U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NICOLETTE R. KELSTROM and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Fresno, CA

Docket No. 03-275; Submitted on the Record;
Issued May 14, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that her claimed chemical sensitivity condition was causally related to factors of her federal employment.

On August 1, 2000 appellant, then a 48-year-old tax technician, filed a notice of occupational disease and claim for compensation for a chemical sensitivity, which she related to exposure in her federal employment. Appellant indicated that she had a severe reaction to perfume sprayed in the next unit and, although she had spoken to her coworkers, manager and section chief, it did not stop. Appellant indicated that her allergist told her that she was sensitive to odors and to avoid any such odors she was sensitive to. Appellant submitted a medical note that indicated she had a chemical hypersensitivity that required special work conditions.

By letter dated August 25, 2000, the Office of Workers' Compensation Programs requested that appellant supply additional factual and medical information, including a comprehensive medical report that described her symptoms, results of examinations and tests, treatment provided and its effects and the physician's opinion with medical reasons on the cause of her condition. Also, by letter dated August 25, 2000, the Office requested the employing establishment to provide comments regarding the claimed exposure.

In an August 31, 2000 statement, appellant alleged that around April 2000, body sprays and perfumes were being used on a daily basis in the unit next to hers. She stated that she was exposed daily to perfumes, hairsprays, deodorants, lotions and cleaning products for the entire eight-hour day. Appellant stated that some of her reactions to chemicals were moderate, but many were severe, especially since the spraying started around April. Appellant stated that her sensitivity had increased as well as her recovery time. Appellant described her symptoms and stated that her problems eventually disappeared when she was in an odor-free place. Appellant noted that for the prior 25 years, she smoked approximately a pack of cigarettes a day and was in the process of trying to quit.

Appellant submitted a September 8, 2000 report from Dr. Natalya Malley, a Board-certified internist, who advised that appellant had a hypersensitivity to odors and chemicals with accompanying dizziness. Dr. Malley opined that several chemicals at work possibly aggravated appellant's condition.

In a September 14, 2000 letter, the employing establishment stated it was aware of appellant's exposure to perfumes and hairspray orders, but did not agree with the frequency and duration of the exposures appellant alleged. The employing establishment stated that there were only three documented occasions on July 11, August 1 and August 9, 2000, when appellant may have been exposed to irritants at work. The employing establishment further advised that precautions had been taken to minimize the effects of the exposure.

In a February 6, 2001 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that appellant sustained an injury as alleged.

By letter dated March 6, 2001, appellant requested an examination of the written record before an Office hearing representative. She responded to the employing establishment's statement and submitted clarifying statements. Appellant submitted medical reports from Drs. Robert J. Harrison, Board-certified in both internal medicine and preventive medicine with a specialty in occupational medicine, Malley and A.M. Aminian, an allergist.

In a June 30, 2000 report, Dr. Aminian, advised that appellant was seen for respiratory problems, triggered by exposure to some irritant odors such as perfumes and cologne. Dr. Aminian opined that appellant needed to avoid direct exposure to those agents.

In a July 31, 2000 memorandum, Dr. Malley stated that appellant had a chronic medical condition of chemical hypersensitivity, which required special work conditions.

In a February 1, 2001 report, Dr. Harrison, provided a history of the injury and his findings on examination. He diagnosed chemical sensitivity with headaches and fatigue. Dr. Harrison advised that appellant had developed an exquisite sensitivity to airborne irritants, including perfumes, colognes, automobile exhaust, cleansers and soaps. He stated that appellant's symptoms had significantly worsened over the prior two years as a result of exposure to coworkers' perfumes, as well as workplace exposure to desk cleaners and air fresheners. Dr. Harrison stated that although appellant requested relocation to another unit with a fragrance-free policy, this had been unsuccessful and appellant's symptoms had significantly worsened. Dr. Harrison opined that appellant's condition had become stationary and he did not expect her to improve. Recommended treatment was primarily avoiding those chemicals that bother her. Dr. Harrison opined that appellant was permanently disabled and, therefore, eligible for disability retirement. He further advised that appellant should discontinue her use of cigarettes.

