

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILDRED E. BURNETT and DEPARTMENT OF THE ARMY,
CHARLES MELVIN PRICE SUPPORT CENTER, Granite City, IL

*Docket No. 99-761; Submitted on the Record;
Issued June 7, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant was disabled during intermittent periods from January 13 to September 27, 1997 due to her accepted condition of temporary aggravation of asthma and allergic aspergillosis.

On April 21, 1997 appellant filed a claim for exacerbation of asthmatic bronchitis, allergic rhinitis and sinusitis that she attributed to her exposure to dust during remodeling at her workplace. In a letter dated July 14, 1997, appellant stated that she was exposed to dust eight hours a day, five days a week during remodeling at the employing establishment from October 1996 through January 1997 and that she was hospitalized from January 13 through 22, 1997 and from March 25 through April 9, 1997 and used sick leave from February 18 to 21, 1997. The employing establishment's acting chief of the division in which appellant worked stated that she "was exposed to dust Oct[ober] 1996 through January 1997 for a total of 128 days."

In a report dated August 15, 1997, her attending physician Dr. Royal J. Eaton, who is Board-certified in pulmonary diseases, stated:

"This lady suffers from asthma, allergic bronchopulmonary aspergillosis, and is very sensitive to aromatic vapors, dust and fumes. She is steroid dependent and requires multiple medicines to control her pulmonary illness.

"It is important for her to avoid dust and fumes, as she has reactive airways disease and responds adversely to exposure to these substances. I believe this was a critical factor in her deterioration of pulmonary condition between October 1996 and January 1997."

By letters dated August 27, 1997, the Office of Workers' Compensation Programs notified appellant and Dr. Eaton that it had accepted an aggravation of asthma and allergic aspergillosis due to her exposure to dust from October 1996 to January 1997, the Office

requested Dr. Eaton's opinion whether the aggravation was temporary or permanent. In a report dated September 5, 1997, Dr. Eaton stated, "In my opinion, [appellant's] injury temporarily aggravated her underlying condition of asthma and allergic bronchopulmonary aspergillosis, but left no permanent residual injuries."

On September 8, 1997 appellant filed a claim for compensation for intermittent periods from January 13 to August 22, 1997. By letter dated September 19, 1997, the Office advised appellant that it needed medical evidence to support total disability from work. On September 19, 1997 appellant filed a claim for compensation for the period from September 13 to 27, 1997. By letter dated October 23, 1997, the Office advised appellant that it needed a report from Dr. Eaton addressing the relationship between this period of disability and her exposure to dust from October 1996 to January 1997.

By decision dated July 30, 1998, the Office found that the medical evidence did not support that she was disabled during the periods claimed between January 13 and September 27, 1997.

Appellant requested reconsideration and submitted a report from Dr. Eaton dated September 29, 1998. In this report, Dr. Eaton reiterated his opinion on the temporary aggravation of appellant's conditions and added, "[appellant] was unable to work because of her chronic lung disease from January 13 through August 22, 1997. She returned to work for a brief time and then was hospitalized again for sinus surgery on August 12, [1997] she then developed bacterial pneumonia and was unable to work for the dates of September 13 to 27, 1997."

By decision dated November 10, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

The Board finds that appellant did not meet her burden of proof to establish intermittent disability due to her accepted conditions.

The evidence establishes that appellant was exposed to dust during remodeling at the employing establishment from October 1996 to June 1997. In a report dated August 15, 1997, appellant's attending physician, Dr. Eaton, stated that this exposure was "a critical factor in her deterioration of pulmonary condition between October 1996 and January 1997." This report did not address whether appellant was disabled at any time by her pulmonary condition. In a report dated September 29, 1998, Dr. Eaton stated that appellant was unable to work from January 13 to August 22, 1997 and from September 13 to 27, 1997. It is not clear, however, whether he was attributing these periods of disability to appellant's employment-related aggravation of her pulmonary condition, as Dr. Eaton stated that the earlier period of disability was due to "her chronic lung disease" and the later period to bacterial pneumonia. Because Dr. Eaton did not

directly attribute appellant's disability to the employment-related aggravation accepted by the Office, his reports are not sufficient to meet appellant's burden of proof.¹

The decisions of the Office of Workers' Compensation Programs dated November 10 and July 30, 1998 are affirmed.

Dated, Washington, D.C.
June 7, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ Appellant's burden of proof includes the necessity of establishing that the disability is causally related to employment. *Francis Fowler*, 39 ECAB 890 (1988).