

U. S. DEPARTMENTT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARIA E. BENNETT and FEDERAL JUDICIARY,  
NORTHERN DISTRICT OF OHIO, Cleveland, Ohio

*Docket No. 96-1373; Submitted on the Record;  
Issued April 20, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has established that her medical condition on and after December 31, 1990 was causally related to an accepted temporary aggravation of asthma, or other factors of her federal employment.

The Office of Workers' Compensation Programs accepted that appellant, then a 42-year-old jury administrator, sustained a temporary aggravation of preexisting asthma ending on December 31, 1990 when she retired from Federal employment. Appellant's claim was initially denied in an April 22, 1993 decision. She requested an oral hearing on November 18, 1993.

In an October 26, 1993 report, Dr. David Weiner, an attending Board-certified pulmonologist, opined that appellant had occupationally-related asthma which rendered her totally disabled from December 31, 1990 onward. He stated that appellant's asthma was clinically correlated to her work environment, with "numerous temporal correlations between time spent working in the building and ... exacerbations of her asthma." He noted an absence of other aggravating factors such as pets or cigarette smoke at home.

By decision dated and finalized March 14, 1994, an Office hearing representative set aside the Office's April 22, 1993 decision and remanded the case for further development, including referral to an appropriate specialist for a rationalized opinion on causal relationship.

In a May 10, 1994 report, Dr. David Berzon, a Board-certified pulmonologist and second opinion physician, opined that appellant's asthma was "not caused by her working at the [employing establishment.] There was no evidence that [appellant] sustained any type of high level exposure to any type of toxic or noxious fumes." He noted that a black dust to which appellant was exposed was not identified with certainty, but was not substantiated to be a "toxic noxious chemical." He concluded that appellant's work environment caused a temporary aggravation of her underlying asthma, ending when she retired December 1990.

On November 3, 1994 appellant filed a claim for compensation for the period commencing December 31, 1990.<sup>1</sup>

By decision dated December 13, 1994, the Office denied appellant's claim on the grounds that the weight of the medical evidence, represented by Dr. Berzon, did not establish that her condition on and after December 31, 1990 was causally related to the accepted temporary aggravation of asthma or other work factors. Appellant disagreed with this decision and requested an oral hearing, held on June 23, 1995.

By decision dated and finalized September 5, 1995, the Office hearing representative set aside the December 13, 1994 decision, and remanded the case for the appointment of an impartial medical examiner to resolve a conflict of medical opinion between Dr. Weiner, for appellant, and Dr. Berzon, for the government, regarding the extent and duration of appellant's work-related respiratory condition. On return of the case, the Office referred appellant, a revised statement of accepted facts, and the medical record to Dr. Stephen J. Clary, a Board-certified pulmonologist, to obtain an impartial medical evaluation.

In a January 4, 1996 report, Dr. Clary noted appellant's "problems as a young child with bronchitis," without further problems until a spontaneous left pneumothorax in 1983, and that appellant was on a variety of prescribed inhalers to treat bronchospasms. On examination, Dr. Clary found appellant "completely wheeze-free and asymptomatic," that spirometry showed "no evidence of clinical airway reaction," and that a three-minute exercise step test revealed no "bronchotic component of the lungs" or bronchospasm, although appellant "did fatigue because of physical endurance." Dr. Clary opined that considering "the lack of clinical findings ... [he saw] no evidence of any industrially-related problems ... respiratory insufficiency or embarrassment at th[at] time."

By decision dated January 12, 1996, the Office denied appellant's claim on the grounds that medical evidence established that the "temporary aggravation of asthma due to employment factors, ceased prior to December 31, 1990." The Office found that Dr. Clary's opinion represented the weight of the medical evidence, as it was clear, definite, and "supported by substantial medical reasoning."

The Board finds that appellant has not established that her medical condition on and after December 1990 was causally related to factors of her federal employment.

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<sup>1</sup> Appellant submitted documents relating to demolition of buildings adjacent to the employing establishment in October 1982, inadequate atmospheric controls, a January 1988 indoor air quality study showing lack of temperature and humidity controls but no contaminants in excess of federal standards, the removal of asbestos during July 1988 in the building where she worked, a March 5, 1991 indoor air quality assessment showing inadequate airflow, dirty air ducts, mold colonies, and persistent tobacco smoke, and an August 3, 1992 indoor air quality assessment showing yeast and bacteria in air handling units.

Causal relationship is a medical issue,<sup>2</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>3</sup> 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,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> 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>6</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed condition on and after December 31, 1990, the day she retired from federal employment and was no longer exposed to the alleged environmental factors.<sup>7</sup> This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>8</sup>

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "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." Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>9</sup> The Board finds that Dr. Clary's January 4, 1996 opinion is based upon a review of the complete medical record, the statement of accepted facts, and contains sufficient medical rationale to represent the weight of the medical evidence in this case. Dr. Clary found appellant to be asymptomatic on examination and testing, and showed no objective evidence of respiratory disability. He therefore concluded that appellant was not disabled due to work factors as she was, in fact, not disabled.<sup>10</sup>

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<sup>2</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>3</sup> *See Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>8</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>9</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

<sup>10</sup> Appellant did not submit medical evidence following Dr. Clary's January 4, 1996 report which was considered by the Office.

Consequently, appellant has not met her burden of proof, as she submitted insufficient rationalized medical evidence establishing that she had residuals of accepted temporary aggravation of asthma after December 31, 1990.

The decision of the Office of Workers' Compensation Programs dated January 12, 1996 is hereby affirmed.

Dated, Washington, D.C.  
April 20, 1998

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member