

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL J. CHOPYAK and DEPARTMENT OF VETERANS AFFAIRS,
WILKES BARRE MEDICAL CENTER, Wilkes Barre, PA

*Docket No. 02-1718; Submitted on the Record;
Issued January 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish periods of disability from September 11 to October 10, 2000 and December 18, 2000 to March 23, 2001 for which the Office of Workers' Compensation Programs did not authorize leave buy back.

On January 11, 2000 appellant, then a 45-year-old medical supply technician, filed an occupational disease claim, alleging that he had been exposed to ethylene oxide gas while in the performance of his federal duties. By letter dated February 2, 2000, the Office accepted that appellant sustained an episode of asthma due to exposure to ethylene oxide.

On May 30, 2001 appellant filed claims for compensation for the periods September 11 to October 10, 2000 and December 18, 2000 to March 23, 2001 and requested leave buy back for these periods. By letter dated February 11, 2002, the Office informed appellant that the medical evidence of record was insufficient to establish his entitlement to wage-loss compensation. The Office advised appellant that his treating physician should provide a thorough narrative report to support all periods of claimed disability. In response, appellant submitted medical evidence. By decision dated May 7, 2002, the Office denied appellant's claim for compensation and leave buy back on the grounds that the medical evidence of record did not contain a reasoned medical opinion that he was totally disabled from all work during the times of claimed disability. The instant appeal follows.

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

In general, the term "disability" under the Federal Employees' Compensation Act¹ means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.² Disability is not synonymous with physical impairment which may

¹ 5 U.S.C. §§ 8101-8193.

² *Janice J. Green*, 49 ECAB 307 (1998).

or may not result in an incapacity to earn wages. An employee who has had a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity. When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing his or her employment, he or she is entitled to compensation for any loss of wage-earning capacity.³

Causal relationship is a medical issue,⁴ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, 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 the claimant.⁵

The medical evidence relevant to appellant's ability to work for the periods September 11 to October 10, 2000 and December 18, 2000 to March 23, 2001 includes a number of reports from his treating physician, Dr. Joseph C. Koval, who is Board-certified in internal medicine and pulmonary disease. In a report dated August 24, 2000, Dr. Koval noted the history of occupational exposure to ethylene oxide gas and appellant's complaints of wheezing and shortness of breath. He advised that, while the pulmonary function tests were normal, they suggested the presence of reversible bronchospasm. Dr. Koval concluded that appellant had developed asthma, "most likely secondary" to the occupational exposure of ethylene oxide gas.

In a report dated August 28, 2000, Dr. James J. Kosik, a Board-certified internist, noted wheezing on examination and diagnosed ethylene oxide exposure with asthma.

By report dated October 10, 2000, Dr. Koval advised that appellant's asthma was not adequately controlled. In an attending physician's report dated January 18, 2001, he noted findings of wheezing on lung auscultation and diagnosed ethylene oxide induced asthma. Dr. Koval checked the "yes" box, indicating that the condition was employment related. He further advised that appellant had been placed on four medications and had permanent effects that were "as yet unknown."

By report dated April 23, 2001, Dr. Kosik diagnosed asthma secondary to ethylene oxide exposure and advised that appellant had been disabled since August 18, 2000. He stated that appellant would attempt to return to work and was restricted to work in well-ventilated and low humidity work situations and should avoid exposure to fumes which could exacerbate his dyspnea.

³ *Lyle E. Dayberry*, 49 ECAB 369 (1998).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. Koval provided an attending physician's report dated April 6, 2001, in which he repeated his findings and conclusions and advised that appellant should avoid fume, chemical and dust exposure. He advised that the period of total disability was "unknown," and that appellant was partially disabled from November 15, 1999 to April 23, 2001. On May 15, 2001 Dr. Koval approved a light-duty job offer, and, in separate letters dated June 6, 2001, he diagnosed ethylene oxide induced asthma and advised that appellant had been "off work due to occupational exposure to ethylene oxide and was under my care" for the periods September 11 to October 6, 2000 and December 18, 2000 to March 23, 2001.

In an attending physician's report dated January 2, 2002, Dr. Kosik noted findings of dyspnea from asthma secondary to ethylene oxide exposure that was employment related. He repeated his work restrictions and advised that appellant was totally disabled from August 18, 2000 to April 23, 2001.

The Board initially notes that under the Act⁶ appellant is entitled to wage-loss compensation for time off from work in which he obtained medical treatment for the employment-related condition.⁷ The record in the instant case indicates that appellant underwent medical treatment on the following dates for the accepted condition of ethylene oxide induced asthma: October 10 and December 19, 2000 and January 18 and March 22, 2001.

The Board further finds that, while Dr. Koval's reports taken as a whole are insufficient to establish that appellant was disabled from work for the relevant periods of the instant claim, the fact that they contain deficiencies preventing appellant from discharging his burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Dr. Koval was consistent in his opinion that appellant had ethylene oxide asthma, the accepted condition in the instant case, and submitted reports indicating that appellant had been off work for the specific periods in the instant claim due to occupational exposure to ethylene oxide. The Board therefore finds that these opinions are sufficient to require further development of the record.⁸ It is well established that proceedings under the Act are not adversarial in nature,⁹ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰ On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether his employment-related condition prevented him from work for the periods September 11 to October 10, 2000 and December 18, 2000 to March 23, 2001. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8123(b).

⁸ See *Lourdes Davila*, 45 ECAB 139 (1993); *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

⁹ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹⁰ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated May 7, 2002 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
January 24, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member