

**United States Department of Labor
Employees' Compensation Appeals Board**

J.C., Appellant)	
)	
and)	Docket No. 10-2256
)	Issued: June 20, 2011
DEPARTMENT OF HEALTH & HUMAN SERVICES, NORTHEAST REGIONAL LABORATORY, Jamaica, NY, Employer)	
)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 8, 2010 appellant filed a timely appeal of the March 18, 2010 merit decision of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a bilateral eye condition causally related to her federal employment.

On appeal, appellant contends that the employing establishment failed to investigate environmental conditions that caused her claimed injury in violation of its own standard operating procedure. She further contends that its laboratory director is not professionally qualified to challenge her claim on a medical basis.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 26, 2010 appellant, then a 46-year-old quality systems manager, filed an occupational disease claim alleging that on November 24, 2009 she first became aware of severe swelling of both eyes, eyebrows and eyelids. On January 10, 2010 she first realized that her eye condition was caused by reviewing and handling numerous records and being exposed to laboratory surfaces during an audit she conducted at the employing establishment's microbiological services branch from November 16 to 20, 2009.

In a January 25, 2010 statement, appellant related that from November 16, 2009 through January 25, 2010 she experienced redness and swelling of both eyes for which she sought medical treatment and used 93.5 hours of sick leave. She alleged that she was exposed to a chemical or infectious agent while handling records or touching a contaminated surface in the laboratory which she inadvertently transferred to her eyes. Appellant stated that a nonconformance investigative report indicated that the employer had a significant decline branch-wide in conformance to quality management system standards which included environmental and contamination controls. She contended that it was possible that her exposure to a toxic agent or substance was a deliberate attack by a coworker due to a complaint filed against management with the Equal Employment Opportunity Commission.

Medical records indicated that appellant was treated at Franklin Immediate Medical Care for her eye condition on December 15, 2009 and January 7, 2010 by Dr. Paul A. Cooperman, a Board-certified family practitioner.

In letters dated January 26, 2010, appellant requested that Dr. David M. Arbesfeld, a Board-certified dermatologist, Dr. David Speiser, an ophthalmologist, Dr. Cooperman and Dr. Jeff D. Kopelman, a Board-certified otolaryngologist, each complete an attending physician's form report regarding treatment of her claimed injury. In a January 21, 2010 report, Dr. Speiser provided an illegible date of injury that occurred in 2009. He obtained a history that appellant was working in a microbiological laboratory from November 10 to 20, 2009 when she noticed swelling of her eye lids which was treated with antibiotics. Appellant's condition improved, but it flared up again. Dr. Speiser indicated with an affirmative mark that appellant's dermatitis in both upper eye lids was caused by an employment activity. He stated that she most likely had residual dermatitis from an infection.

Appellant submitted health insurance claim forms for the period December 14, 2009 through January 20, 2010, a prescription, a notification of personnel form (SF-50) regarding a general pay adjustment and leave analysis forms.

In a January 27, 2010 letter, Michael J. Palmien, a laboratory director, controverted appellant's claim. He stated that her claimed exposure to an infectious and/or toxic substance was unfounded. Over 60 microbiologists and technicians worked or continued to work in the microbiological sciences branch without report of any illness. The microorganisms that were routinely handled were typically enteric. The other bacteria, that was handled was associated with food-borne gastrointestinal illness. Mr. Palmien was not aware of anyone contracting an eye/sinus illness from any microbial or chemical source in its laboratory. He disputed appellant's allegation that audit results indicated a significant decline branch-wide in

conformance to quality management system standards. Appellant had no reasonable basis for such statement. The laboratory had an active safety committee spearheaded by a very proactive industrial hygienist and was supported at every level of management.

By letter dated February 12, 2010, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual evidence regarding her workplace exposure and a rationalized medical report from an attending physician which described results of examination and tests, a diagnosis, treatment provided and an opinion with medical reasons on whether her employment contributed to her claimed condition. Appellant was allowed 30 days to submit such evidence. She did not respond.

In a March 18, 2010 decision, the Office denied appellant's claim, finding that she failed to submit sufficient rationalized medical evidence to establish that her diagnosed eye condition was causally related to the employment factors.²

LEGAL PRECEDENT

A claimant seeking benefits under the Act³ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To establish that an injury was sustained in the performance of duty, 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 employment factors identified by the claimant.⁵

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁶ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁷ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a

² Following the issuance of the Office's March 18, 2010 decision, appellant submitted additional evidence to the Office. The Board cannot consider evidence that was not before the Office at the time of the final decision. *See* 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ *See Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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 factors.⁸

ANALYSIS

Appellant alleged that her employment duties of reviewing and handling numerous records and being exposed to infectious and toxic substances on laboratory surfaces caused a bilateral eye condition; however, she did not provide sufficient medical evidence to establish her claim. The Board finds that the evidence of record is insufficient to establish that she developed a bilateral eye condition causally related to factors of her employment.⁹

In a January 21, 2010 report, Dr. Speiser found that appellant had bilateral eye dermatitis due to her employment, but also advised that she most likely had residual dermatitis from an infection. He did not provide a description of the work duties that she implicated as causing her condition. Moreover, Dr. Speiser's opinion is speculative regarding causal relation and provides no support for appellant's claim that the diagnosed condition was caused or contributed to by her established work duties as a quality systems manager. The Board finds, therefore, that his report is of diminished probative value.

The medical records from Franklin Immediate Medical Care indicated that appellant received treatment for her bilateral eye injury on December 15, 2009 and January 7, 2010 by Dr. Cooperman. This evidence does not address whether she sustained an injury caused by the established work duties. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁰ The Board finds that the above medical records are insufficient to establish appellant's claim.

The Office informed appellant of the need to submit a physician's opinion which explained how the alleged condition was related to employment-related factors. However, she did not respond within the allotted time. The Board finds, therefore, that appellant failed to meet her burden of proof.¹¹

Appellant's contentions on appeal that the employing establishment failed to investigate environmental conditions that caused her claimed injury in violation of its standard operating procedure and that Mr. Palmien was not qualified to challenge her claim. These contentions are not germane to the issue of whether the medical evidence supports that she sustained a bilateral eye condition causally related to her work duties.

Appellant's contention that the Office responded to her claim in a highly hostile and non-neutral manner has not been established. In its March 18, 2010 decision, the Office reviewed the

⁸ *Id.*

⁹ See *Richard A. Weiss*, 47 ECAB 182 (1995).

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ See *Donald W. Wenzel*, 56 ECAB 390 (2005).

medical evidence of record, cited to the pertinent Board precedent and determined that the evidence submitted was not sufficiently rationalized to establish that appellant's eye condition was causally related to the established employment factors.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a bilateral eye condition causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board