

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHIE M. CRAWFORD and DEPARTMENT OF THE NAVY,
COMMANDER CHARLESTON NAVAL SHIPYARD, Charleston, SC

*Docket No. 99-1812; Submitted on the Record;
Issued August 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury caused by factors of her federal employment.

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

On June 3, 1997 appellant, then a 50-year-old secretary, filed a claim for an occupational disease (Form CA-2) assigned number A6-0698801 alleging that on March 7, 1997 she first realized that her asthma was caused or aggravated by her employment. She stated that her physician advised her that this condition resulted from her work environment which was always saturated with heavy amounts of dust and other particles.¹ Appellant also filed a claim for a schedule award (Form CA-7) on June 3, 1997.² Her claims were accompanied by factual and medical evidence.

By letter dated April 3, 1998, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office also advised appellant to submit additional factual and medical evidence supportive of her claim. By letter dated May 1, 1998, appellant submitted additional factual and medical evidence.

In a decision dated May 12, 1998, the Office found the medical evidence of record insufficient to establish that appellant sustained a condition caused by factors of her

¹ Appellant was separated from the employing establishment on April 1, 1996 due to the closure of the employing establishment.

² The Board notes that the Office of Workers' Compensation Programs did not issue a decision on whether appellant was entitled to a schedule award for her respiratory condition and therefore, this is not an issue on this appeal.

employment. In a June 17, 1998 letter, appellant requested reconsideration of the Office's decision and submitted medical evidence.

By decision dated July 9, 1998, the Office denied appellant's request for modification based on a merit review of the claim. The Office again found the medical evidence of record insufficient to establish a causal relationship between appellant's asthma and factors of her employment.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or 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 the claimant.⁴ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion 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 claimant'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,⁵ must be one of reasonable medical certainty⁶ 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 claimant.⁷

Appellant submitted a February 6, 1997 medical report of Dr. Cary E. Fechter, a Board-certified internist. In this report, he stated:

"I have followed [appellant] for four years for several medical problems of which her pulmonary disease appears to be work related. The pulmonary problems appear to have developed since beginning work at the [employing establishment]. She has worked at a computer for the last several years. However, [appellant] works in an area where she arrives and departs through dusty buildings and laborers are working with various gases, chemicals such as solvents and fumes such as acetylene."

³ On appeal appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; see *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1).

⁴ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

Dr. Fechter noted that appellant's work exposure had been documented on previous reports and that she had asbestos exposure although he did not see any findings of asbestosis. He further noted:

“[Appellant] *did not have pulmonary problems prior to working at the [employing establishment]*. She currently does. It does not appear to be related to the outside environment as spring and fall does not produce hay fever or a worsened asthma condition.” (Emphasis in the original.)

Appellant also submitted Dr. Fechter's April 22, 1998 medical report which provided responses to specific questions in the Office's April 3, 1998 letter advising appellant to submit additional factual and medical evidence supportive of her claim. Specifically, Dr. Fechter provided a diagnosis of occupational bronchitis. He stated:

“The reasoning that [appellant's] condition developed as a result of work is medically based in that she never had pulmonary problems prior to starting her work at the [employing establishment] and I have not been able to identify other outside environmental factors. The relationship of gases, chemicals and dust causing lung disease has been well established and I need not further detail that aspect of the diagnosis.”

Dr. Fechter further stated that appellant's condition continued since she left the employing establishment in March 1996 and that appellant had improved, but that she had moderate obstructive disease and obstructive and restrictive disease. In response to the Office's question of whether appellant's job caused any permanent pulmonary impairment, Dr. Fechter provided:

“[Appellant] has shown some improvement since retiring from the [employing establishment]. The permanent nature of this disease can not be fully assessed at this time. An aspect of her restrictive lung disease may be related to her previous thymoma and thoracic surgery as chest x-rays do not show significant infiltrates or fibrotic disease. It appears the physician first related her condition to her job exposure in 1997; however, in conversations with [appellant] and in review of her notes the possibility of asbestos exposure and work-related exposures have been addressed since at least 1994. Also, I was concerned about myasthenia gravis associated with thymoma and referral to a neurologist showed that she did not have myasthenia gravis.”

Dr. Fechter concluded:

“[Appellant's] is a very difficult condition to specifically identify the causal agents. Certainly, I have already listed several work-related agents that may produce obstructive or restrictive lung disease including asbestos, dust, gases, chemicals, fumes including acetylene, acetone, fiberglass particles, paint fumes, welding fumes, etc. [Appellant] is going to do a more exhaustive review of the agents which she was exposed to either directly or indirectly while at the [employing establishment].”

Finally, appellant submitted Dr. Fechter's June 8, 1998 medical report noting his previous reports. He also noted that John R. McLain, appellant's former supervisor, wrote a letter helping appellant create a list of toxic agents that she was exposed to usually on a daily basis.⁸ Dr. Fechter noted:

"[I]nside the shop this included chlorine, Clorox bleach, trisodium phosphate, muriatic acid, Freon 113, acetone, silver solder flux and black diamond dust (which was throughout the shipyard from blasting in dry docks. Incidentally, black diamond dust created a heavy dust throughout the shipyard) and many different types of paints, paint thinners and paint removers which were not specified as to name."

Dr. Fechter opined:

"[E]very agent listed above is potentially caustic and injurious to the lungs. I stand by my previous reports describing the fact that [appellant's] pulmonary condition developed after work at the [employing establishment] and, unfortunately has not completely resolved with her retirement from the [employing establishment]."

Although Dr. Fechter has opined that appellant sustained an injury caused by specific factors of her federal employment, his medical reports are not sufficiently rationalized to establish causal relationship. Nonetheless, the Board finds that Dr. Fechter's medical reports, taken as a whole, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁹ Additionally, the Board notes that in this case, the record contains no medical opinion contrary to appellant's position.

Accordingly, the case will be remanded for further development and a *de novo* decision.¹⁰ On remand, the Office should refer appellant, together with a statement of accepted facts and the medical evidence of record to an appropriate specialist for an examination and a rationalized opinion on whether appellant has a respiratory or pulmonary condition and if so, whether such condition was caused by factors of her federal employment. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

⁸ The record contains Mr. McLain's April 22, 1998 narrative statement. In this statement, Mr. McLain described situations where appellant was exposed to dirt, dust and other contaminants while working for the employing establishment. He opined that the conditions he described could be very hazardous to an employee's breathing zone.

⁹ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820-21 (1978).

¹⁰ *John J. Carlone*, *id* at 360; *Horace Langhorne*, *id* at 822.

The May 12 and July 9, 1998 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
August 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member