2</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered, in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.<sup>4</sup> An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. He has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, her statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.<sup>5</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup>

Regarding the first component, appellant in this case stated in her claim form that on August 9, 2001 she sustained shortness of breath, severe nausea, tightness in her chest, dry mouth and light-headedness due to breathing gasoline fumes from the landscape machinery which went into the air intake valves in her building. In progress notes from the employing establishment dated August 9, 2001, an employing establishment's doctor noted that appellant complained of shortness of breath, severe nausea, tightness in her chest, dry mouth and light-

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Duane B. Harris*, 49 ECAB 170 (1997); *David M. Ibarra*, 48 ECAB 218 (1996).

<sup>4</sup> *Wendell D. Harrell*, 49 ECAB 289 (1998).

<sup>5</sup> *Carmen Dickerson*, 36 ECAB 409 (1985).

<sup>6</sup> *Ronald C. Hand*, 49 ECAB 113 (1997); 20 C.F.R. § 10.115.

headedness due to breathing gasoline fumes from the landscape machinery which went into the air intake valves in her building.

The Board finds that appellant's statements and the medical report provide a consistent history of injury and that she obtained medical treatment the day of the incident. Further the record contains no evidence that the incident did not occur. Thus, the Board finds that the contemporaneous evidence of record supports that the incident occurred at the time, place and in the manner alleged.

Regarding the second component, however, the Board finds that appellant has failed to establish that her shortness of breath, severe nausea, tightness in her chest, dry mouth and light-headedness was caused by the August 9, 2001 incident.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factor of employment.<sup>7</sup>

In an August 15, 2001 report, Dr. Poydras noted appellant's complaints of recently experiencing headaches, dizziness and increasing shortness of breath which appellant attributed to "a history of repeated toxin exposure at work." The physician did not provide a diagnosis of appellant's condition or an opinion on the causal relationship between her condition and her employment. Thus, her report is insufficient to meet appellant's burden of proof. As she failed to submit the necessary medical opinion evidence, she failed to meet her burden of proof and the Office properly denied her claim.

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<sup>7</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

The decision of the Office of Workers' Compensation Programs dated December 17, 2001 is affirmed.<sup>8</sup>

Dated, Washington, DC  
August 20, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> The Board notes that this case record contains evidence, which was submitted subsequent to the Office's December 17, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).