

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMAN M. PERRAS and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 96-429; Submitted on the Record;
Issued April 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an occupational disease due to exposure to chemicals, dust and fumes in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

In the instant case, appellant filed an occupational disease claim on May 18, 1994 alleging that he sustained multiple conditions including "allergic rhinitis, reflux, allergic sinusitis, lead poisoning, malaise, multiple allergies and hypersensitivities, toxic effect of fumes [and] vapors, skin disease, [and] clinical depression" due to his exposure to chemicals, dust, fumes and vapors during the course of his federal employment. Appellant stopped work on May 18, 1994 and did not return.

The Office accepted that appellant's work environment from 1977 onward included areas with potentially hazardous substances including fumes, dust, noise, heat, ionizing and nonionizing radiation, and chemicals.

By decision dated January 11, 1995, the Office denied appellant's claim on the grounds that he did not establish a causal relationship between the claimed conditions and factors of his federal employment. By decision dated May 12, 1995, an Office hearing representative affirmed the Office's January 11, 1995 decision. Appellant requested reconsideration, which the Office denied in a decision dated October 30, 1995 on the grounds that the evidence submitted was not sufficient to warrant review of the prior decision.

The Board has duly reviewed the case record and finds that the case is not in posture for decision due to a conflict in the medical opinion evidence.

In a report dated July 6, 1994, appellant's attending physician, Dr. David Buscher, Board-certified in family practice, diagnosed toxic effects of fumes, vapors and gases,

depression, sleep apnea, fatigue, rhinitis, sinusitis, headache and gastroesophageal reflux disease. Dr. Buscher found that appellant's symptoms "were very typical of someone having adverse effects from chemical irritants and toxic exposure." He further discussed the results of allergy testing and blood testing for chemicals and stated:

"Solvents and other chemicals are well-known to cause this type of symptomology. Solvent exposures have been well documented in medical literature to cause problems with cognition, depression and mood swings. Since [appellant] was found to have a variety of solvents in his blood, they are most likely a part of his cognitive impairment. Although the levels of solvents in his blood by themselves are not excessively high, the synergistic effect of them in combination, more likely than not, contributed to his central nervous system and other reactions.

"[Appellant's] immune system shows sensitization to chemicals such as benzene which is found in diesel and auto exhaust fumes. In addition, he had elevated antibodies to isocyanates and trimellitic anhydride which are commonly found in paints, glues, and other materials."

Dr. Buscher noted that appellant was in good health prior to 1977 when he began work for the employing establishment and opined that his problems "developed [] over the years due to chronic exposure to various irritants including chemical dust, fumes and metal dust."

In a report dated September 20, 1994, Dr. Buscher found that a urine test revealed abnormal porphyrins "more likely than not indicative of an acquired porphyria secondary to toxic exposures." Dr. Buscher diagnosed, *inter alia*, the toxic effects of fumes, vapors and gases, multiple chemical sensitivities, and porphyria. He found that appellant was totally and permanent disabled from his employment and that his condition "is more likely than not related to exposures to a wide variety of toxic irritants at work."

In a report dated January 16, 1995, Dr. Buscher noted that appellant's symptoms developed gradually from 1977 onward and his condition "continued to deteriorate because he continued to be exposed to truck and forklift fumes and other irritant dusts." Dr. Buscher noted that appellant's urine tests were positive for porphyria and that he also had depression and sleep apnea. Dr. Buscher opined that appellant's "psychiatric condition is related to chemical toxin exposure. Porphyria is known to cause what appears to be psychiatric illness." He stated that appellant could not return to his usual employment as he had to avoid chemical toxins.

On November 9, 1994 the Office referred appellant to the Occupational Medicine Clinic for a second opinion evaluation.

In a report dated November 21, 1994, Dr. Jay Brown, Board-certified in family practice, noted that appellant related health problems since 1989 when he relocated to building 467 at the employing establishment. He further noted that appellant related "no precipitating exposure as the cause of multiple sensitivity syndrome." Dr. Brown diagnosed evidence of multiple chemical sensitivity syndrome without the usual precipitating incident and noted appellant's history of sleep apnea, depression, anxiety and his diagnosis of porphyria.

In a report dated November 21, 1994, Dr. Carl A. Brodtkin, Board-certified in internal and preventive medicine, diagnosed “[g]eneralized symptoms including fatigue, headache, [and] dizziness” and noted that the onset of symptoms was vague and not due to a specific overexposure to chemicals. Dr. Brodtkin noted that appellant’s symptoms began in 1989 after he transferred to his current work site, building 467. He opined that appellant’s symptoms could be due to his sleep apnea, depression and anxiety rather than his exposure to chemicals after 1989. Dr. Brodtkin further diagnosed multiple chemical sensitivity but stated that he “cannot attribute [appellant’s] ongoing chemical sensitivity to exposures in building 467 subsequent to 1989, on a more probable than not basis.” He found that appellant could perform his usual employment in a well-ventilated area with minimal exposure to irritants.

In a supplemental report dated December 21, 1994, Drs. Brown and Brodtkin stated that appellant had chemical sensitivity but without the usual incident of chemical overexposure and reiterated that they could not find his symptoms were more probably than not employment related. The physicians opined that there was insufficient evidence to support a diagnosis of toxic porphyria. Drs. Brown and Brodtkin further found that tests revealed that appellant was exposed to phthalate dust which would cause irritation but did not explain his chemical sensitivity.

The Board finds that there is a conflict in the medical evidence of record between Dr. Buscher, appellant’s physician, and Drs. Brown and Brodtkin, the Office referral physicians, regarding whether appellant has any medical condition caused by his employment-related exposure to chemicals and other irritants.

5 U.S.C. § 8123(a) of the Federal Employees’ Compensation Act provides in pertinent part, “If there is a 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.”¹

Consequently, the Office should refer appellant, together with the case record and a statement of accepted facts, to an appropriate medical specialist for an impartial evaluation. After such further development as it deems necessary, the Office shall issue an appropriate decision.²

¹ 5 U.S.C. § 8123(a)

² In view of the Board’s disposition of the merits, the issue of whether the Office abused its discretion in denying appellant’s request for reconsideration under section 8128 is moot.

The decisions of the Office of Workers' Compensation Programs dated October 30, May 12 and January 11, 1995 are hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, D.C.
April 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member