

File Number:  
HR13-D-H

RECEIVED OCT 12 2016

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 50  
LONDON, KY 40742-8300  
Phone: (202) 693-0045

Date of Injury:  
Employee: .

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

Sincerely,

Electronically Signed

Hearing Representative

PAUL H FELSER  
QUEENSBORO BANK BUILDING  
7393 HODGSON MEMORIAL DRIVE STE 102  
SAVANNAH, GA 31406

*If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.*

Washington DC, September 30, 2016

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of,  
| Claimant; employed by the | ; Case  
number

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The issue for determination is whether the properly denied the claim for an occupational disease by decision dated |

|, born |, is employed as a |  
with the | in | On |  
| filed a claim for occupational disease, reporting fragrance sensitivity from pain fumes, causing allergic reactions and symptoms. She noted that contractors were on site, painting the rooms inside the building. The employer reported that the claimant stopped work on | and was to return on |, adding that the employee did not appear ill.

The claimant provided a statement on |, reporting difficulties beginning a week earlier, when painting contractors started work in the building. As the painters moved closer to her work area, her symptoms increased. She noted that the rest rooms had been freshly painted, and she had closed doors to the BMEU unit to reduce exposure to fumes. Her headaches continued in spite of the changes. Upon returning from lunch the day before, she found that the doors she had closed had been opened and painted; the odor was unbearable. She unknowingly had touched the wet doors, and reported burning eyes, nausea, chest tightness, headache and hoarseness. She cleaned her hands and went outside for fresh air. She noted a similar experience when an employee used a cleaning spray on their desk, reporting use of a week off work to recover from the symptoms. She sought treatment with an allergist after that incident.

The employer challenged the claim in a letter dated | noting a lack of medical evidence to establish causation, and a history of sinus issues.

A note from |, PAC dated | reported inability to work until | due to an unspecified condition.

On | the district office developed the claim. The Office requested medical opinion discussing the relationship between the reported work factors and any claimed conditions. The claimant was also asked to discuss the any outside exposure to irritants, as

well as reveal past pulmonary or allergic conditions, including smoking history. By separate letter, the employer was asked to provide all factual evidence relevant to the claim. Thirty days was afforded for a response.

A report from otolaryngologist MD noted prior treatment for sinus problems and reflux. He noted exposure to pain fumes during the past two weeks at her place of employment, with reported headaches, burning eyes, nausea, chest tightness and hoarseness. She had seen an allergist after having a reaction to a cleaning spray. He recorded his exam findings and diagnosed allergic rhinitis, voice disturbance and headaches, noting a reaction to fumes at work. He indicated that a week out of work was necessary. In a narrative dated Dr. wrote that he had seen the patient on : and diagnosed headache and voice disturbance after exposure to pain fumes at work. He opined, "Breathing in paint fumes is directly causing her headaches, burning eyes, nausea, chest tightness and hoarseness which are all symptoms of an inhalant." He noted reports of post nasal drip, sneezing, red, itchy, watery eyes, and itchy nose, classifying these symptoms of allergic rhinitis. That diagnoses predated the paint exposure, and he added that the symptoms were not caused by the pain fumes, but "probably exacerbated" by the fumes. He indicated that the patient should remain off work until the painting was completed and fumes had dissipated. He completed a Duty Status Report on indicating diagnoses of headache and voice disturbance due to the exposure to paint fumes at work.

Allergist MD saw the patient on noting a history of rhinitis and cough when exposed to certain chemicals. Prior testing had revealed some reactivities, and the patient continued to report symptoms at work. More recently, the patient reported painting of the office at work, with the patient feeling sick. She was wearing a mask at work, noting headaches, burning eyes, hoarseness and chest tightness. She reported the exposure to the Occupational Safety and Health Administration and saw an ENT specialist. Symptoms were relieved when not at work, but none of the medications that had been prescribed had reduced symptoms. He recorded exam findings and diagnosed chemical sensitivities, vasomotor rhinitis, cough and allergic rhinoconjunctivitis. Additional skin prick testing was performed, indicating reactions to pollens, feathers, cats, and cockroaches. A partial chart note from indicated the same diagnoses, with reaction to ink and black rubber.

