U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM B. MORIARTY and SMITHSONIAN INSTITUTION, NATIONAL ZOOLOGICAL PARK, Washington, DC

Docket No. 98-1860; Submitted on the Record;
Issued January 25, 2001

DECISION and ORDER

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

The issue is whether appellant's hospitalizations for gastritis in April and June 1996 were causally related to his November 17, 1983 employment injury.

On November 17, 1983 appellant, then a 43-year-old air-conditioning equipment operator, filed an occupational disease claim, alleging he had contracted pulmonary disease due to exposure to asbestos and that he became aware this condition was caused or aggravated by employment factors in July 1983.

By decision dated January 18, 1985, the Office of Workers' Compensation Programs accepted the claim for exposure to asbestos, but found that appellant was not entitled to compensation because the record did not establish that he sustained any asbestos-related pulmonary impairment or disability for work, and had not experienced any wage loss due to the asbestos–related condition.

By letter dated January 21, 1985, appellant requested a hearing.

By decision dated April 2, 1985, an Office hearing representative, based on review of the written record, found that appellant had presented medical evidence sufficient to establish pulmonary fibrosis. The hearing representative remanded the case to determine appellant's entitlement to compensation.

Appellant stopped working on August 24, 1984 and has not worked since. The Office paid appellant appropriate compensation for temporary total disability. The Office subsequently expanded the claim to include bilateral posterior subcapular opacity and cataract, secondary to medical treatment of pulmonary fibrosis.

In a report dated January 30, 1996, Dr. Rolando J. Santos, Board-certified in internal medicine, stated that appellant related complaints of poor breathing, arthritis and stomach pain. Dr. Santos noted that appellant had recently been treated for cataract removal, which he advised

was a direct result of the corticosteroids prescribed for his pulmonary fibrosis and asbestos exposure. He stated:

> "The medicine that [appellant] takes for his asbestos exposure and/or pulmonary fibrosis [includes] Kenalog ..., [and] Decadron.… The patient was also informed that even if his corticosteroids are given by injections, they could still produce some gastric irritation causing abdominal pain."

Dr. Santos also advised that he wanted to rule out renal stones as a cause of appellant's abdominal pain, though he could not be sure of this because of the presentation and characteristics of the symptoms.

In a report dated February 23, 1996, Dr. Santos related that appellant had returned with complaints of abdominal pain. He suggested that these pains might be related to the pulmonary asbestos exposure because asbestosis could produce abdominal tumors, which could be causing the pain.

In an April 12, 1996 report, Dr. Santos noted that appellant had been hospitalized from April 10 through 12, 1996 for acute abdominal pain which had an unknown etiology. He diagnosed probable gastritis, and ruled out a peptic ulcer or tumors related to asbestosis.

In a report dated May 13, 1996, Dr. Santos stated that he had treated appellant for a recurrence of his abdominal pain. He noted the possibility that appellant's abdominal pain was attributable to the medications Zocor, Ansaid, taken for arthritis, Toradol, used for abdominal pain, or for corticosteroids.

Appellant returned to Dr. Santos on June 10, 1996 with complaints of abdominal pain. Dr. Santos reiterated that he was unable to rule out an early abdominal tumor from asbestos.

In reports dated June 18, 22 and 25, 1996, Dr. Santos stated that appellant had been hospitalized on June 17, 1996 for severe stomach pain with vomiting for several days. In his June 18, 1996 report, he reiterated his diagnosis of gastritis secondary to medications. Dr. Santos advised, in his June 25, 1996 report, that appellant had been discharged from the hospital on June 22, 1996 with no more vomiting or abdominal pain, and that an endoscopy had ruled out the possibility of an abdominal tumor. He suggested that a kidney stone might be causing his abdominal pain. Dr. Santos indicated that appellant had gastritis as a result of medication that included corticosteroids prescribed for his pulmonary asbestosis.

In a report dated June 27, 1996, Dr. Santos stated appellant had returned to his office on June 26, 1996 with additional complaints of abdominal pain, that peptic esophagitis was healed but might no be causing the pain. He also advised that left renal stones could possibly be causing the left plank tenderness, vomiting and abdominal pain.

In a report dated October 25, 1996, Dr. Santos noted that the Office had accepted the claim for bilateral posterior subcapsular opacity and bilateral cataract surgery because the cataract that appellant developed was related to the corticosteroids being injected for the purpose of treating his pulmonary asbestos and fibrosis. He noted that during appellant's April and

June 1996 hospitalizations, appellant had symptoms of abdominal pain, the exact etiology of which was not really know during those periods. Dr. Santos advised that diagnostic tests, including computerized axial tomography scan, had ruled out an occult malignancy or abdominal tumor as the cause of appellant's abdominal pain, and then stated that appellant's abdominal pain should be accepted as a condition related to his exposure to asbestos, most likely from gastritis from medications resulting from corticosteroid therapy and/or other medications he was taking. He concluded that the medications given for appellant's accepted conditions caused an aggravation of his gastrointestinal condition and/or abdominal pain. In an additional October 25, 1996 report, Dr. Santos indicated that appellant had been prescribed Kenalog, Decadron and ACTH, which were also known to produce gastritis when taken on a regular basis.

