

(GERD). The Office accepted the claim for acute laryngitis. The Office did not accept GERD because it had not received any diagnostic test confirming its existence and an explanation of how such condition resulted from exposure to construction dust at work. Appellant stopped work on February 14, 2001.

In a medical report dated May 1, 2001, Dr. Robin DaCosta, a Board-certified internist and attending physician, indicated that appellant had been under her care following exposure to construction dust, fiberglass and rodents in her workplace. She stated that on February 14, 2001 appellant developed an acute allergic reaction with upper airway edema, breathing difficulties and hoarseness and that appellant was symptomatic with laryngitis and GERD. Dr. DaCosta further stated that due to the laryngeal irritation, she suspected that appellant was very sensitive to any gastroesophageal reflux and that an esophagogram was attempted to document the reflux; however, only a limited study could be performed because the barium contrast exacerbated her symptoms. She stated:

“[Appellant] has symptoms consistent with GERD and is improving with Prevacid. She did not have these symptoms prior to the event. For continued laryngeal healing, control of her reflux is important. Her GERD is related to her work exposure. I recommend that she continue the Prevacid for at least another month. If her symptoms do not continue to improve, she might require a repeat esophagogram and upper endoscopy.”

In a May 15, 2001 report, Dr. DaCosta stated that she could not rule out an allergic component to appellant’s symptoms and that, given the severity of appellant’s reaction, she was hesitant to have appellant return to her former work building at that time. She stated that appellant was able to return to her occupation but in a different building with adequate ventilation free from construction dust, loose fiberglass and rodent infestation.

Appellant resumed work on July 2, 2001.

The Office referred appellant for a second opinion examination. In a report dated July 10, 2001, Dr. Firooz Rezvani, a Board-certified otolaryngologist, discussed appellant’s February 14, 2001 employment injury, her chief complaint of intermittent hoarseness and his findings on physical examination. He stated that appellant’s nose, oral, cavity, oropharynx and neck were within normal limits and, although an indirect laryngoscopy was attempted, appellant reportedly did not cooperate. Dr. Rezvani indicated that appellant would need fiberoptic laryngoscopy in order to evaluate the larynx and see the cause of the hoarseness.

Dr. Rezvani conducted a fiberoptic laryngoscopy and submitted a supplemental report dated August 7, 2001. He indicated that there was no evidence at that time that appellant had laryngitis and that appellant’s gastroesophageal reflux was unrelated to exposure to dust. Dr. Rezvani further stated that appellant had fully recovered from the effects of exposure to the dust back in February 14, 2001. He noted that appellant might have had a sudden allergic reaction to exposure of dust at that time but it did not permanently damage the larynx as it properly moved in abduction and the range of motion was normal. Dr. Rezvani stated that in order for appellant to prevent a recurrence of the same symptoms claimed that she could wear a mask while walking through a dusty area.

On September 28, 2001 appellant filed a recurrence of disability claim alleging that she had several attacks since her return to work due to a reaction to perfumes, cleaning fluids, air fresheners and the cooling air from the ceiling vents. Appellant asserted that continued exposure to such agents in the workplace caused her disability as of September 6, 2001 related to the accepted employment injury.

By decision dated February 22, 2002, the Office denied the recurrence of disability claim on the grounds that the evidence did not establish that the recurrence was causally related to the injury of February 14, 2001.

On June 14, 2002 appellant, through counsel, requested reconsideration and submitted argument and additional evidence in support. Appellant's counsel requested that the acute laryngitis claim be expanded to include toxic laryngitis, reactive upper airway dysfunction syndrome and GERD. The Office later received various reports from Dr. DaCosta. In a report dated May 2, 2002, Dr. DaCosta discussed that, since the employment injury, appellant had been symptomatic with a hoarse voice, excessive sputum production, sensations of her throat closing and sinus congestion which were exacerbated by exposure to chemicals, odors, perfume and smoke. She stated that, as a result of her exposure, on February 14, 2001 appellant had developed reactive upper airway dysfunction with vocal cord dysfunction. Dr. DaCosta further stated:

“In summary, [appellant] has a reactive upper airway dysfunction syndrome with vocal cord dysfunction, gastroesophageal reflux disease and chronic intermittent hoarse voice with cough. Her symptoms are as a result of exposure to fiberglass, dust and rodent feces in her office environment on February 14, 2001. Her attempts to return to work in September 2001 resulted in reexacerbation of her symptoms. At present, [appellant] must practice strict avoidance of areas in which she would be exposed to odors or chemicals. This has had a significant impact in that it has become difficult for her to participate in usual activities such as shopping and cleaning the house.... At this time, [appellant] is disabled and is unable to return to her former occupation.”

By decision dated August 5, 2002, the Office modified the February 22, 2002 decision to accept that appellant sustained an employment-related aggravation of laryngitis related to new work factors. The Office found a conflict in the medical evidence regarding whether appellant's current medical condition or claimed disability was related to her February 14, 2001 employment injury or September 2001 aggravation which required further development.

On September 17, 2002 the Office referred appellant to Dr. Anthony J. Durante, a Board-certified otolaryngologist, for an impartial medical examination to resolve the conflict between Dr. DaCosta and Dr. Rezvani regarding the causal relationship between appellant's condition and her federal employment.

In a report dated October 23, 2002, Dr. Durante reviewed appellant's employment exposure on February 14, 2001 and her accepted laryngitis condition. Dr. Durante indicated that, following physical examination, he believed that appellant had functional laryngitis and GERD as described by her history. Based on her response to a C-Pap, however the diagnosis of upper

airway dysfunction could not be made at that time. He stated that appellant did have a mildly deviated nasal septum to the right with a reactive nasal mucosa and that during the examination appellant was found to hawk a great deal, which would account for vocal changes as associated with a postnasal drip. Dr. Durante noted that the oropharynx was crowded, there was moderate hypertrophy of the tonsils and that the neck was within normal limits. He further found that the fiberoptic examination showed a negative nasopharynx bilaterally with minimal adenoid tissue, that the larynx showed good motion with weak closure and that there were no masses and evidence of changes in the posterior laryngeal area which would go along with GERD. Dr. Durante stated:

“At the present time causal relationship cannot be shown beyond reasonable medical doubt. The patient’s findings, presenting history and diagnosis are extremely difficult to objectify. My examination does not show a great deal of obvious changes. Her tests are equivocal and it is therefore difficult to objectify that which the patient is complaining of. It is noted that the patient is the only one to experience any long term symptoms, although other employees and construction workers were exposed to the same areas. Her condition as described, along with the diagnosis she was given, may be possible but it seems that this would be so in only the most rare individuals. I believe that some of the tests which have been performed on the part of her individual physicians should be repeated in an independent setting. The pulmonary function tests with flow loops, along with video stroboscopy, allergy work up, asbestos work up, asbestos workup exposure and endoscopy for GI [gastrointestinal] disease should be repeated. The fact that the patient is able to perform fairly well outside her work environment leads one to wonder if she would be able to work in a different setting.”

In a supplemental report dated January 29, 2003, Dr. Durante stated:

“You will note in my report that, at the time of the visit, aside from some weakness in the laryngeal glottic area, there is no evidence of any redness or abnormality. [Based upon the findings of that examination, the patient can only be found to have a deviated nasal septum and a reactive nasal mucosa.] In view of the fact that there is no history of trauma, the deviated septum and reactive mucosa cannot be attributed to the situations that occurred in February or September 2001. The weak closure of the larynx may be the reason for her functional laryngitis, the etiology of which could be multiple reasons. One could be the hawking and constant clearing of her throat which was noted at the time of the examination. This is a result of postnasal drip and her deviated nasal septum.

“As stated in my report, it is difficult to objectify the claims which [appellant] is making since the situation is such that she alleges the problem to exist within a particular building. Therefore, the only modification that can be made for her to return to gainful employment is change of building....

