

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA J. MARTIN and DEPARTMENT OF THE INTERIOR,
NATIONAL MARINE FISHERIES OFFICE, Boise, ID

*Docket No. 01-470; Submitted on the Record;
Issued October 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof in establishing that she had "sick building syndrome" causally related to exposure to fumes and chemicals at the employing establishment.

On March 12, 1999 appellant, then a 30-year-old fisheries biologist, filed a claim for sick building syndrome, which she related to her work at the employing establishment. She noted that she had reported the condition initially on April 5, 1998. Appellant stated that the employing establishment moved into offices in a new building on November 18, 1996. She noted that the office was on the third floor of a three-story building with closed air circulation, windows that could not be opened and an air supply that was turned off every evening and weekend. Appellant commented that the offices of the employing establishment in the building always had a stronger chemical odor than other areas of the building. She stated that within a few days of occupancy, April 6, 1998, she began having symptoms of fatigue, dizziness, impaired thinking, impaired driving, headaches, burning dry eyes, burning throat, burning nose, plugged ears, upset stomach, shortness of breath, mental distress and a bad taste in her mouth. Appellant noted that she had recently become pregnant and her symptoms had intensified. She commented that not all symptoms were present at all times. Appellant indicated that she was exposed to the office for nine hours a day since March 30, 1998. She related that in the summer months, she noticed that the odors became worse and her symptoms would begin occurring more rapidly in the day. Appellant noted that a sulfuric acid leak occurred in the building on August 12, 1998. She reported that on September 21, 1998 a person came into the building and became ill. The local police department investigated the incident and closed the first floor of the building to the public. Appellant stated that when she came to work that day, she developed a persistent bad taste in her mouth and, after lunch, had a headache, burning eyes and a burning nose. Her supervisor sent her home to work for the rest of the day.

Appellant indicated that testing had revealed office contaminants such as formaldehyde, 1,2-dichloroethane, heptane, toluene, acetone, sec-butanol, hexane, mineral spirits and elevated levels of carbon dioxide. She submitted environmental reports that discussed the testing for

odors and contaminants. Appellant noted that after recent air quality tests, the ventilation system in the building was improved which reduced her symptoms for two weeks before they returned. She was allowed to work at an alternative work site beginning December 11, 1998.

Appellant submitted an August 1997 air quality report for the employing establishment building. The report indicated that there was a low volume of air being delivered to the third floor space occupied by the employing establishment, lower than the amount required by the building lease. The report stated that the lack of outdoor air permitted the normal building indoor contaminant to reach a higher equilibrium concentration, which had resulted in higher employee health complaints. The report made recommendations on how to increase airflow into the employing establishment's offices. A January 1997 air quality report for the employing establishment building indicated that total volatile organic compounds were present in the building at levels 2 to 14 times higher than that of outside air, with the highest levels found on the third floor. The report noted that specific air samples taken in November 1996, when no outside air was being supplied to the building, identified at least nine contaminants in the office spaces, all of which were below recognized industry health standards. The report indicated that occasionally air distribution within the building was disrupted due to mechanical breakdowns. The report concluded that the off-gassing of air contaminants from new furniture and equipment, coupled with potentially inadequate air distribution at times, were and might continue to be the direct cause of many complaints of eye irritation, sore throats and possibly other adverse health effects experienced by many building occupants.

An October 28, 1998 report on indoor air quality at the employing establishment stated that, in testing performed in October 1998, the total volatile organic compounds in the employing establishment building were within the range normally encountered in an office building. The report indicated that laboratory results on the air samples for aldehydes showed very low aldehydes and formaldehyde levels. The mold spore levels and carbon dioxide levels were reported as very low and within a normal range for office buildings. The levels for the parameters measured during the survey were described as well below the permissible exposure levels set by the Occupational Safety and Health Administration. The report noted that the highest level of total volatile organic compounds were found in the third floor offices of the employing establishment. The report indicated that compounds with high abundance in these offices were toluene, hexanal, xylene isomers, propylene glycol and texanol. The report commented that the compounds were associated with motor vehicle exhaust, cleaning products, solvents, paints and disinfectants. The carbon dioxide levels were reported as ranging between 300 and 720 parts per million (ppm) which was within the normal range for office environments.

