

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA J. HINDERS and GENERAL SERVICES ADMINISTRATION,  
Seattle, Wash.

*Docket No. 95-2141; Submitted on the Record;  
Issued March 26, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant's employment-related occupational illness ceased by November 15, 1989.

On October 2, 1989 appellant, then a 42-year-old binder operator, filed a claim alleging that she sustained an allergic reaction to chemical fumes and other environmental contaminants while in the performance of duty.

In a medical report dated December 20, 1989, Dr. James P. Duffy, a general practitioner and appellant's treating physician, stated that appellant had no previous history of allergies until transferred into the binder operator's position. He noted that since her transfer out of that position, she had temporarily improved, noting that she remained allergic to perfumes of any kind.<sup>1</sup>

On February 15, 1990 Dr. Robert E. Sandblom, Board-certified in internal medicine and an Office consultant, reviewed the statement of accepted facts and appellant's medical record and opined that her allergic condition and contact dermatitis were not supported by the medical record. Dr. Sandblom stated that Dr. Duffy's diagnosis was not supported by appellant's history, physical examination or laboratory data. He could not determine whether appellant's condition was causally related to employment because of incomplete data. Dr. Sandblom agreed with Dr. Duffy that appellant's condition was temporary even though it had not resolved within 60 days after her transfer away from contaminants. Although he stated that appellant could work at her old position, he also noted that she should not be exposed to similar working conditions because it may aggravate her condition. Dr. Sandblom stated that her prognosis was undetermined and recommended a second opinion.

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<sup>1</sup> The doctor did not indicate her date of transfer.

In treatment notes received by the Office on March 5, 1990, Dr. Duffy noted on August 11, 1989 that appellant had had allergies for a long period of time which seemed to be aggravated at work, but that by October 4, 1989 her job change had improved her condition. In a treatment note dated November 15, 1989, Dr. Duffy stated that appellant “continues to do well; rash is much improved. Her eyes aren’t watering; nose is not stuffy. I’m sure she was allergic to something she was in contact with at the job. Examination unremarkable; no basic change in her condition.”

Upon review of the March 5, 1990 submissions, Dr. Sandblom, on March 18, 1990, stated that there was insufficient evidence in the record to accept an employment-related allergic condition. “However, I would be willing to accept a temporary aggravation of dermatitis and respiratory mucosal irritation by unspecified work exposure with resolution by November 15, 1989.” He recommended referral to an occupational disease clinic if “there was any dispute over this.”

In a medical report dated March 22, 1990, Dr. Gordon P. Baker, Board-certified in allergies and immunology, upon physical examination and review of appellant’s medical and work history, opined that she should avoid further contact with chemicals at work.

On March 23, 1990 the Office accepted her claim for the condition of temporary aggravation dermatitis and respiratory mucosal irritation which was resolved by November 15, 1989.

On April 12, 1990 the employing establishment submitted a report reflecting appellant’s lost time from August 16, 1987 through October 25, 1989.<sup>2</sup>

On April 14, 1990 appellant, through counsel, requested she be paid for “time loss as well as prior time loss compensation.”

In a medical report dated June 3, 1990, Dr. Sandblom, upon review of Dr. Baker’s medical report, repeated his March 18, 1990 opinion in which he found that there was no objective medical evidence to support appellant’s claim.

On July 2, 1990 the Office notified appellant that it had determined that a conflict in the medical evidence existed in her case, and that further development of the medical evidence had been initiated.

On March 18, 1991 the Office referred appellant, a copy of her medical records and an amended statement of accepted facts, to an impartial medical panel made up of Drs. Drew Brodtkin, an Occupational Medicine Fellow, and Scott Barnhart, Board-certified in internal medicine and preventive medicine, for a medical evaluation to resolve the conflict in medical opinion.

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<sup>2</sup> Appellant claimed 278 hours of sick leave and 14.5 hours of leave without pay (LWOP) after November 15, 1989.

