U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW F. KELLIHER, JR. and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, Brockton, MA

Docket No. 98-748; Submitted on the Record;
Issued September 2, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS:

The issue is whether appellant sustained an injury in the performance of duty.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, 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 appellant 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.[1]

In its most recent merit decision dated October 23, 1997, the Office of Workers' Compensation Programs explained that, while it had accepted that "there was difficulty in the air quality" appellant was exposed to during periods of his federal employment, the issue on reconsideration was one of causal relationship and not employment exposure. The Office further explained that appellant failed to submit any probative medical evidence demonstrating a causal relationship between appellant's current respiratory condition and his accepted employment exposure. Consequently, the Office denied appellant's claim based on his failure to establish that he sustained a condition that was related to his exposure at work.

In support of his claim, appellant submitted, among other things, numerous chest x-rays, pulmonary function studies, and the treatment records of Dr. Christopher H. Fanta, a Board-certified internist specializing in pulmonary diseases. Dr. Fanta began treating appellant on

[1] *Victor J. Woodhams*, 41 ECAB 345 (1989).

June 29, 1995. In a report dated December 17, 1996, the doctor diagnosed "diffuse inflammatory lung disease, possibly bronchiolitis obliterans organizing pneumonia." Moreover, Dr. Fanta provided the following assessment regarding the cause of appellant's respiratory condition:

> "The patient has a diffuse inflammatory lung disease that began during his work in the pharmacy at the [employing establishment]. Difficulty with the fresh air intake to the pharmacy reportedly exposed him to aero-allergens that are a potential cause for his diffuse inflammatory lung disease. Although a precise pathogenic association cannot be established with certainty, the timing of onset of his illness and its known specific inflammatory nature make his environmental exposure a likely precipitating factor."

Proceedings under the Federal Employees' Compensation Act[2] are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[3] When the Office initially denied appellant's claim on April 29, 1997, it characterized the medical evidence, and particularly Dr. Fanta's December 17, 1996 report, as "speculative." Although Dr. Fanta's December 17, 1996 report and treatment notes do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current respiratory condition is causally related to his accepted employment exposure, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[4]

Not only is the medical evidence submitted by appellant uncontradicted, the Office apparently believed at one point that this evidence was sufficient to establish a *prima facie* case for entitlement. While the Office contemplated referring the file to its district medical adviser in March 1997, there is no specific indication in the record as to why the Office subsequently decided against further development of the record. On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's respiratory condition is causally related to the accepted employment exposure. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

[2] 5 U.S.C. §§ 8108-8193.

[3] *William J. Cantrell*, 34 ECAB 1223 (1983).

[4] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The October 23 and April 29, 1997 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
September 2, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member