

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUAN B. LOPEZ-LOPEZ and DEPARTMENT OF THE ARMY,  
MAINTENANCE DIVISION, Fort Polk, LA.

*Docket No. 02-1688; Submitted on the Record;  
Issued July 9, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained an occupational disease in the performance of his federal employment.

On July 27, 1999 appellant, then a 61-year-old mechanic, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that exposure to several chemicals in the performance of his federal duties caused him to suffer from multiple medical conditions including skin rashes, dizziness, weakness, sleepiness, headaches, severe fatigue and irritated eyes. He first noticed these symptoms in 1986 and became aware they were causally related to his employment in 1997.

Appellant, who had a history of hypertension, worked as a mechanic assembling and disassembling pumps from 1980 until he retired in 1999. He worked most of his career in a 10 by 18 foot room with no windows and inadequate ventilation where temperatures often exceeded 90 degrees. Protective equipment was provided in the late 1980s. After several workers complained, proper air conditioning was also added to the room. The chemicals appellant was exposed to include tetrachloride, asbestos, cold tank degreaser, acid solutions, solvent acetone MSD. Appellant testified and submitted corroborating witness statements that at least 17 of his coworkers suffered from the same symptoms and some died prematurely from respiratory problems.

In an undated statement Larry Moore, appellant's supervisor, indicated that he was aware of appellant's symptoms from 1986 forward, but when James Dean, the chief of industrial hygiene ran tests for the relevant components they came back negative.

A July 7, 1999 analysis of the work shop air indicated that the levels of acetone, toluene and Stoddard solvent were within the Office of Safety and Health Administration standards.

In July 13, 1999 report, Dr. Guru Ghanta, a general surgeon, wrote that between 1987 and 1997 he treated appellant for a small swelling on his chest, body aches and pains, abdominal

bloating and indigestion, diarrhea and congestion and he removed from appellant several warts, lesions and growths. He opined that appellant's conditions might be secondary to prolonged, repeated and excessive exposure to threshold limit value or "TLV's."

In a September 28, 1999 report, Dr. Hanna Lubbos, Board-certified in internal and pulmonary medicine, diagnosed appellant with Tolvidine Blue Stain. She wrote that appellant has had several warts, lesions and growths removed which she felt may be due to prolonged, repeated and excessive exposure to chemicals.

In an October 18, 1999 decision, the Office of Workers' Compensation Programs denied the claim, finding both the medical and factual evidence insufficient to meet appellant's burden of proof. Appellant requested a hearing that was held on March 14, 2000. At the hearing he and several coworkers testified to the working conditions and the exposure to chemicals.

In a February 2, 2000 letter, the employing establishment opposed appellant's claim arguing that the employees had safety equipment and training, the air quality tests did not show dangerous levels and appellant's medical evidence was insufficient on the issue of causal relationship.

The record contains a February 18, 2000 statement from Gayle Liliedahl, chief of the maintenance division, who wrote that in the early 1980s there were no standards for air quality that the shop was not well ventilated and employees were exposed to fumes from diesel heaters and pumps. She further indicated many employees complained of dizziness and were told to take a break in well-ventilated areas. In 1998, safety equipment was provided. The record also contains a 1992 report that shows that the employees were exposed to high levels of asbestos.

In an April 18, 2000 report, Dr. Thomas Callendar, a Board-certified specialist in toxicology and occupational health, diagnosed appellant with peripheral neuropathy, obstructive sleep apnea and encephalopathy, chronic nasal sinusitis, lung disease with chronic bronchitis, chronic gastroenteritis, autonomic nervous system dysfunction, dysguesia, olfactory dysfunction, poor visual contrast and poor night vision, abnormal peripheral and central vision. He found appellant totally disabled from work and that it was highly probable these conditions were either caused or significantly contributed to, by his federal employment. Dr. Callendar added that he causally related appellant's medical conditions to his work based on "consideration of the types of chemicals he was exposed to, degree and timing of the exposure and the diseases the exposure to the chemicals is known to cause.

In a June 7, 2000 decision, the hearing representative remanded the case, finding that appellant was exposed to hazardous chemical materials between 1980 and 1987.

The Office referred appellant for a second opinion along with a statement of accepted facts, that indicated that appellant was exposed to trichlorotrifluorethane from 1980 to 1986 and from 1986 through 1990 he was exposed to trichloroethylene, acetone, Stoddard solvent and toluene. It also indicated that appellant utilized proper safety equipment such as face shields, plastic gloves and goggles and aprons.

In a September 6, 2000 report, Dr. Thomas Mego, a dermatologist, diagnosed appellant with dermatofibrosarcoma, angiodermitis, lymphocytic infiltrate of the dermis, mild

hypertrophic spongiotic vesicular and psoriasiform dermatitis, unclassified and mild perifollicular T-cell dysplasia of indeterminate type. He also found that on occasion there were examples of progressive T-cell dysplasia that initially showed a preponderance of perifollicular involvement and that appellant should be carefully followed.

