

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSIE M. LITTLEFORD and LIBRARY OF CONGRESS,
PRINTS & PHOTOGRAPHS DIVISION, Washington, DC

*Docket No. 00-675; Submitted on the Record;
Issued March 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that her toxic neuropathy condition was sustained in the performance of duty.

On October 27, 1998 appellant, a 60-year old paper conservator, filed an occupational disease claim, alleging that she sustained toxic polyneuropathy, due to exposure to toxic chemicals at work.

In support of her claim, appellant submitted a January 16, 1998 electromyographic (EMG) report from Dr. Alfred P. Pavot, Board-certified in orthopedic surgery, physical medicine and rehabilitation, who stated that his findings were consistent with a mild axonal polyneuropathy. Dr. Pavot advised that appellant's history and clinical findings were consistent with a mild bilateral brachial plexopathy, superimposed on the above.

In a report dated March 15, 1998, Dr. Edgar V. Potter, Board-certified in internal medicine, found that appellant would be limited in her ability to perform her current job based on her chronic cervical condition and the findings from Dr. Pavot's EMG results.

By letter dated January 20, 1999, the Office of Workers' Compensation Programs advised appellant that the evidence she submitted was not sufficient to determine whether she was eligible for compensation benefits and that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her alleged pulmonary condition. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and opining whether her exposure to asbestos at the employing establishment contributed to her condition.

In a report dated June 19, 1998, Dr. William E. Lightfoote, Board-certified in psychiatry and neurology, stated:

“[Appellant] brings in a list of solvents and organic chemicals that have been used in her office as a paper conservator for the [employing establishment]. She also has a list of chemicals and solvents used in restoration.... [W]e must ... investigate what part the solvents play in this injury as well.... There is the possibility of exposure and damage to the nervous system due to these chemicals and this must be entertained. Particularly, in view of the fact that Dr. Pavot, the physiatrist, did EMG and nerve conduction tests on January 16, 1998 and found evidence of an axonal polyneuropathy.”

Dr. Lightfoote indicated that he was sending a copy of his report to the employing establishment to investigate whether appellant’s exposure to toxic chemicals was occupational.

To clarify whether appellant’s exposure to toxic chemicals and solvents in her federal employment resulted in her claimed neurological condition, the Office referred the claim to Dr. Michael E. Batipps, Board-certified in psychiatry and neurology, who examined appellant on May 10, 1999.

Dr. Batipps, after reviewing the medical history and the statement of accepted facts, stated:

“[Appellant] gives a history of exposure to numerous toxic substances when at work. During the 1960s and 1970s and perhaps even the early 1980s, it seems that not much attention was given to employee safety during those early years. [Appellant] reports frequently having various chemicals on her skin, on her hands, arms and that she was frequently inhaling toxic fumes from many different chemicals used to process the various projects that she was assigned to. The patient told me that with great difficulty she was able to get a list of some of the chemicals that she had been exposed to over the years. She emphasizes, however, that this is a very incomplete list and that there were many other substances that were in the environment on a regular basis. Many of the substances listed are potentially neuro-toxic. These include various dyes, including aniline dye, ethylene glycol and a form of benzene and numerous other substances. The first step in the analysis of this problem is to do a complete and detailed EMG and nerve conduction study of the lower extremities to determine the severity and extent of peripheral neuropathy. If this is significant, diagnostic tests (mainly blood tests) then should be done to rule out any other cause of peripheral neuropathy. Blood and urine toxicology, at this point, would not be ... very fruitful, in my opinion. If [appellant] proves to have a significant degree of peripheral neuropathy and further analysis fails to find an organic cause for this neuropathy, I think that it would be reasonable to conclude that a likely etiology is the chemical exposure over a period of many years.”

By letter dated June 15, 1999, the Office approved Dr. Batipps' request for authorization for EMG studies and blood testing. The Office stated that Dr. Batipps had 30 days to submit his test results.

By decision dated August 23, 1999, the Office denied appellant's claim, finding that she failed to establish a medical condition or disability causally related to factors of her federal employment.

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

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature; nor is the Office a disinterested arbiter. The Office share responsibility in the development of the evidence to see that justice is done.¹ Although a claimant has the burden of establishing his entitlement to compensation, the Office should assist in this process in particular circumstance.²

In this case, Dr. Batipps emphasized that appellant needed to undergo EMG studies and blood testing to determine whether her toxic polyneuropathic condition was caused or aggravated by her exposure to toxic chemicals and solvents during her federal employment. In its June 15, 1999 letter, the Office authorized Dr. Batipps to administer these tests, but allowed only 30 days for appellant to schedule an appointment, undergo the tests and then have Dr. Batipps submit a report to the Office.

Appellant argues on appeal that, pursuant to the Office's authorization for further testing, she was unable to schedule an appointment with Dr. Margit L. Bleecker, the physician to whom Dr. Batipps referred her, until September 23, 1999. Therefore, she was unable to furnish the information requested within the Office's deadline.

The Board finds that the medical evidence in this case has not been adequately developed. Although Dr. Batipps' May 10, 1999 report is not sufficient to meet appellant's burden of proof, it raises an uncontroverted inference that appellant's long-term exposure to toxic chemicals may have resulted in a work-related condition.³

Therefore, the case will be remanded for further development of the evidence to determine whether appellant met her burden of establishing that she sustained a toxic neuropathic condition in the performance of duty. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

¹ *Jimmy A. Hammons*, 51 ECAB ____ (Docket No. 98-1259, issued December 8, 1999).

² *Marco A. Padilla*, 51 ECAB ____ (Docket No. 98-1296, issued December 6, 1999).

³ *See John J. Carlone*, 41 ECAB 354 (1989).

The August 23, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
March 7, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member