

Appellant filed a claim on January 8, 1999 for wheezing and shortness of breath, which the Office accepted for asthmatic reaction due to chlorine gas inhalation.²

In January 2000, the Office referred appellant for a pulmonary evaluation to determine the extent of any permanent impairment due to his employment injury. In a report dated April 20, 2000, Dr. Deepak Shrivastava, a Board-certified pulmonologist and internist, diagnosed occupational asthma after exposure to chlorine. He noted that appellant's physical examination was entirely unremarkable and his April 10, 2000 pulmonary function studies revealed a mild obstructive ventilatory defect. Dr. Shrivastava stated that appellant did not have a history of allergies or asthma before the exposure occurred and there was no known nonindustrial or preexisting disability. He opined that appellant was perhaps sensitized by the exposure to chlorine and subsequently developed occupational bronchial hyperreactivity. Dr. Shrivastava stated that there were no known periods of total disability. Although appellant stopped working on or about January 1, 1999, he stated that appellant was not currently disabled. Dr. Shrivastava also noted that appellant continued to suffer episodes of asthma-like symptoms, but there were no physical limitations from a pulmonary standpoint.

Appellant provided the Office with a copy of a January 14, 2001 Social Security Administration (SSA) disability determination that found him eligible for disability dating back to December 5, 1998. Appellant's disability was based, in part, on his prior federal employment. However, the January 14, 2001 SSA determination did not include specific details or otherwise identify the factual or medical evidence upon which it was based.

By decision dated April 2, 2001, the Office found that, while appellant was entitled to continued medical treatment for his accepted condition, he did not have a compensable disability for work. The Office based its finding on Dr. Shrivastava's April 20, 2000 opinion.

Appellant requested an oral hearing, which was held on December 3, 2001. He submitted treatment records from Visalia Medical Clinic covering the period of June through October 2001. Appellant was diagnosed with numerous conditions, including asthma, allergic rhinitis, hypertension, hypertensive heart disease, gastroesophageal reflux disease, edema, hiatal hernia, hyperlipidemia, morbid obesity and sleep apnea. Appellant also submitted a December 2001 report from Dr. Thuong B. Nguyen, a Board-certified internist and allergist, who diagnosed asthma and allergic rhinitis. He noted that appellant's April 10, 2000 pulmonary function study showed airway obstruction. Additionally, Dr. Nguyen indicated that appellant's pulmonary condition prevented him from working even in a part-time capacity. He also explained that appellant gets very short of breath with brief periods of physical activity.

In a decision dated March 4, 2002, the Office hearing representative affirmed the April 2, 2001 decision.

Appellant again requested reconsideration on February 17, 2003. He submitted additional medical evidence that included various treatment records covering the period January 2002 through January 2003. These records reflected treatment for a number of

² Although appellant filed a traumatic injury claim with the employing establishment on August 16, 1986, there is no indication from the record that the Office received this initial filing prior to February 1999.

conditions including deep venous thrombosis, phlebitis, hemoptysis, asthma, sinusitis, bronchitis, iron deficiency anemia and right-sided congestive heart failure. The Office reviewed appellant's claim on the merits and denied modification by decision dated March 6, 2003.

On February 9, 2004 appellant requested reconsideration. Additional medical evidence included Dr. Nguyen's January 14, 2004 work capacity evaluation (Form OWCP-5c) and a January 23, 2004 attending physician's report (Form CA-20). In his January 23, 2004 report, Dr. Nguyen indicated that appellant's chronic persistent asthma was due to his employment. Appellant also submitted an August 21, 2003 pulmonary function study and various other treatment records from Visalia Medical Clinic covering the period October 2002 to November 2003.

In a decision dated April 26, 2004, the Office denied reconsideration, as noted.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.⁴ Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁵ Whether a particular injury causes disability for work is a medical question, which must be resolved by competent medical evidence.⁶

ANALYSIS

The Office accepted appellant's claim for asthmatic reaction due to chlorine gas inhalation.⁷ He retired from his position with the employing establishment effective December 24, 1998. Appellant did not specifically identify any dates on which he was either

³ 5 U.S.C. § 8101 *et seq.*

⁴ 20 C.F.R. § 10.115(e), (f) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁵ 20 C.F.R. § 10.5(f) (1999).

⁶ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁷ In addition to his accepted asthmatic condition, appellant has other medical conditions, including hypertension, congestive heart disease, gastroesophageal reflux disease and hiatal hernia, none of which have been proven to be employment related. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury. *Jacquelyn L. Oliver*, *supra* note 4.

disabled due to his accepted condition or experienced lost wages as a consequence of obtaining medical treatment for his accepted condition. The first medical evidence of appellant's disability was Dr. Nguyen's December 2001 report in which he diagnosed asthma and allergic rhinitis and indicated that appellant's pulmonary condition prevented him from working even in a part-time capacity.⁸ Dr. Nguyen explained that appellant experienced shortness of breath with brief periods of physical activity. This report is insufficient to establish disability because Dr. Nguyen did not discuss causal relationship or mention appellant's August 16, 1986 occupational exposure. Appellant bears the burden of demonstrating that his claimed disability is causally related to his accepted employment injury.⁹

Dr. Nguyen's January 14, 2004 work capacity evaluation and his January 23, 2004 attending physician's report are also insufficient to establish a causal relationship between appellant's claimed disability and his accepted employment injury. In his January 23, 2004 report, Dr. Nguyen indicated that appellant was disabled due to his chronic persistent asthma that developed after his exposure to fumes. Dr. Nguyen also referenced appellant's recent pulmonary function study and noted that appellant was frequently symptomatic despite multiple medications. On the January 14, 2004 Form OWCP-5c he further explained that appellant could not work because his chronic persistent severe asthma becomes symptomatic even with light physical activity despite being on multiple medications.

The January 14, 2004 work capacity evaluation does not address causal relationship and Dr. Nguyen's January 23, 2004 physician's report does not include a date of injury or identify the period of disability. Additionally, the January 23, 2004 report did not identify the accepted employment factor that caused or contributed to the disability. The reported history of injury was "Asthma symptoms developed after exposure to fumes as per patient." Dr. Nguyen did not specify the type of fumes appellant was exposed to or when the exposure occurred. Although he checked the "yes" box attributing appellant's asthma to his employment activity, Dr. Nguyen's January 23, 2004 opinion is insufficient to support causal relationship because it was based on an incomplete factual background and the doctor failed to support his conclusion with medical rationale.¹⁰

While appellant submitted hundreds of pages of medical documentation, the majority of information either pertained to unrelated medical conditions or did not specifically address the relevant issue of employment-related disability. Additionally, although the Social Security Administration found appellant disabled as of December 5, 1998, the Office is not bound by such a finding.¹¹ Accordingly, the medical evidence of record fails to establish any specific period or periods of disability causally related to appellant's August 16, 1986 accepted employment injury.

⁸ Dr. Nguyen did not specifically identify any period or periods of disability prior to December 2001. This report is a handwritten response to six questions posed by appellant in a "Dec[ember] 2001" typewritten letter. The document was date-stamped as being received by the Office on January 18, 2002.

⁹ 20 C.F.R. § 10.115(e), (f) (1999); see *Jacquelyn L. Oliver*, *supra* note 4.

¹⁰ *Victor J. Woodhams*, *supra* note 4.

¹¹ See *Freddie Mosley*, 54 ECAB ___ (Docket No. 02-1915, issued December 19, 2002) (entitlement to benefits under another act does not establish entitlement to benefits under the Act).

CONCLUSION

The Board finds that appellant failed to establish that he was disabled due to his August 16, 1986 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member