In an October 16, 2000 report, Dr. Hussan Alammer, an internist, wrote that appellant presented with extremity weakness with calves pain, tingling and numbness in both feet and hands. He diagnosed peripheral neuropathies secondary to chemical exposure, mycosis fungoides, sleep obstructive apnea, hypertension and diabetes mellitus.

In an April 16, 2001 report, Dr. Douglas Swift,<sup>1</sup> an Office referral and a Board-certified specialist in occupational medicine, found no history or pattern to appellant's conditions that suggested a toxic exposure. He indicated that appellant's responses to questions begged credibility; that his symptoms and complaints ranged the gamut and included positive responses to practically all questions. Appellant indicated to Dr. Swift that he was unable to do any activities of daily living with the exception of turning on and off water faucets. Dr. Swift wrote that appellant claimed a degree of disability far beyond what was found in the medical examination. He noted that appellant's symptoms were worse after ending his exposure; just the opposite of what would be expected of a toxic exposure. Dr. Swift found appellant's skin lesions were not consistent with exposure to an irritant or allergic contact dermatitis. He concluded that after reviewing appellant's occupational and medical history and conducting the examination, there was no specific pattern of toxic related illness that he could identify.

In a May 14, 2001 decision, the Office denied the claim finding that the weight of the medical evidence rested with Dr. Swift, who the claims examiner treated as an impartial examiner.

In a May 30, 2001 letter, appellant requested an oral hearing arguing that Dr. Swift had only examined him for only a few minutes and that Dr. Callender, who had done a more comprehensive examination, found him totally disabled.

In an October 18, 2001 report, Dr. Callender diagnosed appellant with respiratory tract injuries of the upper airways and lungs due to toxic effects of workplace chemicals and neurological injuries consistent with toxic effects of workplace chemicals. He listed 12 separate dysfunctions appellant suffered from including chronic bronchitis, chronic toxic encephalopathy and peripheral neuropathy. Dr. Callender added that appellant is totally and permanently disabled due to severe and life threatening medical problems that were caused by his workplace chemical exposures. In a November 27, 2001, report Dr. George B. Ingrish wrote that appellant's biopsies demonstrated mild T-cell dysplasia and recommended following him closely for possible progression to skin cancer.

In a February 28, 2002 report, Dr. Lubbus diagnosed appellant with respiratory tract injuries of the upper airways of the lungs as well as neurological injuries including sleep apnea, cardiac arrhythmias secondary to sleep apnea, nasosinus disease, bronchitis and dermatitis of the

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<sup>1</sup> The Office originally referred appellant to Dr. Thomas Kurt, who saw him but failed to produce a report, so the Office referred appellant to Dr. Swift.

mild T-cell dysphais. She further opined that these conditions were caused by toxic chemical exposures.

At the March 14, 2002 hearing, appellant's testimony, as well as his wife's and daughter's focused on the difficult working conditions and deteriorating health of appellant and his coworkers. In a May 22, 2002 decision, the hearing representative affirmed the May 14, 2002 decision finding the medical evidence insufficient on the issue of causal relationship.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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. The medical evidence required to establish a causal relationship 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, 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.<sup>5</sup>

The critical issue in the present case is the causal relationship between appellant's exposure to chemicals in his workplace and his medical conditions. Appellant submitted multiple medical reports from several doctors with expertise in toxicology, dermatology,

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

endocrinology and internal and pulmonary medicine. Each report causally related appellant's medical condition to his exposure to toxic chemicals at the workplace. However, none of these reports provided a detailed physiological explanation of how exposure to a specific chemical caused specific medical conditions.

In an April 18, 2000 report, Dr. Callendar, Board-certified in toxicology and occupational health, found appellant totally disabled from work and that it was highly probable that these conditions were either caused or significantly contributed to, by his federal employment. He added that he causally related appellant's medical conditions to his work based on "consideration of the types of chemicals he was exposed to, degree and timing of the exposure and the diseases the exposure to the chemicals is known to cause.

In denying appellant's claim, the Office relied on the April 16, 2001 report from Dr. Swift, a Board-certified specialist in occupational medicine, who found no history or pattern to appellant's conditions that suggested a toxic exposure and who concluded after reviewing appellant's occupational and medical history and conducting the examination, that there was no specific pattern of toxic related illness that he could identify. He had both appellant's medical history and the statement of accepted facts that established his exposure to specific chemicals, so it is not clear why he wrote that he could not find a history of exposure to toxic chemicals.

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>6</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.<sup>7</sup>

The Board finds that there is a conflict in the medical evidence between Dr. Swift, who served as an Office referral physician and Dr. Callender, appellant's physician, regarding whether there was a causal relationship between appellant's medical conditions and his exposure to toxic chemicals. Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between Dr. Swift and Dr. Callender. On remand the Office should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant's claim.

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<sup>6</sup> 5 U.S.C. § 8123(a).

<sup>7</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The May 22, 2002 and May 14, 2001 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
July 9, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member