

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELVIRA G. DANQUE and DEPARTMENT OF THE NAVY,
NAVAL CONSTRUCTION BATTALION CENTER, Port Hueneme, CA

*Docket No. 03-860; Submitted on the Record;
Issued July 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an aggravation of her preexisting mitral valve prolapse due to exposure to carbon monoxide while in the performance of duty.

Appellant, a 45-year-old industrial hygiene technician, filed a notice of traumatic injury alleging that she was exposed to carbon monoxide on May 10, 2000 and experienced headaches, salivating, light-headedness and flu-like symptoms as a result. Appellant alleged that she ultimately experienced chest palpitations and tightness.

Appellant submitted medical evidence in support of her claim and the Office of Workers' Compensation Programs referred her for second opinion evaluations with Dr. John Vogel, a cardiologist, and Dr. Samir Shahin, Board-certified in occupational medicine. Appellant submitted additional factual and medical evidence following the reports from the second opinion physicians and the Office requested supplemental reports.

By decision dated November 19, 2001, the Office denied appellant's claim finding that she had not established that her exposure on May 10, 2000 resulted in an aggravation of her mitral valve prolapse. Appellant requested an oral hearing on December 13, 2001. The oral hearing was held on June 27, 2002 and by decision dated October 16, 2002, the hearing representative considered appellant's additional allegations of employment exposures and found that she failed to establish an injury in the performance of duty.

The Board finds that this 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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

Appellant initially attributed her condition to exposures to carbon monoxide on May 10, 2000. The Office developed appellant's claim as a traumatic injury and provided the second opinion physicians with a statement of accepted facts which included exposure only on May 10, 2000. Neither second opinion physician supported appellant's claim for aggravation of mitral valve prolapse as a result of employment-related carbon monoxide exposure. Dr. Shahin found that appellant's exposure to carbon monoxide was trivial on May 10 and September 11, 2000 and that her complaints of illness were not from carbon monoxide. Dr. Vogel stated, "It would seem that [appellant] did develop symptomatology secondary to carbon monoxide exposure, however, there is no significant prolapse at this time although a trace of mitral insufficiency is present."

Appellant later expanded her claim to include additional exposures to varying levels of carbon monoxide over the course of several years. Appellant's supervisor initialed the exposures as accurate. Appellant also submitted a report from Dr. Karl Bergenstal, a clinical psychologist, dated May 9, 2001 in which he opined that appellant's psychological testing indicated brain dysfunction which he attributed to her employment-related carbon monoxide exposures.

On May 18, 2001 the Office requested clarification from Drs. Vogel and Shahin. The Office requested that the physicians provide their opinions based on the statement of accepted facts and the additional information provided. Dr. Shahin provided a supplemental report on June 5, 2001 and stated that Dr. Bergenstal's report did not alter his opinion regarding appellant's condition. Dr. Vogel's July 6, 2001 report indicated that he reviewed additional medical reports. Neither physician indicated that he reviewed the evidence of additional exposure and the statement of accepted facts does not describe the additional exposures which appellant alleged caused or contributed to her condition.

Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter; in a case where the Office "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."² The record does not contain an accurate statement of accepted facts which provided Drs. Shahin and Vogel with the additional exposures to which appellant attributed her condition. The Office's procedures require that a statement of accepted facts should be complete in all essentials and that omission of a critical fact diminishes the value of a medical opinion or decision as much as an incorrect statement.³ As the initial statement of accepted facts listed only the exposure on May 10, 2000 and not the

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

² *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.11(c) (June 1995).

exposures to which appellant later attributed her claim, the Board finds that the case requires additional medical development on the part of the Office.⁴

On remand the Office should formulate a complete statement of accepted facts in accordance with its own procedures and should undertake the necessary development of the medical evidence to determine if appellant has a physical or psychological condition as a result of her accepted employment exposures. After this and such other development as the Office deems necessary, an appropriate decision shall be issued.

The October 16, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
July 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ *Id.*