

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES A. JOHANSON and DEPARTMENT OF THE ARMY,
TOOELE ARMY DEPOT, Tooele, Utah

*Docket No. 95-2053; Oral Argument Held March 4, 1998;
Issued April 21, 1998*

Appearances: *David K. Smith, Esq.*, for appellant; *Miriam Ozur*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

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

The issues are: (1) whether appellant has established that he sustained a liver condition, permanent sensitization to trichlorethane, carbon tetrachlorides or other chemicals, or other condition in the performance of duty on or after March 19, 1991 and continuing; and (2) whether appellant was terminated or separated from the employing establishment due to an illness or condition causally related to work factors such as chemical exposure.

On January 4, 1995 appellant, then a 34-year-old heavy mobile equipment mechanic, filed a notice alleging that he sustained chemical hepatitis due to frequent, prolonged occupational exposure to trichlorethane and other solvents.¹ He stated that he first became aware of his illness on May 2, 1988, and first related it to work factors on August 9, 1988. The employing establishment noted that appellant was last exposed to chemicals on September 28, 1994, when he was "loaned to tire shop where there is no chemicals."

The record demonstrates that this was not appellant's first claim for a chemically-induced liver condition. On March 19, 1991 the Office accepted appellant's claim number A12-112362 for "mild liver toxicity as the result of trichlorethane exposure" which had resolved by that date

¹ A material safety data sheet submitted by the employing establishment stated that 1,1,1 trichlorethane (C₂H₃Cl₃), known as Solvent 111 or Methyl Chloroform, also contains 1,4 diethylene dioxide and 1,2 butylene dioxide, and has hazardous decomposition products of hydrogen chloride, phosgene and chlorine. It was noted that "medical conditions aggravated by exposure" were "acute and chronic liver disease and rhythm disorders of the heart. Exposure pathways included inhalation and skin contact. Recommended safety precautions included vapor-type respirators, gloves, solvent-resistant boots and clothing, safety glasses, and avoiding skin contact or breathing vapors."

with no residuals and no time lost from work.² The Office found that appellant could return to work, and disapproved further medical treatment.³

In support of his contention that he had sustained a permanent, chronic liver condition or chemical sensitivity related to chemical exposures in the performance of duty, appellant submitted medical and factual evidence relating to occupational chemical exposure from 1988 onward.

In a November 27, 1989 report, Dr. Marshall F. Willis, Jr., an attending Board-certified family practitioner, noted appellant's "history of chemical hepatitis secondary to chemicals that he is exposed to at work.... [Appellant] ... had an elevation in liver enzymes. He was removed from the environment for a period of time. His liver enzymes returned to normal." Dr. Willis recommended that appellant work "away from exposure to hepatitis type chemicals."

In a December 5, 1989 report, Dr. Glen R. Fuller, an attending Board-certified family practitioner, noted that appellant's liver enzymes were elevated after "working around chemicals." Dr. Fuller noted that appellant's "SGOT and SGPT are elevated as well as his LDH," and diagnosed "[a]bnormal liver function tests secondary to toxic exposure."

In a January 20, 1990 report, Dr. Willis stated that appellant must stay "away from chemicals for life" because of "hepatic dysfunction" due to chemical sensitivity, and thus could not return to his date-of-injury position. This report was also reviewed on January 23, 1990 by Dr. Kirsten M. Phalen, an employing establishment physician, who noted that she "concur[red]" with Dr. Willis. The employing establishment then issued a January 25, 1990 notice of medical disqualification, advising that appellant was unable to perform his position as a heavy mobile equipment mechanic," and that reasonable accommodations would be initiated.⁴

In a June 15, 1990 chart note, Dr. Willis noted that appellant had received a notice that he was to be fired as the employing establishment could not locate a "position for him that does not entail some exposure to the chemicals. ... [H]e could probably do any type of work ... away from that one carbon tetrachloride type compound."

In a June 18, 1990 report, Dr. Willis stated that well-healed nonoccupational burns occurring in 1983 did not predispose appellant to any hepatotoxicity at the employing

² Appellant submitted evidence relating to claim A12-112362 dated prior to March 19, 1991. In April 5, 1990 statement, appellant noted that on June 20, 1983 he sustained burns over 34.5 percent of his body in a nonoccupational gasoline fire, was off work until September 1983, and that trichlorethane soaked his bandages while he was assigned to dip machine parts in solvent and could not wear protective rubber gloves due to the burns. He performed this job for 4 to 5 months, then worked preparing paints for a month. He also submitted laboratory reports for liver enzyme studies performed on August 17, 1988, November 27, 1989 and January 20, 1990.

