

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYDIA MARTINEZ and U.S. POSTAL SERVICE,
POST OFFICE, Santa Fe, NM

*Docket No. 99-1161; Submitted on the Record;
Issued September 22, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has multiple chemical sensitivity causally related to her employment.

On May 27, 1993 appellant filed a claim for chemical allergy and intolerance and chronic fatigue that she attributed to her exposure to floor strippers and other chemicals at work. On January 14, 1994 appellant filed a claim for a chemical reaction from a janitor buffing and mopping a floor. By decision dated June 21, 1994, the Office of Workers' Compensation Programs found that fact of injury was not established, and that the weight of the medical evidence was represented by the opinion of its referral physician, Dr. William Christensen. Appellant requested reconsideration, and submitted additional medical evidence. By decision dated September 22, 1994, the Office found that the additional evidence was not sufficient to modify its prior decision.

By letter dated September 15, 1995, appellant requested reconsideration, and submitted a report dated May 25, 1995 from her attending physician, Dr. Jacqueline A. Krohn. The Office determined that this report created a conflict of medical opinion with the report of Dr. Christensen, and, to resolve this conflict referred appellant, the case record and a statement of accepted facts to Dr. J. Michael Straight, who is Board-certified in internal medicine and in emergency medicine. On April 2, 1997 appellant called the Office and stated that she was unable to travel to Colorado to be examined by Dr. Straight. Appellant submitted an April 8, 1997 note from Dr. Krohn which stated: "It would be detrimental to [appellant's] health to go to Lakewood, Co., to see a physician. [Appellant] gets very ill when she travels."

On May 1, 1997 the Office received a telephone call from Dr. Straight's office indicating that appellant appeared for her scheduled appointment on April 22, 1997 but that the Office had already canceled it. In a letter to appellant's attorney dated June 4, 1997, the Office stated that it was unable to find a qualified physician closer to appellant's residence who was willing to perform an independent evaluation. The Office stated: "Please advise us when [appellant] is

able to travel so that we may reschedule her appointment and resolve the pending issue in her claim.

In a letter dated October 22, 1998, appellant's attorney stated that he had "obtained the professional services of Dr. Amitava Dasgupta, Director of Clinical Chemistry and Toxicology, UNM School of Medicine, to opine on whether [appellant] does, indeed, have a *bona fide* chemical sensitivity to chemical agents used at her workplace, thus causing her injury." The attorney stated that, as soon as Dr. Dasgupta provided an opinion, he would submit it to the Office.

By decision dated December 3, 1998, the Office found that the medical evidence was not sufficient to establish that appellant's medical problem was related to her employment. The Office decision noted that there was currently a conflict of medical opinion and that appellant had "neither submitted to examination as scheduled by our office nor provided additional medical evidence to conclusively establish a causal connection between your symptoms and factors of your workplace."

The Board finds that the case is not in posture for a decision.

The Office properly found a conflict of medical opinion in this case. Its referral physician, Dr. Christensen, stated in a March 17, 1994 report that he did not subscribe to the theory of multiple chemical sensitivity and that he therefore was unable to relate appellant's symptoms and illness to her employment exposures. Appellant's attending physician, Dr. Krohn, stated in a May 25, 1995 report that the generally accepted characteristics of multiple chemical sensitivity fit appellant's condition, and that this condition was related to her employment exposures.

While the Office stated on December 3, 1998 that the conflict existed in the medical evidence because appellant had not submitted to examination scheduled by the Office, the evidence of record does not support this finding.

Section 8123(a) of the Federal Employees' Compensation Act¹ provides in relevant part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." The case will be remanded to the Office for the referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist for a reasoned opinion on whether appellant had multiple chemical sensitivity causally related to her exposure to chemicals in her employment.

¹ 5 U.S.C. § 8123(a).

The decision of the Office of Workers' Compensation Programs dated December 3, 1998 is set aside and the case is remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
September 22, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member