By report of April 24, 1991, the panel listed appellant's chief complaints, reviewed the history of her present illness and medical evidence of record and reported their findings upon physical examination. The panel diagnosed appellant with acute solvent-induced upper airway irritation and central nervous system effects, acute occupationally-induced dermatitis and multiple chemical sensitivity syndrome with an onset of 1990. The panel found that the first three diagnoses were employment related, noting that all three conditions would be expected to resolve after removal from the source of the solvent exposure. They noted that she should be considered unable to return to her position as a binder operator. The panel considered appellant's prognosis regarding the three employment-related conditions as excellent, noting that removal from exposure normally resulted in resolution of symptoms within weeks or months and that she no longer had objective evidence of contact dermatitis. However, Drs. Brodtkin and Barnhart felt that her subjective complaints after removal from exposure supported a diagnosis of multiple chemical sensitivity syndrome but were unable to determine if it was employment related. The prognosis regarding multiple chemical sensitivity syndrome was unknown. The panel recommended that appellant be placed in a workplace where she would not be exposed to solvents or other irritants.

In a medical report dated July 17, 1991, Dr. Brodtkin stated that the results of appellant's neuropsychological testing revealed that appellant had sustained a general decline in all areas at a time well after exposure to solvents. He attributed her decline to depression and associated emotional factors. Dr. Brodtkin concluded that, although solvent exposure induced central nervous system effects between 1989 and 1990, it was insufficient to cause chronic or residual impairment.

In a decision dated November 27, 1991, the Office denied appellant's claim for compensation after November 15, 1989, the date of Dr. Duffy's chart note, on the grounds that the medical evidence failed to support residuals of her employment-related injury after that date. The Office also modified appellant's accepted condition to reflect temporary aggravation of upper airway irritation, central nervous system effects and contact dermatitis.

On December 6, 1991 appellant requested an oral hearing. On March 24, 1994 a hearing was held in Missoula, Montana.<sup>3</sup>

On April 5, 1995 the hearing representative issued a decision, finalized the same day, affirming the Office's decision dated November 27, 1991 denying benefits on the grounds that the medical evidence of record failed to support that appellant was disabled for any other period other than that for which she received benefits. The hearing representative noted that the medical report of Dr. Stephen A. Schacher, submitted after the hearing, was of limited probative value because he was not Board-certified in internal medicine and pulmonary disease and was insufficient to outweigh the opinion of the impartial medical panel.

The Board finds that the case is not in posture for decision.

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<sup>3</sup> Appellant requested several postponements of previously scheduled hearings.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>4</sup>

In this case, a conflict in medical opinion arose between Dr. Sandblom, who stated that appellant did not have an ongoing employment-related condition, and Drs. Baker and Duffy, who stated that appellant had a temporary aggravation of dermatitis and respiratory mucosal irritation. The Office referred appellant for an impartial medical examination to resolve this conflict. The panel stated that appellant's acute solvent-induced upper airway irritation, its effect on her central nervous system and her contact dermatitis was employment related and would be expected to resolve after her exposure ended. However, the panel failed to indicate that, in fact, appellant's conditions had resolved. The panel's general statement that these conditions would be expected to resolve after removal from the source of the solvent exposure is not sufficient to establish that appellant's conditions had resolved. Further, the panel was unable to resolve whether appellant's multiple chemical sensitivity syndrome was employment related. The panel failed to resolve the conflict as to when appellant's temporary conditions would end and whether her multiple chemical sensitivity syndrome was temporary or permanent.

In a situation where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.<sup>5</sup> Since the panel has not provided a rationalized medical opinion resolving the issue of whether appellant's temporary aggravations ended on November 15, 1989, or, if they did not end on that date, when would they end, and whether appellant's multiple chemical sensitivity syndrome was causally related to the accepted employment injury, the Office should prepare amended questions to the panel to address these issues and secure a supplemental report which provides a well-rationalized medical opinion on the issue of appellant's temporary aggravations and expected time frame as well as an opinion regarding the temporary or permanent nature of appellant's multiple chemical syndrome. After such development as the Office deems necessary, it should issue an appropriate decision.

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<sup>4</sup> *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

<sup>5</sup> *Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988); *Thomas Graves*, 38 ECAB 409 (1987); *Harold Travis*, 30 ECAB 1071 (1979).

The decision of the Office of Workers' Compensation Programs dated April 5, 1995 is hereby set aside and remanded to the Office for further action consistent with this decision and order.

Dated, Washington, D.C.  
March 26, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member