³ In a March 15, 1995 file note, the Office requested information regarding retrieval of file A12-112362 from the Federal Records Center. The Office was informed on March 17, 1995 that file A12-112362 had been destroyed on February 14, 1995.

⁴ In a February 9, 1990 note, Dr. Willis stated that chemical exposure at work was contraindicated in appellant's case.

establishment. Dr. Willis opined that appellant's "work impairment [was] related to his hepatotoxicity' caused by trichlorethane, a hepatotoxic solvent related to carbon tetrachloride, causing liver enzyme elevation. Dr. Willis stated that there "should be no further elevations in [appellant's] liver enzymes or hepatotoxicity as long as he is kept away from the carbon tetrachloride family of solvents."

In a June 19, 1990 report, Dr. Fuller noted appellant's "history of toxic exposure at work to chemicals and elevated liver function tests.... [Appellant] needs to stay off work."

On September 26, 1991 the employing establishment offered appellant a job as a heavy mobile equipment mechanic, with engine disassembly duties, as "the best position that can be offered at this time ... within the limitations given by the reporting physician."

In a June 2, 1992 letter, Dr. Myron Laub, a hematologist, advised appellant that he had tested positive for hepatitis C, but that the test may have been a false positive, and so recommended further diagnostic testing of greater sensitivity.

The record indicates that appellant was reassigned voluntarily within the vehicle remanufacturing facility on April 3, 1994 as a heavy mobile equipment mechanic.

In a September 28, 1994 report, Dr. Willis stated that in 1990, appellant's "exposure to solvents ... resulted in chemical hepatitis," and thus he was permanently restricted from working "around any solvents," fumes or gases, and could not return to his date-of-injury position. "[H]e was put back at his previous job description, exposed to chemicals, and now is beginning to develop chemical hepatitis again. His liver enzymes are slightly elevated." Dr. Willis stated that appellant could not be "exposed to chemicals because of hepatitis."

In October 11 and November 21, 1994 letters,⁵ appellant noted returning to work on September 26, 1991, placed in building 637 in the engine disassembly or "tear down area" with a "heated cleaning tank" of trichlorethane and Stoddard solvent close to his work area. He informed his supervisor, Joe Christianson, who advised appellant to call the dispensary. Appellant recalled that "Dr. Knapp (from the dispensary) came down with four other people and after looking at the area told [appellant] that [appellant] shouldn't be there," and they assured appellant that he would be moved and that they would get back to him, but never did. Appellant stated that after approximately two months, he had "dizzy spells," and consulted Dr. Willis who found elevated liver enzymes. Mr. Christianson then moved appellant to building 639 where there were no solvent tanks. After approximately 6 months of working in building 639, an employing establishment blood test showed his "count was low and ... that [he] could stay in building 637. [Appellant] informed [the dispensary] that [he] had moved away from 637 six months prior into a safe environment so that is probably why [his] count was down." Appellant worked in building 639 for approximately another 18 months, then was moved to building 619 working "Hemmitts." Appellant worked in building 619 for 5 to 6 months, at which time his blood count began to rise and he volunteered for a detail to Germany. Appellant was in

⁵ Appellant submitted statements from coworkers corroborating his account of working in building 637 on the engine disassembly line, and that there were quantities of solvents present in that work area.

Germany between nine and twelve months, during which time he was “not in contact with any kind of solvents. When [he] returned [his] count was down. After he returned from Germany, he worked in building 619 for 6 to 7 months, at which time his “count became high again.” Appellant noted that he applied for disability retirement as no positions were available within his restrictions.

In an October 31, 1994 duty status form report, Dr. Fuller noted limitations against exposure to fumes, gases and solvents. He stated that appellant “can’t work around chemicals -- hepatic damage,” that appellant was “sensitive to chemicals,” and that appellant should stay “away from chemicals for life.”

In a report originally dated September 26, 1990, annotated “No Change December 12, 1994,” Dr. Willis stated that appellant “developed chemical hepatitis secondary to his work at [the employing establishment]. His hepatic function returned to normal when removed from exposure to the solvents there. Upon returning to the job, he redeveloped chemical hepatitis. [Appellant] is being forced into medical disability retirement which is unnecessary.”

