

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIJA M. HUGHES and DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,
Washington, DC

*Docket No. 03-127; Submitted on the Record;
Issued May 1, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that she sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record as untimely filed.

On October 15, 2001 appellant, then a 62-year-old technical information specialist, filed a claim for occupational disease, Form CA-2, alleging that on September 10, 2001 she suffered burns on her face, hands and arms, watery eyes, and an ecchymotic area on her right leg due to exposure to florescent lights for 1 hour and 45 minutes while xeroxing materials in the performance of duty. Appellant noted that she suffers from multiple chemical sensitivity and occupationally-induced electromagnetic sensitization and could not spend extensive time under neon lights.

In support of her claim, appellant submitted treatment notes dated September 10, 2001 from the employing establishment health unit. The treatment notes document appellant's complaints of a burning pain in her face, hands and arms, and further noted the appearance of a 30-millimeter round bruise on appellant's right leg. Appellant was treated with ice packs.¹

By letter dated October 22, 2001, the Office requested that appellant submit additional medical and factual evidence in support of her claim.

In response, appellant submitted a narrative statement detailing her alleged exposure, copies of articles and abstracts pertaining to harmful substances commonly found in the workplace and a March 15, 2000 medical report from Dr. William J. Rea, appellant's treating Board-certified thoracic and cardiovascular surgeon.

¹ The signature on the treatment note is partially illegible but it is unclear whether the treating person was a physician.

By decision dated December 7, 2001, the Office denied appellant's claim on the grounds that the medical evidence submitted was insufficient to establish fact of injury.

By letter dated August 23, 2002, appellant, through counsel, requested a review of the written record. In a separate letter dated August 23, 2002, appellant provided additional arguments in support of her request.

In a decision dated October 1, 2002, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. The Office also noted that appellant was not entitled to review by a hearing representative because the issue in the case could be equally well addressed through the reconsideration process.

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact 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.³

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁵ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁶

In the present case, the record contains a treatment note dated September 10, 2001, the day of the alleged injury, from the employing establishment health unit. The treatment note documents appellant's complaints of a burning pain in her face, hands and arms, and further noted the appearance of a 30-millimeter round bruise on appellant's right leg. Appellant was treated with ice packs. This treatment note is of limited probative value, however, as it does not contain a diagnosis or discuss the cause of appellant's condition. Moreover, the signature on the treatment note is partially illegible and it is unclear whether the treating person was a qualified physician.⁷

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.115 (1999).

⁴ See *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(ee) (1999).

⁶ See *John J. Carlone*, *supra* note 4.

⁷ See *Ruthie M. Evans*, 41 ECAB 416 (1990); *Diane Williams*, 47 ECAB 613 (1996).

The only other medical evidence of record consists of a March 15, 2000 report from Dr. Rea, who treated appellant since October 15, 1988, and he stated that appellant's employment-related exposure to volatile organic compounds and radiation from September 21, 1988 to March 15, 2000 resulted in her development of organic brain syndrome, ultraviolet dermatitis, x-ray dermatitis, multiple chemical sensitivity and chemically-induced persisting dementia. However, Dr. Rea's March 15, 2000 report predates appellant's alleged September 10, 2001 occupational exposure to fluorescent light, it is not relevant to the issue of whether appellant sustained an injury due to this exposure, as alleged.⁸

Appellant's exposure to fluorescent light on September 10, 2001 is not disputed and the record indicates that she sought medical attention on September 10, 2001. Appellant, however, failed to submit sufficient medical evidence that discusses how the September 10, 2001 fluorescent light exposure caused or contributed to her diagnosed conditions. Accordingly, the Office properly denied appellant's claim.⁹

The Board further finds that the Office properly denied appellant's request for a review of the written record as untimely filed.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.¹⁰ However, the Office has discretion to grant or deny a request that was made after this 30-day period.¹¹ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹²

As appellant's request for a review of the written record was dated and received by the Office on August 23, 2002, more than 30 days after the Office's December 7, 2001 decision, appellant was not entitled to a review of the written record as a matter of right. The Office in its October 1, 2002 decision noted that appellant's request for a review of the written record was untimely filed, and that consideration of whether appellant sustained an injury as alleged could be equally well addressed through a request for reconsideration.¹³ Therefore, the Office properly exercised its discretion in denying appellant's request for a review of the written record.

⁸ *Brady L. Fowler*, 44 ECAB 343 (1992).

⁹ *Carolyn F. Allen*, 47 ECAB 240 (1995) (medical reports not containing rationale on causal relationship are entitled to little probative value.)

¹⁰ 20 C.F.R. § 10.616 (1999).

¹¹ *Linda J. Reeves*, 48 ECAB 373, 377 (1997); *Herbert C. Holley*, 33 ECAB 140 (1981).

¹² *Rudolph Bermann*, 26 ECAB 354 (1975).

¹³ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).

The decisions of the Office of Workers' Compensation Programs dated October 1, 2002 and December 7, 2001 are hereby affirmed.

Dated, Washington, DC
May 1, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member