In a February 22, 2001 report, Dr. Harrison advised that appellant had developed a chemical sensitivity with headaches and fatigue. He opined that this condition was a result of exposure to coworker perfumes, desk cleaners and air fresheners. The chronology of events submitted by the employing establishment documented that appellant was developing symptoms as a result of perfume and deodorizers in her area. Dr. Harrison stated that this chronology corresponded to the history of illness he obtained from appellant. He further stated that appellant

forwarded him a chronology of events that documented her symptoms to exposure at work. Dr. Harrison opined that there was substantial evidence that appellant had a work-related condition.

In a June 18, 2001 report, Dr. Harrison stated that appellant's symptoms were consistent with a syndrome known as multiple chemical sensitivity, which he noted to be a somewhat controversial diagnosis. He further noted that the results from pulmonary function studies did not show any evidence of increased airway responsiveness. Laboratory studies were also noted as being normal.

In a February 28, 2002 decision, the Office hearing representative found that the reports from Dr. Harrison raised an inference of causal relationship between the diagnosed condition and appellant's work environment. Although Dr. Harrison's reports contained deficiencies that prevented appellant from discharging her burden of proof, the hearing representative found the reports were sufficient to require further development of the evidence by the Office. The Office hearing representative set aside the April 10, 2001 Office decision and remanded the case record for further development of the medical evidence.

On remand, the Office prepared a March 13, 2002 statement of accepted facts and referred appellant, together with the statement of accepted facts and the case record, to Dr. Paul Manchester, Board-certified in preventative medicine with a specialty in occupational medicine, to conduct a second-opinion evaluation.

In a June 19, 2002 report, Dr. Manchester noted appellant's occupational history, the history of injury, appellant's current complaints and past medical history. He also reviewed appellant's medical records and provided the results of his physical examination. Dr. Manchester advised that appellant had been given the label of "multiple chemical sensitivity" or hypersensitivity to chemicals, or chemical sensitivity. He stated that although Dr. Harrison indicated this was a well-described condition, this was only partially correct. Dr. Manchester stated that this was a syndrome, defined entirely by subjective symptoms, in which people report a variety of constitutional and psychological effects that they relate to low-level environmental exposures of many types. While this had been labeled multiple chemical sensitivity by some investigators, Dr. Manchester explained that more recently it had been proposed that this syndrome be titled "idiopathic environmental intolerance" (IEI) to more accurately reflect the lack of a chemical basis for the condition. He noted that there were no objective findings or tests to establish the diagnosis. Instead, it was based entirely on the patient's report. Dr. Manchester stated that this was true in appellant's case.

Dr. Manchester stated that if there were an attempt to define a specific chemical basis for IEI symptoms, there would be many inconsistencies in the histories of IEI patients that it would quickly become impossible to construct any meaningful physiologic direct chemical basis for the symptoms. In appellant's case, Dr. Manchester stated one need only look to her history of smoking. He stated that appellant was daily exposed to high concentrations of powerfully aromatic cigarette smoke, which is made up of many "chemicals," but yet somehow this exposure did not trigger a reaction. Dr. Manchester stated that the nature of this syndrome was entirely based upon a patient's report rather than on any measurable environmental or physical factor. He stated that from the history appellant provided him, she had generalized reactions that

were not isolated to the workplace. Appellant reported reactions to some scented products and said reactions were not restricted to the workplace. Dr. Manchester also noted symptoms of a nonspecific nature that occurred at the workplace and outside the workplace. He opined that this did not, of itself, establish a workplace causation for appellant's underlying problem.

