U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE H. WALKER, JR. and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 01-1601; Submitted on the Record;
Issued January 14, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's asthma was caused or aggravated by his federal employment.

This case is on appeal to the Board for the sixth time.[1] On the first appeal, the Board affirmed the decision of the Office of Workers' Compensation Programs dated August 9, 1989 in which the Office determined that appellant's claims for severe generalized dryness of skin, lichenified eczema and allergy to molds were not timely filed and appellant did not establish that his asthma condition was caused or aggravated by employment factors. The Board set aside the Office's August 16, 1989 decision to determine appellant's entitlement to compensation for his urticarial condition and to address appellant's emotional claim. On the second appeal, the Board affirmed the Office's April 6, 1992 decision to the extent that the Office denied appellant's claims for stress, lichenified eczema, allergy to molds and reversed that part of the decision denying appellant's claim for asthma, with instructions to remand for the Office to consider new evidence appellant submitted in support of his asthma claim. The Board affirmed the Office's June 26, 1992 decision in which the Office found that appellant's June 11, 1992 request for reconsideration was untimely filed and failed to establish clear evidence of error.

On the third appeal, the Board affirmed the Office's March 1, 1994 decision, to the extent it denied appellant's claims for uticaria/dermatitis and stress but set aside the Office's denial of appellant's asthma claim, and remanded for the Office to consider all the relevant evidence appellant submitted to support his claim. On the fourth appeal, the Board set aside the Office's March 6, 1998 decision, stating that the Office erred in not considering all the relevant evidence in denying appellant's claim for asthma and remanded the case for the Office to consider the new

[1] Docket No. 9-1760 (issued September 11, 2000). Docket No. 98-1760 (issued June 16, 2000). Docket No. 94-1743 (issued February 7, 1996). Docket No. 92-2004 (issued October 8, 1993). Docket No. 89-1814 (issued May 15, 1990). The facts and history surrounding the prior appeals are set forth in the prior decisions and are hereby incorporated by reference.

evidence, specifically the January 30, 1997 report of Dr. Edwyn L. Boyd, a Board-certified otolaryngologist, and the July 13, 1996 rating decision by the Department of Veterans Affairs. On the fifth appeal, the Board denied appellant's petition for reconsideration, and stated that the Office would conduct a merit review of appellant's asthma claim and issue an appropriate final decision.

In a report dated December 28, 1989, Dr. Erik R. Swenson, a Board-certified internist, stated that appellant has symptomatic asthma, which required daily inhaled bronchodilators and oral theophylline. He stated that the onset of the asthma was temporally related to his former occupation as a sandblaster with the employing establishment where he had exposure to silica, copper, nickel and other metal contained in the abrasive slag used for sandblasting. Dr. Swenson stated that appellant was a nonsmoker with no previous personal or family history of asthma or allergic conditions. He stated that appellant's history, physical examination and laboratory results supported the diagnosis of an occupationally acquired asthma or restrictive airways disease. Dr. Swenson stated that the condition might be life long despite cessation of exposure to the initial inciting agents.

In a January 30, 1997 report, Dr. Boyd stated that appellant had documentation of existing allergic disease with the development of asthma as a result of employment with exposure to a variety of different chemicals as a sandblaster. He stated that appellant's record indicated that his work environment aggravated his condition and he improved when he was removed from the work environment. Dr. Boyd noted that appellant was placed back in the same environment and continued to have problems and he had to continue to rely on medications and bronchodilators for occupationally-induced asthma. He stated that he agreed with Dr. Swenson that appellant's history and documentation supported the diagnosis of an occupationally acquired asthma or reactive airway disease syndrome, and he agreed with Dr. Swenson's conclusion that appellant's condition might be lifelong despite cessation of exposure to the initial citing agents.

A Department of Veterans Affairs rating decision dated January 20, 1994 which was based on service records from December 19, 1972 to July 6, 1978 and an examination dated June 8, 1979 stated that appellant's entitlement to service connection for asthma was not established, meaning the service medical records were entirely void as to any findings or treatment of asthma in service. A Department of Veterans Affairs rating decision dated July 13, 1996 which was based on "private medical evidence" with reference to private doctors and a clinic but no dates stated that new and material evidence adequate to reopen the claim for service connection for paranoid schizophrenia to include major depression had not been submitted. The decision also stated that the claim for service connection of sinusitis/rhinitis was not well grounded because there was no record of treatment in service for sinusitis/rhinitis.