Appellant submitted a September 24, 1998 report from Dr. Michael P. Gibson, Board-certified in occupational medicine, who diagnosed headache, sore throat and sick building syndrome. He noted that hygienists had identified many volatile organic chemicals in the building. Dr. Gibson indicated that, although none of the chemicals were above the threshold limit, they were all higher than the levels found in outside air. He related that appellant became employed at the employing establishment site in April 1998 and almost immediately began to have symptoms of dry, burning eyes, nostrils and throat, dizziness and fatigue, which was similar to the complaints of other employees of the employing establishment. Dr. Gibson noted that appellant had allergic rhinitis symptoms and an enlarged thyroid but normal thyroid function. He concluded that appellant's symptoms were most compatible to sick building syndrome or

chemical sensitivity to the combination of ambient chemicals noted by industrial hygienists. In an October 5, 1998 report, Dr. Gibson recommended that appellant be reassigned to another building and removed from the premises of the employing establishment. He stated that he did not anticipate any long-term medical problems from appellant's low level exposures. Dr. Gibson predicted, however, that if appellant remained at the employing establishment building, she would have persistent problems that would diminish her quality of life.

In an April 29, 1999 letter, the Office of Workers' Compensation Programs informed Dr. Gibson that before it could accept appellant's claim, it needed a definitive diagnosis for her injury and objective evidence of her sensitivity to whatever caused her sick building syndrome, such as testing supporting a sensitivity to one or more of the organic chemicals found at her work site. In a May 7, 1999 response, Dr. Gibson indicated that he had reviewed the report of indoor air quality sent to him as well as previous data on air quality at the employing establishment. He cited the January 1997 report which related the off gassing of air contaminants in the new building, coupled with potentially inadequate air distribution, to the complaints of eye irritation, sore throats and other adverse health impacts by building occupants. Dr. Gibson stated that these complaints were precisely the complaints voiced by appellant.

In a May 20, 1999 decision, the Office denied appellant's claim on the grounds that causal relationship had not been established.

In a June 6, 1999 letter, appellant requested reconsideration. In a March 6, 2000 merit decision, the Office denied appellant's request for reconsideration.

In an August 14, 2000 letter, appellant again requested reconsideration. She submitted several articles from medical journals on the subject of sick building syndrome. She also submitted an August 9, 2000 report from Dr. Gibson, who stated that appellant's symptoms of dry burning eyes, nose and throat, dizziness and fatigue, were experienced only while she was at work and was experienced by similar employees who occupied the employing establishment building. He stated that he diagnosed appellant with sick building syndrome as supported by medical literature. Dr. Gibson indicated that there was no conclusive medical testing that he could perform in regards to sick building syndrome. He pointed out that appellant's symptoms abated once she was removed from the employing establishment but returned whenever she returned to the building.

In a November 7, 2000 merit decision, the Office denied appellant's request for modification of the prior decisions.

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

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;¹ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the

¹ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

presence or occurrence of the disease or condition;² and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

Dr. Gibson diagnosed sick building syndrome, marked by allergic rhinitis and many other associated symptoms. Appellant submitted a factual statement, accompanied by several air quality reports, to show that she had been exposed to chemical odors in the employing establishment. Dr. Gibson, based on appellant's history, the air quality reports and medical literature, diagnosed sick building syndrome or chemical sensitivity. He noted that appellant had the symptoms only when she was at work in the employing establishment building that was the subject of the air quality studies and complaints. His reports were uncontradicted by any other medical evidence of record. Dr. Gibson's reports, while insufficient to establish that appellant's symptoms were causally related to her exposure to chemical fumes at the employing establishment, are sufficient to require further development of the medical record.⁷

The case must, therefore, be remanded for further development. On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate specialist for an examination. The specialist should provide a diagnosis of appellant's condition and give his opinion on whether appellant's condition was causally related to her exposure to chemical fumes at the employing establishment. If the specialist should find that appellant's condition is causally related to her employment, he should address whether appellant had any long-term effects due to the exposure to chemical fumes at work.

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

³ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

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

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ *John J. Carlone*, 40 ECAB 354 (1998).

The decisions of the Office of Workers' Compensation Programs, dated November 7 and March 6, 2000, are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
October 4, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member