In a December 19, 1994 report, Dr. Willis explained that appellant developed chemical hepatitis whenever he worked “around solvents that his job requires,” and that when removed from the solvents “his liver enzymes returned to normal. For this reason ... [appellant] cannot work around these solvents,” but could perform “any other type of work. He is not disabled.” Dr. Willis noted that appellant could not perform the duties of a heavy-duty mechanic if that entailed contact with chemicals. “[R]epeated liver enzyme studies ... elevate while he is exposed to the chemicals and return to normal when he is taking off work and then elevate again when they put him back on the job. We have recommended for years that he ... be retrained in another job.”

By letters dated March 17, 1995, the Office advised appellant and his attorney representative of the type of medical and factual evidence needed to establish his occupational disease claim, including a detailed statement regarding what substances he was exposed to and the circumstances of the periods of exposure, a detailed description of the development of his condition, and a rationalized medical report from his attending physician explaining how and why the alleged exposures would cause the claimed medical condition.

By decision dated April 20, 1995, the Office denied appellant’s claim on the grounds that fact of injury was not established. The Office found that there was insufficient evidence to support that the claimed incidents or exposures occurred at the times, places and in the manners alleged, or that a medical condition resulted therefrom. The Office noted that evidence pertaining to claim A12-112362 could not “be considered part of this claim.” The Office also noted appellant’s attempts to “obtain a light-duty position away from chemicals due to his previous exposure and predisposal to chemical induced hepatitis,” but that fear of future injury was not compensable under the Act.

Regarding the first issue, the Board finds that appellant has not established that he sustained a liver condition or permanent sensitization to trichlorethane, carbon tetrachlorides or other chemicals in the performance of duty on and after March 19, 1991.

In the present case, the Office accepted that appellant sustained an episode of mild liver toxicity which ceased on or before March 19, 1991, causally related to chemical exposures at work. However, appellant's physicians have not indicated that the exposure to trichlorethane, solvents or other chemicals caused a permanently heightened sensitivity or other residual condition. What appellant has not established, and what he must prove in order to prevail, is that his permanent restriction against chemical exposure is due to an objective, clinical change produced by occupational chemical exposure, and not merely fear of future injury.

Appellant has submitted numerous medical reports stating that exposure to trichlorethane and other chemicals caused abnormal increases in liver enzymes, including SGOT, SGPT and LDH, signaling chemical hepatitis. In a November 27, 1989 report, Dr. Willis, an attending Board-certified family practitioner, diagnosed chemical hepatitis with elevated liver enzymes secondary to occupational chemical exposure, and recommended that appellant not work with chemicals. In a December 5, 1989 report, Dr. Fuller, an attending Board-certified family practitioner, noted elevation of SGOT, SGPT and LDH secondary to occupational chemical exposure. In September 28, 1994 reports, Dr. Willis stated that appellant's "liver enzymes [we]re slightly elevated" after trichlorethane exposure.

These reports also indicate that when appellant was removed from a work environment with chemical exposure, his enzyme levels returned to within normal limits. In a June 18, 1990 report, Dr. Willis stated that there "should be no further elevations in [appellant's] liver enzymes or hepatotoxicity as long as he is kept away from the carbon tetrachloride family of solvents." In a December 12, 1994 report, Dr. Willis stated that appellant's liver "function returned to normal when removed from exposure to the solvents.... Upon returning to the job, he redeveloped chemical hepatitis."

The critical medical issue is whether appellant has established that he sustained a liver condition, chemical sensitivity, or other objective pathophysiologic change on and after March 19, 1991 due to work factors, including chemical exposure. Appellant submitted several reports addressing this point.

In a January 20, 1990 report, Dr. Willis stated that appellant must avoid "chemicals for life" because of "hepatic dysfunction" due to a chemical sensitivity, but did not provide medical rationale explaining whether or not this chemical sensitivity was induced by previous occupational chemical exposures. In September 28, 1994 reports, Dr. Willis stated that appellant could not be "exposed to chemicals because of hepatitis," but did not explain whether further exposure would then cause hepatitis, or if appellant had chronic hepatitis due to work factors that would be aggravated by further chemical exposure.

In an October 31, 1994 duty status form report, Dr. Fuller stated that appellant "can [not] work around chemicals -- hepatic damage," that appellant was "sensitive to chemicals," and that he should stay "away from chemicals for life." However, Dr. Fuller did not explain the origin of this chemical sensitivity, or whether such sensitivity constituted a permanent or chronic medical condition. Also, he did not specify whether "hepatic damage" referred to possible future injury, or if appellant had sustained unresolved, permanent liver damage due to exposure to chemicals at work. The Board notes that the possibility of future injury is not a basis for the payment of

compensation.⁶ Similarly, in a December 19, 1994 report, Dr. Willis explained that appellant could not work around solvents because he experienced enzyme elevation when exposed. However, Dr. Willis did not indicate whether such enzyme elevation was caused, heightened, or affected in any way because of appellant's prior chemical exposures, or if appellant had developed a chronic chemical sensitivity due to occupational chemical exposures.

