U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILHELMENIA TERRY and DEPARMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICE, Norfolk, Va.

Docket No. 97-1800; Submitted on the Record;
Issued April 20, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing any respiratory disability that is causally related to factors of her federal employment.

On June 23, 1993 appellant, then a 44-year-old transportation clerk, filed an occupational disease claim, alleging that she had occupational asthma and disability due to sick building syndrome which she first became aware of on February 25, 1992 and realized it was causally related to her federal employment on March 26, 1993. Appellant stopped work. By decision dated October 21, 1993, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish that the claimed conditions were causally related to factors of appellant's federal employment. Appellant returned to work on April 15, 1994. However, she underwent surgery related to her claimed condition on April 19, 1994 and again stopped work. In a decision dated August 3, 1994, the Office denied appellant's request for reconsideration on the grounds that, while appellant was exposed to chemicals and irritants common to newly remodeled buildings, the evidence submitted did not establish that she sustained any disability or conditions as a result of that exposure and therefore modification was not warranted. In decisions dated January 13, 1995, February 22, 1996 and March 31, 1997, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decisions.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.[1]

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on May 1, 1997, the only decision before the Board is the Office's March 31, 1997 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

A person who claims benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.[3] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[4] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[6] The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[7]

In the present case, the Office accepted that appellant was exposed to "poor circulation of air in her building; dripping from air conditioning units; mildew on the ceiling due to rain leakage; mold, dust, odors and fumes from vents; pesticide spraying; gas fumes, and renovations[;] carbon dioxide [that] was measured at between 6:00 to 9:30 p.m. during working hours [and] relative humidity [that] was measured between 19 and 22 percent at [her] desk," although no specific contaminants were found. While initial reports by appellant's treating physicians, Dr. Thomas H. Scott, Jr. and Dr. Burton A. Moss were not sufficient to establish that appellant sustained a condition or disability that was causally related to the aforementioned exposure as the reports lacked adequate rationale and were imprecise in discussing the causal relationship between the diagnosed conditions and work exposure, subsequent reports submitted by appellant are sufficient to require further development of the medical evidence by the Office.

Specifically, appellant submitted reports by Dr. Linwood W. Custalow, an otolaryngologist, who provided a history of injury including exposure to chemicals that are common to renovated buildings. He indicated that a remodeled building with poor ventilation and prolonged exposure over a period of time will produce multiple sensitivities as exhibited by appellant. On a form medical report, Dr. Custalow diagnosed hoarseness, rhinosinusitis,

[2] 5 U.S.C. §§ 8101-8193.

[3] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[6] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[7] *Manuel Garcia*, 37 ECAB 767 (1986).

metabolic dysfunction, dizziness, headaches, dermatitis, and edema due to multiple chemical sensitivities and food allergies. He checked the appropriate box to indicate the conditions were causally related to the history of injury and noted "sick building syndrome." Appellant also submitted a report by Dr. Raymond M. Singer, a Board-certified neuropsychologist and clinical psychologist, who provided a thorough history of appellant's exposures to irritants at work and indicated that appellant had an organic brain disorder caused by exposure to multiple toxic substances including pesticides at work and other toxic substances.

While the reports by Dr. Custalow are not sufficient to establish that appellant's claimed conditions are causally related to factors of her federal employment, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.[8] It is well established that proceedings under the Act are not adversarial in nature,[9] and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[10] The Office has the obligation to see that justice is done.[11]

In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physician. On remand, the Office should further develop the evidence by providing Dr. Custalow with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's claimed conditions are causally related to the identified factors of her federal employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.

[8] 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

[9] *See, e.g., Walter A. Fundinger, Jr.* 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

[10] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[11] *William J. Cantrell*, 34 ECAB 1233 (1983).

The decision of the Office of Workers' Compensation Programs dated March 31, 1997 is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 20, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member