

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAY GILL and DEPARTMENT OF THE ARMY,
Fort Polk, La.

*Docket No. 96-1327; Submitted on the Record;
Issued April 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

On April 17, 1993 appellant filed an occupational disease claim alleging that on November 23, 1992 he realized that he sustained “[s]welling of the nerves,” causally related to factors of his federal employment. In a statement dated August 23, 1993, appellant attributed his condition to his exposure to herbicides, contaminated trash and other hazardous chemicals in the course of his work for the employing establishment.

By decision dated October 6, 1993, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence did not establish that he sustained an injury in the performance of duty. Appellant requested a hearing before an Office hearing representative, which was held on February 22, 1995. In a decision dated May 8, 1995, the Office hearing representative found that the opinion of Dr. Thomas J. Callender, a Board-certified internist, was sufficient to require the Office to further develop appellant's claim. The Office hearing representative set aside the Office's October 6, 1993 decision and remanded the case to the Office for the referral of appellant to a second opinion specialist. After further development, the Office denied appellant's claim by decision dated February 28, 1996.

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

Section 8123(a) of the Federal Employees' Compensation Act¹ provides that where there is a disagreement between the physician making the examination for the United States and the

¹ 5 U.S.C. § 8123(a)

physician of the employee, the Office shall appoint a third physician who shall make the examination.²

In the present case, there is a conflict in medical opinion between Dr. Callender, appellant's attending physician and Dr. George D. Isaacs, a Board-certified neurologist, to whom the Office referred appellant for a second opinion evaluation.³

In a deposition dated August 16, 1994, Dr. Callender diagnosed peripheral neuropathies, central nervous system damage and encephalopathies. Dr. Callender opined that the cause of appellant's condition was "chronic exposure to multiple neurotoxic agents" during the course of his federal employment. He then described the mechanism by which such damage to the nervous system could occur as a result of appellant's work-related exposure to toxins. Dr. Callender related that the physical findings, on multiple examinations of appellant and the results of objective testing supported his conclusion. He further noted that objective testing had eliminated other systemic illnesses, which could produce similar symptoms as a cause of appellant's condition.

Dr. Isaacs, on the other hand, in a report dated November 13, 1995, recommended further testing to determine whether appellant had an encephalopathy, an essential tremor or Parkinsonism. After objective testing, Dr. Isaacs, in a report dated December 11, 1995, noted that appellant did not appear to have Parkinsonism and stated:

"I find it very difficult to substantiate a toxic cause for [appellant's] problems at this time. We certainly see many patients who develop essential tremor without any evidence of toxic causes. There is no one specific abnormality in [appellant's] examination that specifically points to a toxic substance having been involved."

To resolve the conflict in medical opinion, the Office should refer appellant to an appropriate impartial medical specialist, together with the case record and a statement of accepted facts, for an opinion on whether appellant has sustained an occupational disease causally related to exposure to toxic chemicals in the course of his federal employment. After further development, the Office should issue a *de novo* decision.

² *Debra S. Judkins*, 41 ECAB 616 (1990).

³ In a report dated July 21, 1995, an Office medical adviser noted that it would be difficult to ascertain the cause of appellant's condition and recommended that appellant be referred to his prior attending physician, Dr. Arsham Naalbandian, a Board-certified neurologist and to Dr. Isaacs, who examined appellant once on May 3, 1993 at the request of his physician, for an opinion on the diagnosis and cause of his condition. Dr. Naalbandian, in response to the Office's request, stated that he did not know the etiology of appellant's condition and recommended that he be referred to specialists such as Dr. Callender or Dr. Isaacs.

The decision of the Office of Workers' Compensation Programs dated February 28, 1996 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.
April 21, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member