By letters dated September 11, 1997, the Office referred appellant for a second opinion examination with Dr. Thomas A. McCabe, Board-certified in internal medicine. In a report dated November 18, 1997, Dr. McCabe, after reviewing the statement of accepted facts and appellant's medical records, and stating findings on examination, stated that appellant was not currently suffering from pulmonary fibrosis, but advised that it was possible he could have asbestosis. With regard to the necessity of the drugs needed for the treatment of the condition, he acknowledged that some physicians prescribed corticosteroids to treat asbestosis, although he personally would not do so. Dr. McCabe further stated:

> "[Appellant] was hospitalized for severe abdominal pains from April 10 to 12 and June 19 to 22, 1996. From my review of the records, it appears that [appellant] had gastritis. The gastritis could be aggravated by the taking of corticosteroids or taking nonsteroidal anti-inflammatory agents, such as Ansaid or Toradol. He also was found to have a renal stone at that time, and that may have been part of the reason he had the pain. I do not think the gastritis was a complication of the pulmonary fibrosis *per se*, but could well have been a complication of the corticosteroids."

In a report dated January 13, 1998, Dr. McCabe opined that appellant's gastritis was not related to his accepted conditions, or to the treatment for them.

By decision dated March 25, 1998, the Office found that appellant was not entitled to reimbursement for his hospitalizations in April and June 1996, as he did not submit medical evidence sufficient to establish that they were causally related to his November 17, 1983 employment injury. The Office found that appellant had been hospitalized for treatment of renal stones during the aforementioned periods, which was confirmed by objective findings, but that Dr. Santos, his treating physician, had failed to provide an explanation of how treatment of his accepted conditions aggravated or caused his gastritis.

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

Section 8103 of the Federal Employees' Compensation Act[1] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services,

[1] 5 U.S.C. §§ 8101-8193.

appliances, and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.[2] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[3]

The Board finds that there is a conflict in the medical evidence between the opinions of Drs. Santos and McCabe regarding whether appellant's hospitalizations in April and June 1996 for gastritis were causally related to his November 17, 1983 employment injury, thereby entitling him to reimbursement. As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness.[4] In this case, appellant has submitted supporting medical evidence consisting of reports from Dr. Santos, who stated several times that the condition for which appellant was hospitalized; *i.e.*, gastritis, was causally related to his primary accepted condition of exposure to asbestos. Dr. Santos opined that, given the fact that diagnostic tests had ruled out other possible causes, appellant's gastritis was most likely the result of his taking medications such as corticosteroids and/or other medications prescribed for his accepted condition. He further indicated that these medications had caused an aggravation of his gastrointestinal condition and/or abdominal pain, resulting in his hospitalization. In his October 25, 1996 report, Dr. Santos stated that appellant had been prescribed Kenalog, Decadron and ACTH, drugs which were also known to produce gastritis when taken on a regular basis.

Dr. McCabe acknowledged in his November 18, 1997 report that gastritis could be aggravated by the consumption of corticosteroids or nonsteroidal anti-inflammatory agents, such as Ansaid or Toradol, and that the gastritis appellant experienced in April and June 1996 might have been a complication stemming from consumption of corticosteroids. He also noted the possibility that appellant's abdominal pain could have been partly caused by the renal stone appellant had at that time. However, in his January 13, 1998 supplemental report, Dr. McCabe stated unequivocally that appellant's gastritis was not related to his accepted conditions, or to the treatment for them. He provided no medical substantiation for this opinion, however.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."[5] In order

[2] 5 U.S.C. § 8103.

[3] *Daniel J. Perea*, 42 ECAB 214 (1990).

[4] *See Francis H. Smith*, 46 ECAB 392 (1995).

[5] Section 8123(a) of the Act provides in pertinent part, "(i)f there is a 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." *See Dallas E. Mopps*, 44 ECAB 454 (1993).

to resolve the conflict of medical opinion, the Office should, pursuant to 5 U.S.C. § 8123(a), refer appellant, the case record, a statement of accepted facts to an appropriate, impartial medical specialist or specialists for a reasoned opinion to resolve the aforementioned conflict. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[6] After such development as it deems necessary, the Office shall issue a *de novo* decision.

The Office's decision of March 25, 1998 is therefore set aside and the case is remanded to the Office for a *de novo* decision in accordance with this opinion.

Dated, Washington, DC
January 25, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *Aubrey Belnavis*, 37 ECAB 206 (1985).