U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY ANN BIEDRYCKI and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Scranton, PA

Docket No. 01-1591; Submitted on the Record;
Issued July 9, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issue is whether appellant's multiple chemical sensitivity syndrome was causally related to work factors.

On August 24, 1995 appellant, then a 45-year-old claims representative, filed a claim alleging that her exposure to chemicals and ingestion of "undetermined irritants" at work caused her to faint. The employing establishment controverted her claim pointing out that she had alleged being overcome by noxious, ammonia-type fumes from an air conditioner at work on July 28, 1995, but that building technicians had checked out the air conditioner and found no problems.

In support of her claim, appellant stated that on July 28, 1995 she had noticed a "musty" odor at work and had become faint and unable to breathe properly. She noted that she had been seeing a physician since February with various symptoms, including itchiness and heat sensations. Appellant described the atmosphere at the office on August 3, 1995 as an ammonia or "alcohol-like aura" which caused her breathing problems. She stopped work and did not return.[1]

Air quality testing on September 8, 1995 showed no formaldehyde odors detected. A report dated October 30, 1995 concluded that air quality testing on September 20, 1995 revealed "no unusual compounds" that would warrant corrective action. Three spectra scans matched readings of sampled air at appellant's desk, her husband's desk and the break room against more than 400 compounds, including ammonia and formaldehyde. No possible alcohol compound matches were identified. The sample readings for ammonia ranged from 0.1 parts per million to 0.4 parts per million, compared with the threshold level of 50 parts per million set by the

[1] Appellant was removed from the federal service, effective February 3, 1997, because of unavailability and physical inability to perform her duties. She retired on disability, effective October 8, 1998, after the Merit Systems Protection Board reversed a denial of her application.

Occupational Safety and Health Administration. Readings for formaldehyde were similarly miniscule.

On October 23, 1995 the Office of Workers' Compensation Programs requested further factual and medical evidence from appellant. She responded that she had experienced lung irritation while her home was being painted in April 1995 but that her breathing problems were exacerbated at work starting in late 1994. Appellant also submitted a December 9, 1995 report from Dr. Basil M. RuDusky, Board-certified in internal medicine, who diagnosed Raynaud's syndrome, probably idiopathic, neurasthenia, possible sympathetic nervous system dysfunction, anxiety-depressive reaction, probable Marfan's syndrome with aborted genetic predisposition and probable multiple chemical sensitivity (MCS) syndrome. He recommended further testing.

On January 16, 1996 the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the air quality in her workplace caused any respiratory condition. She requested a hearing, which was held on September 30, 1997.

Appellant testified at the hearing and submitted voluminous publications on various diseases, copies of medical reports, several letters and an annotated copy of the hearing transcript. The employing establishment responded in detail to appellant's testimony. It noted that no other employees had complained of headaches or any other ailment related to the office environment, that the only complaint of "noxious fumes" involved one coworker's perfume on one isolated occasion and that the air circulation systems in the office did not contain ammonia and worked without problems.

On December 16, 1997 the hearing representative denied appellant's claim on the grounds that she had failed to establish that she was exposed to "poor air quality" and that the medical evidence was insufficient to show that her MCS was caused by work factors.

Appellant requested reconsideration by an undated letter received by the Office on September 14, 1998. The Office denied appellant's request on March 19, 1999 on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision.

On March 17, 2000 appellant again requested reconsideration and submitted additional medical evidence as well as copies of a favorable decision on her request for Medicare coverage, sections of a medical dictionary and The Boeing Company's protocol for workers' chemical reaction claims. On February 27, 2001 the Office denied appellant's request as insufficient to modify its prior decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that her respiratory and allergic conditions were caused by work factors.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim,[3] including the fact that the individual is an " employee of the United States" within the meaning of the Act,[4] that the claim was timely filed within the applicable limitation period of the Act,[5] that an injury was sustained in the performance of duty as alleged and that any disability or condition for which compensation is claimed is causally related to the employment injury.[6] These elements must be established regardless of whether the claim is for a traumatic injury or an occupational disease.[7]

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 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 condition or disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[8]

Causal relationship is a medical issue[9] and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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.[11]

In this case, appellant has submitted medical evidence establishing that she has various health problems. However, the record does not support her allegations that any of these

[2] 5 U.S.C. §§ 8101-8193.

[3] *Irene St. John*, 50 ECAB 521, 522 (1999).

[4] *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

[5] *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993).