Dr. Manchester reiterated that there was no medically accepted or scientifically proven chemical cause, based on generally accepted principles of toxicology or known physiologic effects of chemicals, to explain this or other patient's symptoms of IEI. Dr. Manchester opined that he did not believe that any single agent in appellant's workplace could be identified as causing her symptoms. Dr. Manchester noted that appellant had described a gradual onset of symptoms throughout the last 10 years without any definite initiating factors. It was only after the presence of symptoms for a period of days, weeks, or months, that appellant made the connection to putative environmental chemicals. Dr. Manchester stated that appellant's work exposures, according to the statement of accepted facts, were at average levels as would be expected for a typical office environment. He stated that while appellant reported a generalized increase in symptoms around April 2000, he had no way of establishing a definite cause or relationship to any purported exposures to work or elsewhere. Dr. Manchester explained that nature of IEI was such that it was impossible to document any definite cause or relationship to any specific exposure. Accordingly, he stated that he had no firm information, on which to base a diagnosis of aggravation of a purported chemical sensitivity. Because IEI was completely subjective and unmeasurable, he could not define any aggravation with any certainty. He noted that while there were many subjective complaints, there were no objective findings, which was typical for IEI.

Dr. Manchester stated that he was unaware of any preexisting disability prior to appellant's description of symptoms in the early 1990's, but he did not believe appellant's current symptoms were directly caused by any workplace exposure. Instead, he opined that appellant's condition developed gradually, independent of any specific workplace exposure. He further opined that any disability was not specifically attributable to chemicals *per se*, but instead was based on appellant's complex of symptoms, which did not have a current, generally accepted cause. He further stated that IEI was due to a perception of a chemical insult rather than a true, physical chemical insult. Therefore, a significant portion of treatment needed to be psychological in nature. As appellant had a variety of symptoms that were ongoing and not significantly improving, Dr. Manchester opined that appellant could benefit from a comprehensive medical treatment program, including psychological treatment.

By decision dated August 14, 2002, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a chemical sensitivity condition as a result of her federal employment. The Office attributed determinative weight to the opinion of Dr. Manchester, the second opinion physician.

The Board finds that appellant has not met her burden of proof in establishing that she has a chemical sensitivity condition causally related to factors of her federal employment.

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 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 certainty[5] 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]

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.[7]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report.[8]

The Board finds that the weight of the medical evidence rests with Dr. Manchester who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that he did not believe that any single agent in appellant's workplace could be identified as causing appellant's symptoms. Dr. Manchester discussed a syndrome, described as IEI, which was defined entirely

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

[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 384-85 (1960).

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

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

[8] *See Connie Johns*, 44 ECAB 560 (1993).

by subjective symptoms, in which people, like appellant, reported a variety of constitutional and psychological effects, which they relate to low-level environmental exposures. Dr. Manchester noted that appellant's exposure to cigarette smoke did not trigger a reaction, but she reported a reaction to some (but not all) scented products, wherever they might be and noted such reactions were not restricted to the workplace alone. Dr. Manchester opined that although appellant reported a general increase in symptoms around April 2000, there was no way to establish a causal relationship to any purported exposures to work or elsewhere as the nature of her condition was completely subjective and unmeasureable. Dr. Manchester further stated that appellant's current symptoms were not directly caused by any workplace exposure, but instead developed gradually, independent of any specific workplace exposure and was based on appellant's complex of symptoms and her perception of a chemical insult rather than a true, physical chemical insult.

Although Dr. Harrison noted that appellant developed an exquisite sensitivity to airborne irritants and her symptoms had significantly worsened over the last two years as a result of workplace exposure to coworkers' perfumes, desk cleaners and air fresheners, his reports are of lesser probative value because they fail to offer a well-rationalized medical opinion explaining how or why appellant's condition arose out of or contributed to her employment exposure. Moreover, the coincidence in the time between the onset of appellant's symptoms and the fact she was working in an office environment is speculative at best as there is no rationalized explanation that appellant's condition was caused by her work environment.[9]

Accordingly, appellant has not discharged her burden of proof to establish that her chemical sensitivity condition is causally related to her federal employment.

[9] *See Wendell D. Harrell*, 49 ECAB 289, 291 (1998).

The decision of the Office of Workers' Compensation Programs dated August 14, 2002 is hereby affirmed.

Dated, Washington, DC
May 14, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member