Appellant's liver condition is described as episodic, with discrete beginning and end points corresponding to periods of trichlorethane exposure. As a whole, these reports do not diagnose an objective, underlying change in appellant's physical condition resulting in a permanent sensitivity to trichlorethane or other chemicals such that periods of chemical exposure then cause objective, measurable, quantifiable changes in his liver, or other clinically observable reaction. As the medical evidence does not contain sufficient medical rationale establishing the existence of such a condition, these reports are of limited probative value on this issue.⁷

The facts in this case are distinguishable from those in *Elise H. Daniel*.⁸ In *Daniel*, the Board found that the claimant, a nurse, had established that she sustained asthma, a chronic lung condition with permanent residuals, due to her exposure to penicillin at work. The Board found that appellant submitted sufficient medical evidence establishing that her occupational exposures caused an objective, clinical change in her lungs and immunomediated responses such that the asthma persisted even when occupational exposure to penicillin had ceased. The Board noted that it is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist.⁹

In this case, appellant has not established precise periods of exposure to trichlorethane, in particular after September 1991. While the employing establishment has not controverted appellant's account of periods of exposure, and there is no evidence or record conflicting with appellant's account of events, the exact dates of exposure are necessary in order to determine the extent of appellant's exposure to trichlorethane and other chemicals.

Consequently, appellant has submitted insufficient medical evidence to establish that he sustained a chronic liver condition on and after March 19, 1991 which persisted even in the absence of chemical exposure.

Regarding the second issue, the Board finds that appellant has not established that he was separated or terminated from the employing establishment due to an occupational chemical sensitivity or other medical problem causally related to factors of his federal employment.

⁶ *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

⁷ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁸ 35 ECAB 359 (1983).

⁹ *Laura S. Garcia*, 32 ECAB 1336 (1981).

In the case of *Dennis L. O'Neill*¹⁰ the Board set forth the following principle: “If the medical evidence establishes that the residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.” Thus, appellant would be entitled to wage-loss compensation if he had residuals of the episode of mild liver toxicity ceasing March 19, 1991, such as a heightened sensitivity to trichlorethane or other chemicals, and if such heightened sensitivity prevented him from returning to his date-of-injury job, or otherwise adversely affected his wage-earning capacity.¹¹

The primary difficulty in establishing loss of wage-earning capacity in this case is that appellant did not meet his burden of proof in establishing that he sustained a chronic, permanent liver condition or chemical sensitivity. Thus he cannot take the next step of showing that such a condition prevented him from returning to his job as a heavy machinery mechanic or from holding any other position at the employing establishment, such that he was terminated or separated.

The Board notes that there is some indication in the record that appellant was separated from the employing establishment due to a liver condition. Appellant submitted a November 21, 1994 statement¹² in support of his application for disability retirement, noting that a job search had found no positions away from chemicals. However, appellant did not submit the actual disability retirement application, the supporting medical documentation, or a statement from the employing establishment corroborating that no work could be found for appellant within his medical restrictions. Such documentation would be required to prove that appellant was permanently disabled for work due to an occupational liver condition or chemical sensitivity. However, as appellant has not met the threshold issue of establishing that he sustained a chronic liver condition or chemical sensitivity in the performance of duty, the lack of documentation regarding the application for disability retirement is of little present relevance.¹³

The decision of the Office of Workers’ Compensation Programs dated April 20, 1995 is hereby affirmed.

Dated, Washington, D.C.
April 21, 1998

¹⁰ 29 ECAB 259 (1978).

¹¹ *James C. Ross*, 45 ECAB 424 (1994); see *Gerald D. Alpaugh*, 31 ECAB 589 (1980).

¹² The actual application for disability retirement, supporting medical documentation, notifications of personnel action, and a statement from the employing establishment that work could not be found within appellant’s medical restrictions, are not of record. It is also not apparent from the record if the application for disability retirement was accepted.

¹³ The Board notes that as appellant has not established that his medical condition on and after March 19, 1991 was related to employment factors such as chemical exposure, the Board need not address whether appellant sustained any periods of disability for work on or after March 19, 1991 causally related to a liver condition, chemical sensitivity, or other medical condition sustained in the performance of duty.

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member