

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RHONDA L. MITCHELL and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Greensboro, N.C.

*Docket No. 97-2355; Submitted on the Record;
Issued June 10, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's hearing condition was aggravated by factors of her federal employment.

On September 12, 1991 appellant, then a tax examiner, filed a claim for a traumatic injury, Form CA-1, alleging that on that date excessive dust and fumes from renovation and construction at the workplace created a severe allergic reaction, which caused her to cough and sneeze and in turn upset the pressure and fluid balance in her inner ear resulting in her current inner ear disorder. Appellant stated that she experienced hearing loss, ringing, dizziness, headaches and tiredness. Appellant stopped working on September 12, 1991 and attempted to work in another building, with mixed success, during the renovation.

By letter dated July 23, 1993, the employing establishment stated that appellant was hired under the handicapped provision and was considered disabled due to hearing deficiencies and wore hearing aids in both ears. It stated that during the period of appellant's alleged injury, the entire building was undergoing extensive renovations for almost a year involving, in part, remodeling of the bathrooms, replacement of ceilings and carpets, and installation of cable and electrical wiring, and that there was dust, dirt and fumes in various parts of the building at that time.

Appellant submitted several reports and a disability note from her treating physician, Dr. Robert I. Kohut, a Board-certified otolaryngologist. In his October 2, 1991 disability note, Dr. Kohut stated that appellant had a medical condition which could be worsened with coughing and sneezing and therefore environments which cause her to cough and sneeze should be minimized. In a report dated October 31, 1991, he diagnosed perilymphatic fistula, probably bilateral, status post perilymphatic fistula repair. In his report dated August 26, 1993, Dr. Kohut stated that it was true that extreme coughing and sneezing and other forms of exertion "that can raise the venous pressure is detrimental" to appellant's inner ear condition and it appeared that appellant had endolymphatic hydrops secondary to perilymphatic fistulae. In his report dated

September 8, 1993, Dr. Kohut opined that “there appears” to be a causative relationship between appellant’s coughing and sneezing and the worsening of her preexisting ear condition. He stated that “[d]ust and dirt that can cause this coughing and sneezing certainly are known causes of these symptoms” and that noise does not cause coughing, sneezing or straining although extremely loud noises can cause dizziness in patients. Dr. Kohut stated that he was not personally aware of appellant’s work environment but if there was dust and dirt, and coughing and sneezing occurred, then it aggravated appellant’s preexisting ear condition.

In his October 26, 1993 report, Dr. Kohut stated that appellant’s ear condition “wherein there is communication between the inner and middle ear in which we have sealed surgically, is aggravated by coughing and sneezing.” He stated that “[t]his is because of the concomitant valsalva-like phenomenon” that accompanies these events. Dr. Kohut stated that he could “not say for sure” whether the change in appellant’s hearing was temporary or permanent. He queried when appellant’s exposure began and the period of time it lasted and stated he would review appellant’s test results with this calendar in mind.

In his report dated November 13, 1995, Dr. Kohut stated that appellant had mild to moderate fluctuations of hearing and speech discrimination in her right ear but from November 1991 through May 27, 1993 there was change which was “somewhat progressive.” He further stated that appellant’s hearing condition had stabilized in September 1990, that appellant reported a recurrence of dizziness in mid September 1991, and since that date appellant had marked fluctuations indicating an active process in her ear. Dr. Kohut stated:

“In that this period between September 1990 and September, 1991 corresponds to the cessation of stability and the onset of construction and dusty environment with subsequent marked fluctuations in her condition, it appears to be temporally related to the work environment.

“There is no question in my mind that a dusty environment was potentially detrimental to [appellant]. The report of a year interval of stability followed by the onset of renewed symptoms tends to support a conclusion that there may be an association between the work environment and this renewed symptoms complex. It is also true that the condition [which] underlies [appellant’s] problems was due to a weak area or potentially permeable patency, present since birth. Although that is true, the aggravation of the problem by inappropriate environmental variables remains equally true.” (Emphasis in original).

The Office rejected appellant’s claim by decision dated July 15, 1993 stating that the evidence of record failed to establish an injury as alleged and denied her subsequent requests for reconsideration dated August 4 and December 20, 1993, October 4, 1994 and January 10, 1996.

In her request for reconsideration dated January 1, 1997, appellant submitted evidence allegedly establishing that her coworkers’ health was also adversely affected by dust and fumes in the workplace and the July 23, 1993 letter from the employing establishment corroborating appellant’s allegation that there were fumes and dust from construction and renovation at the work site.

By decision dated April 8, 1997, the Office denied modification after a merit review of the claim.

The Board finds this case is not in posture for decision.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 specific employment factors identified by the appellant.¹ When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.²

In the present case, while some of Dr. Kohut's opinions are speculative, his opinions overall establish that appellant sustained an aggravation to her hearing condition from the dust and fumes at work. In his September 8, 1983 opinion, Dr. Kohut stated that if there was dust and dirt in appellant's work environment and coughing and sneezing occurred, then it aggravated appellant's preexisting ear condition. The employing establishment's July 23, 1993 letter established that during the period of time appellant alleged she was injured, there was dust, dirt and fumes in the building where she worked due to excessive renovation and construction. Further, in his October 26, 1993 report, Dr. Kohut stated that the communication between appellant's inner and middle ear which was sealed surgically "is aggravated" by coughing and sneezing. In his November 13, 1995 report, he stated that the fact appellant's preexisting condition had been stable and worsened during the period of construction at the workplace showed that temporally the worsening of appellant's ear condition was related to the work environment. He further stated in that report that appellant's hearing problem was aggravated by inappropriate environmental variables evidently referring to the dust and fumes in the workplace to which he had referred in his other reports. Appellant has therefore met her burden of establishing that her preexisting hearing condition was aggravated by factors of federal employment. The case must be remanded, however, to determine the nature and extent of appellant's disability and the appropriate payment of compensation and medical benefits.

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *John Watkins*, 47 ECAB 597, 600 (1996).

The decision of the Office of Workers' Compensation Programs dated April 8, 1997 is hereby reversed and the case remanded for further consideration in a manner consistent with this opinion.

Dated, Washington, D.C.
June 10, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member