

On January 31, 2006 appellant, then a 46-year-old engineering technician, filed an occupational disease claim (Form CA-2) alleging that he sustained “disequilibrium, vertigo caused by over exposure to chemicals in the past 21 years.” In a narrative statement, he reported he had been exposed to various chemicals since 1984. From September 2003, appellant worked as a technician and inspector in areas such as the fuel room, where he was exposed to Otto fuel,

used to propel torpedoes and hydrogen cyanide (HCN). He reported that as of July 2004 he began having dizzy spells. Appellant listed some of the chemicals and products he was exposed to at work, including hydraulic fluid, denatured alcohol and spray paint.

By letter dated March 24, 2006, the Office requested that appellant submits a detailed description of his employment exposure to chemicals. On April 3, 2006 it received employing establishment survey reports indicating the chemicals and products used in specific operations involved in maintenance and weapons handling. The Office also received material safety data sheets for various chemicals and products. The employing establishment, by letter dated March 30, 2006, challenged the claim for compensation. It stated that exposure to Otto Fuel would have ceased as of June 21, 2005, when appellant stopped working.

Appellant submitted medical reports from Dr. Michael McManus, an occupational medicine specialist. In a report dated January 27, 2006, Dr. McManus noted appellant had been having symptoms of disequilibrium and associated nausea, he noted appellant's job duties and exposure to chemicals at work. He diagnosed chronic disequilibrium and stated that it was nonwork-related on a more probable than not basis.

By decision dated May 30, 2006, the Office denied the claim for compensation. It found the medical evidence was insufficient to establish the claim. Appellant requested reconsideration on June 4, 2006. On June 5, 2006 the Office received additional evidence, including material data safety sheets and operational training procedures.

With respect to medical evidence, appellant submitted an August 15, 2006 report from Drs. Victor Van Hee and Jordan Firestone, occupational medicine specialists. The physicians provided a history and results on examination. They reported appellant's occupational history included prolonged exposure to organic chemical vapors known to cause vestibular dysfunction, and his symptoms worsened when he worked in the cleaning room area. Drs. Van Hee and Firestone opined the work exposure was a significant contributing factor to the vestibular dysfunction. In a report dated September 21, 2006 report, Dr. McManus provided results on examination and diagnosed chronic disequilibrium, secondary to occupational exposures. By report dated November 30, 2006, he diagnosed toxic encephalopathy secondary to workplace exposures.

The Office prepared a statement of accepted facts (SOAF) and referred appellant for second opinion examination with Dr. Edward DeVita, a neurologist. The November 29, 2006 SOAF described the work duties of an engineering technician, but did not discuss any chemical exposure. In a report dated December 21, 2006, Dr. DeVita provided a history and results on examination, stating the diagnosis was not entirely clear. He reported that appellant stated he was exposed to Otto Fuel and other chemicals. Dr. DeVita reviewed the evidence and noted there were many "records of chemical analysis" which were beyond the scope of his specialty. He recommended a neuropsychological evaluation to determine if there was any cognitive dysfunction. In a report dated February 16, 2007, Dr. Arthur Williams stated that he did not find any objective dysfunction. By report dated March 7, 2007, Dr. DeVita stated that he had reviewed Dr. Williams' report and he opined that there was no objective evidence of an employment-related neurological disorder. He stated that there were no objective neurological medical findings that would coincide with an industrial injury or exposure.

By decision dated March 23, 2007, the Office denied modification of its prior decision. It found the weight of the evidence was represented by Dr. DeVita.

Appellant requested reconsideration and submitted an October 4, 2007 report from Dr. McManus, who opined that he disagreed with Dr. DeVita. Dr. McManus stated that he did not properly take into account the test results previously performed.

By decision dated January 15, 2008, the Office reviewed the report of Dr. McManus and found the weight of the medical evidence remained with the second opinion examiners. The Office stated that it did not perform a merit review of the case.<sup>1</sup>

### **LEGAL PRECEDENT**

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.<sup>2</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.<sup>3</sup>

When the Office further develops the medical evidence, it prepares a SOAF that provides a frame of reference for the physician examining the claimant or reviewing the medical evidence.<sup>4</sup> The Office must provide the essential facts of the case, including the mechanism of injury, which in occupational illness cases “would include factors of employment and exposure data.”<sup>5</sup>

### **ANALYSIS**

Appellant has alleged that he sustained an injury causally related to chemical exposure in his federal employment. The Office undertook development of the medical evidence and referred appellant to Dr. DeVita. As noted above, the SOAF provides the factual background on

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<sup>1</sup> As the Office did review the evidence of record as to its probative value on the underlying issue of causal relationship, the Board finds the January 15, 2008 decision was a merit review of the case.

<sup>2</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>3</sup> *See Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.4 (June 1995).

<sup>5</sup> *Id.* at Chapter 2.809.12(e) (June 1995). Office procedures also indicate that whenever possible exposure data should be condensed to essential information and incorporated into the body of the statement. Chapter 2.809.8(b) (June 1995).

which the medical opinion will be based. The November 29, 2006 SOAF does not provide a sufficient factual background and diminishes the probative value of the medical opinion evidence. The Office did not list the chemical exposure that is the basis of appellant's allegations. It is not clear that the Office has accepted as factual the specific chemicals or products to which appellant alleges exposure or, the degree of exposure. Dr. DeVita was apparently provided with some of the evidence of record regarding chemical products, but it is unclear what evidence Dr. DeVita reviewed and he acknowledged that it was beyond the scope of his specialty as a neurologist. Any probative medical evidence on the issue of causal relationship must be based on a clear understanding of the nature and extent of the accepted chemical exposure.

As the Office referred appellant for a second opinion examination, it has the responsibility to obtain a report which resolves the issues presented in the case.<sup>6</sup> In the absence of a SOAF that provides a proper frame of reference for the examining physician based on accurate and understandable exposure data, the reports of Dr. DeVita were of diminished probative value. The case will be remanded to the Office to prepare a detailed and accurate SOAF in accord with Office procedures. The Office should then refer appellant to an appropriate specialist for a rationalized medical opinion on whether there was a diagnosed condition causally related to chemical exposure in federal employment. After such further development as the Office deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The case is remanded to the Office for preparation of a proper SOAF and referral to an appropriate specialist.

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<sup>6</sup> See *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 15, 2008 and March 23, 2007 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 16, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board