“One can attempt to objectify a great deal of [appellant’s] complaints by repeating the studies previously stated.”

By decision dated September 23, 2003, the Office determined that the weight of the medical evidence rested with the impartial medical specialist, Dr. Durante, and did not establish that appellant's acute laryngitis or aggravation claims should be expanded to include her current conditions or any continuing disability.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³ 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.⁴

ANALYSIS

There was a conflict of medical opinion in this case on the question of whether appellant had any current medical conditions and continuing disability causally related to her exposure to construction-type dust and other agents in the course of her employment. In a report dated May 1, 2001, Dr. DaCosta, a Board-certified internist, indicated that since the February 14, 2001 employment injury appellant had developed an acute allergic reaction with upper airway edema, breathing difficulties and hoarseness and had been symptomatic with laryngitis and GERD. The physician indicated that an esophagogram was attempted to document the reflux however it was not completed because it exacerbated her symptoms. In a May 2, 2002 report, Dr. DaCosta indicated that upon appellant's return to work she had been symptomatic due to exposure to dust, fiberglass, odors and smoke, which triggered her upper airway and diagnosed "reactive upper airway dysfunction syndrome with vocal cord dysfunction, gastroesophageal reflux disease and chronic intermittent hoarse voice with cough."

Contrary to the opinion from appellant's attending physician, the Office's referral physician, Dr. Rezvani, a Board-certified otolaryngologist, concluded, in reports dated July 10 and August 7, 2001, that there was no objective evidence to support a diagnosis of laryngitis, that appellant's gastroesophageal reflux was unrelated to work and that she had fully recovered from the effects of the work-related exposure.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Jerry A. Miller*, 46 ECAB 243 (1994).

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Act, referred appellant, the case record and a statement of accepted facts to Dr. Durante, a Board-certified otolaryngologist. He produced a report dated October 23, 2002 and, after a request by the Office, a supplemental report dated January 29, 2003. Based on his review of the prior medical evidence and his findings on physical examination, Dr. Durante indicated that appellant was only found to have a deviated nasal septum and a reactive nasal mucosa. He stated that because there was no history of trauma these conditions could not be attributed to the employment incident in February 2001 or the aggravation in September 2001. Dr. Durante further stated that appellant had not demonstrated the physical changes associated with GERD. He concluded however that causal relationship could not be shown beyond reasonable medical doubt at that time because appellant's tests were equivocal and that findings, presenting history and diagnosis were extremely difficult to objectify. He explained that, although appellant had functional laryngitis and GERD as described by her history and based on her response to a C-Pap, the diagnosis of upper airway dysfunction could not be made at that time. Dr. Durante recommended that the pulmonary function tests with flow loops, along with video stroboscopy, allergy work up, asbestos work up, asbestos workup exposure and endoscopy for GI disease be repeated and opined that appellant's complaints would be objectified by repeating studies.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

In this case, Dr. Durante detailed his findings on examination and based his opinion on a proper factual background. Dr. Durante's opinion however requires that the medical evidence be further developed. He is very clear in stating that causal relationship could not be established beyond a reasonable doubt at that time because the studies that were previously performed were equivocal making it difficult to objectify that which appellant was complaining about. He concluded that additional diagnostic tests were necessary to confirm the existence of certain conditions claimed by appellant. It is well established that when an impartial medical specialist's opinion requires clarification or elaboration, the Office has the responsibility to secure a supplemental report.⁶

The Board will set aside the Office's September 23, 2003 decision and remand the case for further development consistent with the reconsiderations of the impartial medical specialist. Following such further development as may be necessary the Office shall issue a final decision on appellant's claim of continuing disability.

CONCLUSION

The Board finds that this case is not in posture for a decision in that it requires further medical development by the Office.

⁵ *James P. Roberts*, 31 ECAB 1010 (1980).

⁶ *See Elmer K. Kroggel*, 47 ECAB 557 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 23, 2003 is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: July 26, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member