In a transcript of a hearing with the Social Security Administration dated December 17, 1992 regarding appellant's entitlement to disability benefits, the vocational expert, Dr. Robert E. Griffin, opined that appellant could perform light work given he could have no exposure to dust, fumes, gases or paint and could not perform repetitive bending. Appellant testified that his job as a sandblaster involved working in a closed space "around a lot of dust and chemicals," and he also sandblasted outside of ships "where the dust flies down over you." He stated that he developed his asthma, eczema and dermatitis while sandblasting even while wearing a rubber mask.

A certificate of examination from Dr. Orval Dean dated July 1, 1980 noted that appellant was exposed to fumes, smoke, gases, asbestosis and silica while working as a sandblaster.

A sandblasting analysis of the work environment at the employing establishment dated September 14, 1983 evaluated the quantity of metals, chemical and chemical compounds which were present.

By decision dated August 11, 2000, the Office denied appellant's claim for asthma, stating that the medical evidence of record was of diminished probative value and insufficient to establish that appellant's asthma condition was caused or aggravated by employment factors. The Office stated that it was denying modification of the September 9, 1997 decision.

On September 22, 2000 appellant requested reconsideration of the Office's decision.

By decision dated November 1, 2000, the Office denied appellant's request for reconsideration.

On November 1, 2000 appellant requested reconsideration of the Office's decision.

By decision dated December 1, 2000, the Office denied appellant's request for reconsideration.

On January 11, 2001 appellant requested reconsideration of the Office's decision and submitted a report from Dr. Boyd dated January 7, 2001. In his report, Dr. Boyd stated:

> "[Appellant's] medical history prior to 1983 was devoid of anything related to asthma or urticaria. Even the Department of Veteran's Affairs failed to identify any causal history of asthma during, or prior to, his military career. His symptoms of asthma and urticaria did not begin until 16 months after his date of employment in the shipyard as a sandblaster. This period time was sufficient for his immune system to become sensitized not only to the moldy and chemically rich work environment but also to his protective clothing."

Dr. Boyd stated that he was "suspicious" that appellant's clothing might have had some coating of latex, to which he also became sensitized, and that the failure of the clothing to protect him adequately from the chemicals and debris of the sandblasting, was an additive effect on the development of his urticaria.

Dr. Boyd also noted that appellant was removed from the "instigating environment" for one month on September 7, 1983 and that appellant's urticarial and asthmatic symptoms resolved during that time. He stated that the action demonstrated a causal relationship "by virtue of appellant not having the exposure and consequently not having any symptoms" and when he was reassigned to his duties as a sandblaster, the symptoms recurred. Dr. Boyd stated that the immune system is like a computer which remembers foreign materials and when the patient is reexposed to offensive foreign materials, the immune system would react again in a harmful manner and that is what happened in appellant's case.

By decision dated April 13, 2001, the Office denied appellant's request for modification.

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

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; 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. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 appellant'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, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[2]

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[3]

In this case, Dr. Boyd's January 30, 1997 and January 11, 2001 opinions that appellant acquired occupationally-induced asthma at the employing establishment are not sufficiently rationalized to establish the requisite causal connection between appellant's asthma and his federal employment. However, while Dr. Boyd's opinion is insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his condition is work related, it constitutes sufficient evidence in support of appellant's claim to require further development of the record by the Office.[4] No medical evidence of record refutes a causal connection between appellant's asthma and his federal employment, and the Department of Veterans Affairs ratings dated January 20, 1994 and July 13, 1996 establish that appellant did not have a history of asthma or sinusitis and rhinitis while in service in the seventies and for a period of time after his service. Moreover, because appellant's asthma was not active or existent during his military service or for a period of time after his service, the doctor's note dated August 4, 1983 which states that appellant had asthma since childhood, does not automatically preclude a finding that appellant's employment as a sandblaster with the employing establishment caused or aggravated his asthma condition. Although it is well established that proceedings under the Federal Employees' Compensation Act[5] are not adversarial in nature,[6] and

[2] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[3] *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[4] *See Horace Langhorne*, 29 ECAB 820 (1978).

[5] 5 U.S.C. §§ 8101-8193.

[6] *See Shirley A. Temple*, 48 ECAB 404, 409 (1997); *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[7] The Office has an obligation to see that justice is done.[8]

The case will be remanded for the Office to prepare a statement of accepted facts and refer the statement, the case record and appellant to a physician in the appropriate field of medicine for a rationalized medical opinion regarding whether appellant's asthma was caused or aggravated by his federal employment, and, if so, whether the aggravation was temporary or permanent. Following any further development, the Office shall issue a *de novo* decision.

The April 13, 2001, August 11, November 1 and December 1, 2000 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
January 14, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992); *Robert A. Redmond*, 40 ECAB 796 (1989).

[8] *Dennis J. Lasanen*, *supra* note 7 at 550; *William J. Cantrell*, 34 ECAB 1233 (1983).