U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES R. MOLNAR and U.S. POSTAL SERVICE,
AKRON PROCESSING & DISTRIBUTION, Akron, OH

Docket No. 03-630; Submitted on the Record;
Issued July 17, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in denying authorization for a bronchoscopy; and (2) whether the Office properly denied appellant's request for a hearing as untimely under 5 U.S.C. § 8124.

On October 15, 2001 appellant, then a 49-year-old mailhandler, filed a claim for a traumatic injury to his lungs on October 10, 2001 when he "inhaled toxic chemical fumes due to [a] leaking package of [a] substance that should not have been in [the] mail flow."[1] Appellant stopped work on October 15, 2001.

Appellant received treatment on October 15, 2001 for acute chemical exposure. The physician released him to return to work with a restriction of no chemical exposure for one week.

In a report dated October 17, 2001, Dr. Kenneth M. Cardlin, who is Board-certified in family practice, described appellant's work exposure to Turfcide, a chemical used on golf courses, and noted that its active ingredient was para-nitrochlorobenzine (PNCB). Dr. Cardlin discussed appellant's symptoms of cough, whitish sputum and a headache. He found that appellant had "a mucous membrane irritation in the nasal passages and oropharynx, and possibly upper airways of the lungs. Examination is normal, other than some clear drainage and [appellant] subjectively has had significant improvement." Dr. Cardlin stated, "The MSDS [material safety data sheets] reveal that mucous membrane irritation would be the most significant expected problem for his type of exposure. [Appellant] does not show any other toxicity." He found that appellant could resume his regular employment but should avoid chemical or solvent exposure for a few days.

In a report dated April 17, 2002, Dr. Thomas G. Olbrych, a Board-certified internist, diagnosed a cough and dyspnea due to PNCB exposure. Regarding whether there was a causal

[1] Appellant also had limited exposure to the chemical, Turfcide, on October 11, 2001.

relationship between the diagnoses and appellant's PNCB exposure, the physician stated that he was "in the process of attempting to determine this." Dr. Olbrych noted that he had scheduled a bronchial inhalation challenge for April 26, 2002.

On May 31, 2002 the Office informed appellant that it had accepted his claim for acute chemical exposure. The Office indicated that it had initially processed his claim as a short-term closure with medical treatment on October 15 and 17, 2001. The Office noted that appellant's physician had requested authorization for a bronchoscopy. The Office informed appellant that he should submit additional factual and medical information regarding the causal relationship between his current condition and his accepted October 10, 2001 employment injury.

In a response dated June 17, 2002, appellant related:

> "Prior to [my] exposure on October 10, 2001 I did not have the following symptoms that I am having now. I am experiencing watering eyes, coughing up to periods of 20 min[utes] (only relieved with nebulizer, Albuterol) a sensation of heavy chest feeling, [and] waking up with cough and phlegm being coughed up on a daily basis. After October 17, 2001 I went to Dr. [John T.] Given, [a Board-certified allergist and internist,] because I was having [a] hard time breathing and had [a] deep cough, wheezing, watering eyes [and] sinus drainage. His treatment with steroids has helped me to where I can report to work."

Appellant further related that Dr. Given treated him on December 11 and 12, 2001 and February 12 and 13, 2002 after he was exposed to floor stripper fumes at work.

Appellant submitted reports from Dr. Given. In a report dated October 25, 2001, Dr. Given evaluated appellant due to his two-week "history of watery eyes, nasal congestion, cough, dyspnea and wheezing after exposure to PNCB at work." He noted that appellant's symptoms had improved and stated, "[appellant] associates the cough with post nasal drainage and mild and upper chest irritation. His background history includes exposure to PNCB (nitroside 400)." Dr. Given indicated that appellant's symptoms were "aggravated by various respiratory irritants and dust" and that x-rays of appellant's chest and sinuses were normal. He stated:

> "I suspect the cough, dyspnea and wheezing is secondary to bronchial irritation. The acute worsening was most likely caused by irritant exposure. I suspect the nasal congestion and eye irritation is due to nasal passageway irritation. Until testing is completed, it [is] not possible to say anything too definite about specific allergies."

On December 13, 2001 Dr. Given advised the employing establishment that appellant should wear a respiratory mask to filter chemical fumes. Dr. Given also treated appellant on February 13, 2002 for a cough. He further completed a certification of health care provider form for appellant, in which he indicated that he treated appellant every four to six weeks for chronic rhinitis, dyspnea, wheezing and cough. Dr. Given noted that appellant's condition began around October 11, 2001 and that he could not predict the duration or frequency of any periods of incapacity.