The claimant responded to the development letter on , reporting continued headache and burning eyes after her return to work on . She was wearing a mask, and the paint fumes continued to slowly dissipate. She noted symptoms beginning the week of the painting, with escalation as the painters approached her end of the building. When her work area was painted, she was unable to continue due to symptoms. She denied any other exposure or employment, noting that she kept all chemicals in a storage unit two blocks from her home to reduce exposure. She sang in a choir. She denied any asthma diagnosis, but admitted to bronchitis last April, Smoking was denied.

Supervisor wrote on that the painters started on :  
using oil and water based paints. complained on the fourth day of

painting, and was allowed to go home on that date. Her office was painted in her absence, and use of the oil based trim paint was curtailed. Trim was to be painted on Saturdays when the office were empty. noted a prior reaction to window cleaning spray by a coworker. A Material Safety Data Sheet (MSDS) was provided for the interior paint being used.

By decision dated | the district office denied the claim for benefits. The basis for the denial was the failure to establish a nexus between the claimed work exposure and the diagnosed conditions. The Office found that the medical report from Dr. was speculative in addressing causation, and failed to objectively document symptoms. Finally, the Office found that the headache and voice disturbance diagnoses were symptoms rather than true conditions.

Attorney Paul Felser disagreed with the decision and requested a hearing by letter dated Upon my review of the record, I find that the case is not in posture for a hearing.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.<sup>1</sup> He must also establish that such event, incident or exposure caused an injury.

The employer has acknowledged that contract painters were in the office during the time of reported symptoms. The employer has noted that the painters used water and oil based paints. While the paints are not hazardous to health, the employer provided a MSDS indicating that inhalation exposure can cause respiratory irritation. This is sufficient to establish the facts of the exposure. The claimant has also submitted medical evidence diagnosing conditions in relation to the exposure, satisfying the medical component of the Fact of Injury element.

I also find that the claimant was exposed to the fumes during the performance of her usual duties, in her place of employment.

Causal relationship is a medical issue,<sup>2</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established factors of employment. The opinion of the physician must be based on a complete factual and medical background, 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 factors of employment.<sup>3</sup> The mere concurrence of a condition

<sup>1</sup> Michael W. Hicks, 50 ECAB 325, 328 (1999).

<sup>2</sup> Mary J. Briggs, 37 ECAB 578 (1986).

<sup>3</sup> Victor J. Woodhams, 41 ECAB 345 (1989).

with a period of employment does not raise an inference of causal relation between the two.<sup>4</sup> It is the burden of the claimant therefore to establish the facts of her work exposure and submit rationalized medical opinion which supports a diagnosis related to those duties.

Medical evidence has been introduced to support a relationship between \_\_\_\_\_ voice disturbance and headache and a documented work factor. The medical record clearly documents respiratory and eye complaints predating the paint exposure. While Dr. \_\_\_\_\_ comment regarding the relationship of the allergy symptoms and the paint fume exposure was couched in speculative language, his opinion regarding the diagnosed headache and voice disturbance is not diminished by this comment. Dr. \_\_\_\_\_ had not attributed the patient's allergies to paint exposure. He has only indicated that the documented pain exposure directly resulted in headache and hoarseness. The medical record supports these diagnoses, as well as their causation by paint fumes. While the district office found that the diagnoses provided were merely symptoms, the physician provided industry standard diagnostic codes to establish the conditions. The claimant was treated with exposure avoidance, and has since successfully resumed her usual duties. No further medical treatment is documented for the issue.

For the reasons set forth above, the decision of the district office dated \_\_\_\_\_ is hereby reversed. The case file is returned to the district office for acceptance of headache and voice disturbance secondary to the paint fumes as claimed.

Issued:

Washington, D.C.

Electronically Signed

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Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

<sup>4</sup> *Robert M. Sanford*, 27 ECAB \_\_\_ 115, 1975.