

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH F. JOHNSON and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Cleveland, OH

*Docket No. 00-539; Submitted on the Record;
Issued December 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that his chronic obstructive pulmonary disease is causally related to factors of his employment.

On July 7, 1997 appellant, then a 64-year-old mailhandler, filed a notice of occupational disease claim alleging that his chronic obstructive pulmonary disease (COPD) was due to working in unheated conditions on the loading dock during the winters since 1995.

By decision dated January 12, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the record contained no medical evidence supporting a causal relationship between appellant's disability and employment factors.

In a report dated February 22, 1998, Dr. David K. Denholm, Board-certified in internal medicine and pulmonary disease, diagnosed COPD based on August 1995 pulmonary function studies and acute exacerbations of bronchitis. Dr. Denholm opined that the "faulty climate system has contributed to the episodes of bronchitis and in effect exacerbated his underlying obstruct lung disease." Appellant had a 20-year smoking history which Dr. Denholm indicated "has to be implicated as a major causative agent" in appellant's abnormal pulmonary function studies.

Following appellant's request, a hearing was held on July 28, 1998. He testified about the broken doors on the loading dock, the faulty climate control system and the fact that while working under these conditions in the winter of 1995 he contracted pneumonia.¹

In reports dated February 1 and July 13, 1998, Dr. Denholm diagnosed chronic obstructive lung disease which had been exacerbated by the faulty climate system at appellant's

¹ Appellant requested light duty in early 1995 and was accommodated by the employing establishment.

workplace. Dr. Denholm also stated that while it was “hard to determine the exact cause of his deterioration,” appellant’s 20-year smoking history had to be a causative agent.

In a decision dated September 25, 1998, the hearing representative affirmed the Office’s January 12, 1998 decision denying benefits. The hearing representative found that appellant had failed to submit any rationalized medical evidence implicating work factors which contributed or caused appellant’s chronic obstructive lung disease.

On June 24, 1999 appellant requested reconsideration and submitted a May 20, 1999 report from Dr. Denholm who discussed the conditions under which appellant worked during the winter of 1995 when he developed pneumonia. The physician concluded that appellant developed “scarring” on his lungs as a result of pneumonia and that “[t]his scarring has not resolved and remains as an impairment to his respiratory status.” Dr. Denholm opined that appellant had a 15 to 20 percent impairment due to this unresolved scarring. In conclusion, the physician noted that “there is a small degree of pulmonary impairment caused by the winter illness of 1994 to 1995” which was due to the working conditions, specifically the poor climate control, that appellant endured during that period.

By merit decision dated September 21, 1999, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was insufficient to establish that appellant’s disability was causally related to factors of his employment.

The Board finds that appellant has failed to establish that his chronic obstructive pulmonary disease is causally related to factors of his employment.

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 (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;³ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ The medical opinion must be one of reasonable medical certainty,⁵ and must be supported by

² See *Ronald K. White*, 37 ECAB 176, 178 (1985).

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979). The Office, as part of its adjudicatory function, must make findings of fact and a determination as to whether the implicated working conditions constitute employment factors prior to submitting the case record to a medical expert; see *John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁴ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of the employee that the condition was caused or aggravated by an employment incident or factors, is sufficient to establish causal relationship.⁷

In this case, there is no rationalized medical opinion evidence to support a causal relationship between appellant's factors of employment and his COPD. The reports from Dr. Denholm are not sufficient to meet appellant's burden of proof because they lack sufficient rationale to establish a causal relationship between appellant's respiratory condition and his employment. Dr. Denholm opined that appellant's pulmonary disease was aggravated by the faulty climate control at appellant's employment and that appellant's 20-year smoking history had "to be implicated as a major causative agent." But the physician does not explain how appellant's exposure to an intemperate and changing climate at work aggravated his obstructive lung disease. Dr. Denholm also failed to distinguish between the effects of appellant's 20-year smoking history and his exposure to the cold climate on the loading dock. Furthermore, Dr. Denholm subsequently concluded that it was "hard to determine the exact cause of his deterioration," but that appellant's smoking history had to be considered as a causative factor. In the absence of rationale supporting the conclusion reached that Dr. Denholm's conclusory opinion of diminished probative value on the issue of causal relationship with employment. As noted above, it is appellant's burden to establish the elements of his claim. In this case, the medical evidence is not sufficient to meet appellant's burden and the Office properly denied his claim.

⁶ *Solomon Polen*, 51 ECAB ____ (Docket No. 97-1794, issued March 1, 2000); see *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ *Joseph P. Gulla*, 36 ECAB 516 (1986).

The decision of the Office of Workers' Compensation Programs dated September 21, 1999 is hereby affirmed.

Dated, Washington, DC
December 28, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member