U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY H. WINN and DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Mobile, Ala.

Docket No. 97-2241; Submitted on the Record;
Issued June 11, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in determining that appellant's employment-related condition had resolved by May 15, 1995.

In the present case, appellant filed a claim alleging that she sustained an allergic rhinitis/sinusitis causally related to exposure to fumes in her federal employment. The claim form indicated that appellant stopped working on July 5, 1994. Appellant indicated in a narrative statement that she was exposed to fumes from December 1993 to July 1994 related to renovation and relocation of her work space.

In a report dated October 26, 1994, Dr. Alfred R. Johnson, an osteopath, diagnosed allergic rhinosinusitis and opined that appellant's condition was caused by exposure at work during remodeling. The Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Merlin R. Wilson, a Board-certified internist specializing in allergies and immunology. In a report dated May 15, 1995, Dr. Wilson provided a history and results on examination, noting that appellant had a history of allergic airways disease since 1973. He stated in pertinent part:

> "It is possible that her symptoms could have been provoked by exposure to materials used in the renovation of her office space in the federal office building. Sometimes rugs and fabrics contain preservatives such as formaldehyde that can produce irritation in a patient with allergic airway disease. However, if this occurred there is no evidence that this would continue to produce symptoms months after the exposure had ceased. In reviewing her records, I cannot find anything that supports her allegation that the symptoms were made worse by exposure to the materials. Her frequency of physician office visits have been approximately the same in all the records that I reviewed. Thus, I do not think

there is any clinical or scientific evidence that her condition at the present time is related to this specific fume exposure at her workplace."

In a decision dated January 30, 1996, the Office accepted aggravation of allergic airway disease and determined that the condition had resolved by May 15, 1995. Following a hearing on January 21, 1997, an Office hearing representative affirmed the prior determination by decision dated April 4, 1997.

The Board finds that the Office met its burden in determining that appellant's employment-related condition had resolved by May 15, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[1]

In this case, the Office accepted aggravation of airway disease that resolved by May 15, 1995, based on the report from Dr. Wilson. The Board finds that he provided a complete report indicating that the effects of the exposure to fumes had ceased by the date of the examination. Dr. Wilson indicated that the initial symptoms had resolved and found no evidence that appellant's preexisting condition had worsened due to employment exposure.

Following the January 30, 1996 Office decision, appellant submitted two reports from Dr. Johnson, the attending osteopath. In a report dated March 11, 1996, he opined that appellant was unable to work in a standard work environment due to her sensitivity to inhaled substances and accommodations such as separate air handler and filtration systems for appellant's office would be required. In a report dated January 23, 1997, Dr. Johnson stated in pertinent part:

"It is my medical opinion that [appellant's] medical condition did not and has not returned to the state it was prior to her exposure in the workplace as her hypersensitivity to petrochemical-based fumes remains from the exposure. I have seen her since that time and her symptoms are persistent with exposure to chemical type products as documented from testing."

Dr. Johnson concluded that if specific accommodations could not be met then appellant was disabled from doing her job in the workplace.

With respect to employment injuries caused by exposure to substances such as chemicals or fumes, it is well established that a claimant is entitled to continuing compensation after the initial effects of the injury have resolved only if the employment exposure itself caused a

[1] *Patricia A. Keller*, 45 ECAB 278 (1993).

permanent condition, such as a heightened sensitivity to a wider field of allergens and such heightened sensitivity adversely affected appellant's wage-earning capacity.[2] Accordingly, a claimant does not remain entitled to compensation for wage loss if the medical evidence shows only that a return to work would likely produce a return of symptoms. The evidence must indicate that the exposure during federal employment caused a heightened sensitivity that was not present before the exposure. Dr. Johnson did state that appellant's condition had not returned to the state it was prior to exposure and he then refers to a remaining "hypersensitivity," without providing a clear explanation. If he believed that the exposure from December 1993 to July 1994 did cause a permanent heightened sensitivity, he must provide medical rationale for that opinion,[3] especially in view of appellant's long-standing history of allergic reactions.

The Board therefore finds that Dr. Johnson's reports are of limited probative value as to a heightened sensitivity and do not support a continuing disability. The weight of the evidence rests with Dr. Wilson, who found no evidence that appellant continued to have a condition causally related to exposure to fumes at work.

The decision of the Office of Workers' Compensation Programs dated April 4, 1997 is affirmed.

Dated, Washington, D.C.
June 11, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[2] *James C. Ross*, 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980); *James L. Hearn*, 29 ECAB 278 (1978).

[3] A physician's opinion that is not accompanied by supporting medical rationale is generally of little probative value; *see William C. Thomas*, 45 ECAB 591 (1994).