[6] *David M. Ibarra*, 48 ECAB 218 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Ruth Seuell*, 48 ECAB 188, 192 (1996).

[8] 20 C.F.R. § 10.5(q) (defining an occupational disease or illness as "a condition produced by the work environment over a period longer than a single workday or shift."

[9] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[10] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[11] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

diagnosed conditions were caused by poor air quality at work. In her statements, appellant alleged that chemical exposure and ingestion of undetermined irritants at work caused her respiratory disability on July 28, 1995 and again on August 3, 1995. She described an ammonia or alcohol-like odor, possibly coming from the heating and air conditioning system.

However, the air quality report stated that Freon, an odorless, colorless gas, was used in the air conditioning compressors, not ammonia. Sampling tests showed levels of formaldehyde and carbon dioxide and monoxide well below acceptable limits. The employing establishment submitted a poll of employees, none of whom noted any strange or obnoxious odors on those days. A coworker stated that the weather was hot and humid but that he did not remember any odors. Thus, appellant has failed to show that the atmosphere at work was toxic and caused her ailments.

The medical evidence is also insufficient to establish any causal relationship between appellant's diagnosed conditions and factors at work. By report dated August 18, 1995, Dr. Emma M. Rubin, a practitioner in internal medicine, stated that appellant had "multiple visits" in the past few months with complaints of feeling very hot, difficulty breathing, weight loss and digestive problems. She added that she had been unable to find any medical reason for appellant's symptoms.

The physician related that appellant believed that all her symptoms were related to possible chemical exposure at work and that she had one episode of syncope on July 28, 1995 and was seen in an emergency room, but all testing was normal.[12] She told Dr. Rubin that her symptoms reoccurred when she returned to work and thus she did not want to go back until air quality testing had been done. Dr. Rubin concluded: "I cannot state if her condition is related to her work environment or not."

A computerized axial tomography scan dated November 14, 1995 showed chronic obstructive pulmonary disease, but no interstitial lung disease or parenchymal infiltrates. There was a chronic loss of lung volume in the upper right lobe dating back to 1993.

Dr. Nat E. Levinson, Board-certified in internal medicine, reported on August 11, 1996 that appellant's pulmonary function studies were totally within normal limits but that she had multiple marfanoid characteristics and would be prone to develop pulmonary emphysema. Dr. Levinson stated that appellant had "some chronic shortness of breath," due to external irritants, such as carpet, wood, deodorizers and alcohol/petroleum bases, which had been increasing over the past year. He did not discuss any work factors.

In a November 6, 1996 report, Dr. Joseph J. Soma, Board-certified in otolaryngology, diagnosed MCS, whose onset appellant dated to "sometime in 1994" while working for the

[12] The emergency room form dated July 28, 1995 related a diagnosis of bronchial pneumonia and a history of "ammonia-like fumes coming from the ventilation."

employing establishment.[13] Dr. Soma noted that she had difficulty with exposure to many varied chemicals in her environment including just about all stores, malls and offices. While MCS was a "subjective illness," symptoms occurred in response to very low levels of chemicals, yet numerous studies "have yet to elicit the mode of action responsible for the syndrome." He added that there were no medical criteria to establish disability and that he could offer no objective findings to substantiate disability, but that he would consider appellant disabled.[14]

None of this medical evidence addresses the issue of whether the atmosphere or any odors at work caused or aggravated appellant's underlying respiratory condition. Dr. Rubin was inconclusive, Dr. Levinson did not mention work factors and Dr. Soma concluded that appellant was affected by just about all odors in public places.

Dr. Harold Buttram, a general practitioner, examined appellant on February 24, 1997, provided a medical history and diagnosed MCS, fibromyalgia, Marfan's and Raynaud's syndromes and chronic irritable bowel. He found appellant totally disabled, primarily because of her advanced MCS. Dr. Buttram stated that appellant's MCS was a sequel of continued exposure to airborne volatile organic compounds or solvent-type chemicals in the workplace. While appellant had chemical insensitivity in earlier years to cosmetics, heavy traffic and furniture polish, the cumulative effects of exposures from November 1994 until August 3, 1995 precipitated her present state of advanced MCS, in which she reacts rather severely to virtually all chemical odors commonly found in malls, carpets, petrochemicals, cleaning solutions, cosmetics, deodorants and paper products.

The mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of a causal relationship between the two.[15] Such a relationship must be established by rationalized medical evidence based on a specific and accurate history or employment incidents or exposures alleged to have caused the disabling condition.[16] While Dr. Buttram named "possible sources" of appellant's exposure at work as "solvent-type odors" from carpets, copier machines, laser printers and related appellant's comment that the air was "terrible," he provided no medical rationale explaining how exposure to specific odors precipitated her diagnosed MCS.[17]

[13] Dr. Soma saw appellant on December 11 and 26, 1995 when she complained of severe fatigue and malaise of 14 or 15 months' duration, dating to an episode at work when she collapsed, which she felt was due to something that she inhaled there.

[14] In a February 26, 1996 report, Dr. Soma stated that appellant related a history of reaction to chemicals beginning while at work and gradually expanding to include practically all fumes encountered at any location. He added that the restrictions on appellant's ability to work were based entirely on her subjective complaints.

[15] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[16] *Linda S. Jackson*, 49 ECAB 486, 488 (1998).

[17] *See Michael E. Smith*, 50 ECAB 313, 316 (1999) (finding that appellant failed to submit a rationalized medical opinion on causal relationship).

In a November 25, 1997 report, Dr. Marilyn V. Howarth, Board-certified in internal medicine, stated that she had seen appellant over the summer regarding symptoms "she feels may be related to exposure on the job." Appellant traced her symptoms to moving her office to a new building in May 1994. Dr. Howarth summarized appellant's experience on July 28, 1995 and reviewed her extensive medical history and diagnostic testing. She concluded that it was very difficult to separate appellant's underlying medical problems from the environmentally exacerbated ones, but that she was totally disabled. While it was not possible to identify a specific cause of her MCS, poor air quality at work "likely played a significant role." The testing that was done was inadequate to evaluate the environment comprehensively because brief testing was not appropriate to address the type of intermittent air quality problems identified by appellant and her husband.[18]

Dr. Howarth failed to explain how poor air quality at work would likely play any role in appellant's chemical insensitivity. Moreover, she admitted that she could not identify any specific cause of appellant's MCS, but merely speculated that whatever she breathed at work aggravated her underlying condition. Finally, appellant has failed to establish any poor air quality at work. Therefore, Dr. Howarth's opinion is based only on appellant's perception that something in the air caused her symptoms.[19]

In a July 25, 1998 report, Dr. Leander T. Ellis, a Board-certified neurologist, noted appellant's history of becoming "severely ill with marked weakness and collapse on her last day at work," July 28, 1995 after noticing a musty smell. He concluded that appellant was "unable to tolerate most workplaces" and "her deterioration was speeded by the exposures to fumes in her workplace despite the fact that other less vulnerable persons may have been less affected." Dr. Ellis' conclusion is of diminished probative value because there is simply no documentation of appellant's exposure to unusual or noxious fumes at work. Therefore, his statement on appellant's "deterioration" due to work factors has no factual basis.[20]

With her March 17, 2000 request for reconsideration, appellant submitted an August 28, 1999 report from Dr. Ellis, which merely reiterated his previous conclusion and an August 20, 1999 report from Dr. James V. Martino, Board-certified in internal medicine, which did not address the issue.

Appellant argued on appeal that the Office failed to develop evidence of the fumes and odors at work caused by the renovated building to which her office was moved in May 1994. It is appellant's burden to establish the work factors to which she attributes her disability. In this case, the employing establishment had the air quality of appellant's office thoroughly tested and

[18] Appellant and her husband, Walter Borowski, worked together as claims representatives until August 1995 and filed compensation claims for total disability.

[19] *See Arturo A. Adame*, 49 ECAB 421, 425 (1998) (finding that medical reports attributing diverse pathologies to a single exposure are insufficiently rationalized to establish a causal relationship between appellant's diagnoses and his gulf war experiences).

[20] *See Earl David Seal*, 49 ECAB 152, 155 (1997) (finding that medical opinions based on an inaccurate history provided by appellant are insufficient to establish a causal relationship).

submitted a detailed statement concerning the office move and coworkers' comments describing the office atmosphere. Appellant has failed to show, either factually or medically, that the air at work caused her respiratory condition.

Appellant also argued that the voluminous documents of medical treatises, articles, protocols and dictionary excerpts were submitted as resources within which to view the medical evidence specific to her. The Board has long held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship because these documents are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment factors involved.[21] Therefore, the Board rejects this argument.

The February 27, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 9, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

[21] *William C. Bush*, 40 ECAB 1064, 1075 (1989).