In a report dated June 17, 2002, Dr. Olbrych discussed appellant's history of chemical exposure at work and subsequent symptoms of cough, wheezing and shortness of breath. He stated:

> "It was my impression after review of [appellant's] history, physical examination, normal October 15, 2001 chest x-ray and pulmonary function studies that demonstrated normal vital capacity and FEV^1 (forced expiratory volume in the first second) without response to bronchodilators, that these symptoms were suggestive of reactive airways dysfunction syndrome or asthma. It was difficult to explain this. His pulmonary functions were normal, peak flows were normal...."

Dr. Olbrych noted that an inhalation challenge showed no bronchial hyper responsiveness or abnormal pulmonary function. He opined:

> "It is conceivable that [appellant] has had an inhalation injury to his trachea. The inhalation challenge and the lack of response to bronchodilator inhaled corticosteroids suggests that this is not a syndrome of reactive airways dysfunction or asthma.
>
> "I recommended flexible bronchoscopy to further evaluate [appellant's] symptoms and possible tracheal injury in light of the fact that at least three of the inspiratory flow volume loops during the inhalation challenge demonstrate a variable extrathoracic upper airway obstruction, and similar physiologic findings are demonstrated on pulmonary function studies by Dr. Givens on October 25, 2001."

Dr. Olbrych further related:

> "[Appellant's] pulmonary function is normal except for the variable extrathoracic upper airways obstruction. He does not meet the American Thoracic Society criteria for disability. However, his ability to work could be more fully assessed with visualization of the airway to evaluate for the presence of tracheal injury or stenosis, as suggested by the above-mentioned pulmonary function studies. The exposure to Turfcide 400 triggered these symptoms. The material safety data sheet regarding this product demonstrates that its primary active ingredient is pentachloronitrobenzene. This may cause eye irritation, and it is advised to avoid breathing vapor or spray mist."

In a decision dated August 16, 2002, the Office denied authorization for a bronchoscopy on the grounds that the evidence did not establish that it was warranted due to appellant's October 10, 2001 employment injury. The Office noted that appellant had described new work exposures in December 2001 and February 2002 but that Dr. Olbrych's June 17, 2002 report did not address the new exposures.

In a letter dated and postmarked September 17, 2002, appellant requested a hearing. By decision dated October 30, 2002, the Office denied appellant's request for a hearing as untimely.

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

Section 8103(a) of the Federal Employees' Compensation Act states in part: "the United States shall furnish to an employee who was injured while in the performance of duty the services, appliances, and supplies prescribed by a qualified physician which the Secretary of Labor considers likely to cure, give relief, reduce the period or degree of disability, or aid in lessening the amount of 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 only limitation on the Office's authority is that of reasonableness.[3]

In this case, the Office found that appellant's attending physician, Dr. Olbrych, did not rely on a complete medical history in rendering his opinion regarding appellant's need for a bronchoscopy. The Office noted that Dr. Olbrych reached his opinion without apparent knowledge of appellant's two alleged exposures at work to chemicals after his accepted May 10, 2001 employment injury. However, while Dr. Olbrych did not mention appellant's possible additional work-related exposures to chemicals subsequent to May 10, 2001, he has provided medical rationale supporting that appellant's need for a bronchoscopy was causally related to his employment injury. In his report dated June 17, 2002, Dr. Olbrych found that appellant's inhalation challenge revealed "a variable extrathoracic upper airway obstruction" which could indicate an "inhalation injury to his trachea." Based on the results of the pulmonary function studies, Dr. Olbrych recommended a bronchoscopy to determine whether appellant had a tracheal injury due to his May 10, 2001 employment injury. Furthermore, in finding that appellant did not establish that the requested bronchoscopy was causally related to his accepted employment injury, the Office did not obtain the opinion of an Office medical adviser or otherwise develop the evidence. The Board, therefore, finds that the case must be remanded to the Office for additional development of the medical evidence on the issue of whether appellant requires a bronchoscopy due to his accepted employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.[4]

[2] 5 U.S.C. § 8103.

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

[4] In view of the Board's disposition of the merits, the issue of whether the Office properly denied appellant's request for a hearing as untimely under section 8124 is moot.

The decisions of the Office of Workers' Compensation Programs dated October 30 and August 16, 2002 are set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
July 17, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member