

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVIN ADAMS and DEPARTMENT OF THE ARMY,
Fort Benning, Ga.

*Docket No. 95-2890; Submitted on the Record;
Issued February 10, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant has established that he has any pulmonary, respiratory, neurological, or psychological conditions causally related to his federal employment; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant's accepted condition of chemical sensitivity ceased by April 12, 1995.

In the present case, appellant was employed as an exhibits and model maker by the employing establishment from September 6, 1981 to August 18, 1993. Appellant has alleged that he sustained multiple medical conditions resulting from chemical exposure in the performance of duty including: bronchitis, sinusitis, asthma, lung disease, blurred vision, headaches, tinnitus, skin rashes, head sores, loss of hair, loss of height, decomposed fingernails and toenails, black-outs, memory loss, slurred speech and loss of coordination. Appellant's employment was terminated on August 18, 1993 due to his medical inability to perform his assigned duties. The Office denied appellant's claim by decision dated December 14, 1993 on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability. By decision dated April 25, 1994, an Office hearing representative found that appellant had submitted unrationalized medical evidence which was generally supportive of his claim. The Office hearing representative remanded the case to the Office for development of the factual evidence to establish the extent and duration of appellant's exposure to chemicals while in the performance of duty from September 6, 1981, to be followed by additional development of the medical evidence, and a *de novo* decision.

The Office obtained an employing establishment air sampling survey. By decision dated October 26, 1994, the Office again denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the occupational factors and the claimed conditions or disability. On February 3, 1995 an Office hearing representative again remanded the case to the Office for further development. The hearing representative found that the October 26, 1994 Office decision was premature as it had only determined that appellant's

skin condition and lesions were not causally related to his employment, but had not developed whether the other alleged conditions were caused by the occupational exposure to chemicals.

Upon remand, the Office referred appellant to: Dr. Bruce Bosse, Board-certified in neurology; Dr. Kenneth Melby, Board-certified in pulmonary disease; Dr. Frederick Glass, Board-certified in emergency medicine; and Dr. Henry Selvey, Board-certified in psychiatry. Based upon reports from these physicians, on July 28, 1995 the Office accepted that appellant sustained sensitization to plastics (chemicals) on or about December 6, 1991 which ceased by April 12, 1995. By decision dated July 31, 1995, the Office denied appellant's claim for further compensation benefits on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the other claimed conditions or disability.

The Board finds that appellant has not met his burden of proof to establish that he has any neurological or psychological conditions causally related to factors of his federal employment.

Claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is claimed was caused or adversely affected by factors of federal employment.¹

Regarding appellant's alleged neurological conditions, the only rationalized medical report of record which is based upon a proper factual background that incorporates evidence of appellant's actual exposure to toxins in the workplace is that of Dr. Bosse. In his report dated April 12, 1995, Dr. Bosse noted that appellant had a history of toxin exposure with multiple complaints of headaches, memory problems, weakness, and numbness. Dr. Bosse stated that appellant had no objective findings of any neurologic deficits on current examination and his sensory examination was inconsistent, with varying motor strength, resistance, and functional tandem gait, suggesting embellishment of subjective complaints. Further, Dr. Bosse stated that while appellant had been diagnosed with mild chronic axonal degeneration in December 1992, he believed this diagnosis was a misuse of terminology as appellant's NCV and electromyogram (EMG) revealed findings consistent with a radiculopathy, such as that found with a pinched nerve from a slipped disc, which would not be toxin related, and current NCV testing showed no evidence of axonal neuropathy. Dr. Bosse noted that appellant's headaches could be related to his high blood pressure which was 170/100. Dr. Bosse concluded that appellant had no objective evidence of any neurological disease. Dr. Bosse's report was based upon a proper factual background and was well rationalized. His report establishes that appellant had no neurological condition causally related to toxin exposure at work. Rather appellant's objective findings were consistent with a radiculopathy, caused by a pinched nerve, and which could not be caused by toxin exposure. Regarding appellant's headaches, Dr. Bosse concluded that they were caused by appellant's hypertension as appellant had no evidence of a neurological disease which could cause headaches. The Office therefore properly concluded that Dr. Bosse's report constituted the weight of the medical evidence and established that appellant had no compensable neurological condition.

¹ See generally, *Jimmy Gilbreath*, 44 ECAB 555 (1993).

Regarding appellant's alleged psychological disorder due to toxin exposure, the Board also finds that appellant has not met his burden of proof.

The only rationalized medical report addressing appellant's alleged psychological conditions which is based upon a proper factual background is that of Dr. Selvey. On April 13, 1995 Dr. Selvey stated that appellant's diagnoses were somatization disorder, hypochondriasis with quite poor insight, and personality disorder. Dr. Selvey opined that appellant's disorders were present earlier in his life, but were dormant until he married and entered a dependent relationship. Dr. Selvey stated that appellant was suggestible to warnings regarding exposure to chemicals and the relationship between appellant's symptoms and chemical exposure was "simply a convenient excuse"; however, appellant's characterological behavior would have evolved in time to what it is regardless of the specific external circumstances. Dr. Selvey concluded that appellant's baseline condition was not altered by any claimed work exposure to chemicals or to warning concerning chemical, but was related to the aging process. Again, Dr. Selvey's report was based upon a proper medical background and negated any causal relationship between appellant's employment and his psychological diagnoses. The Office therefore properly concluded that appellant had not established a compensable psychological condition causally related to his employment.

The Board finds that the case is not in posture for decision regarding appellant's alleged respiratory and pulmonary conditions.

In his report dated April 12, 1995, Dr. Melby noted that a methacholine inhalation challenge test performed in 1993 at Emory University Hospital was positive at the highest level of methacholine concentration and on the basis of this, appellant was felt to have hyperreactive airways and presumably sensitivity to some of the solvents used in his mold construction. Dr. Melby further stated that he felt appellant did have significant exposure to potential lung irritants in his occupation. Dr. Melby noted that while there was evidence from the Medical Evaluation Center to suggest that appellant was adequately protected from excessive levels of such compounds, nonetheless appellant had significant symptoms of shortness of breath during the period of exposure at work, positive methacholine challenge, and some lung function tests which showed reduction of capacity during that time. Dr. Melby concluded that therefore it was likely that appellant did have some detrimental effect on his lung function during his period of occupational exposure. Dr. Melby stated that at the present time appellant's respiratory function was completely normal, with medication. Dr. Melby opined that to determine whether appellant's pulmonary injury had resolved, however, appellant would have to be removed from his current medical regimen and a repeat pulmonary function evaluation would have to be performed to determine if his pulmonary function was indeed normal. Dr. Melby's report indicates that appellant sustained a hyperreactive airways syndrome in addition to chemical sensitivity due to work-related solvent exposure. Dr. Melby premised his diagnosis on appellant's positive methocholine inhalation challenge test in 1993 and upon his own evaluation of appellant's exposure to potential lung irritants at work. Dr. Melby indicated, however, that while appellant's pulmonary function was currently normal, as appellant continued on a medical regimen to treat his pulmonary condition, to determine whether the pulmonary injury had resolved appellant would have to undergo a repeat pulmonary function evaluation after removal of his medical regimen. As appellant did not undergo such further pulmonary function

evaluation as recommended by Dr. Melby, the case must be remanded to the Office for further development of the medical record to resolve whether appellant had continued residuals of the diagnosed hyperreactive airways syndrome due to exposure to chemicals at work.

Finally, regarding appellant's accepted condition of chemical sensitivity, in his report dated April 12, 1995, Dr. Glass reported that appellant's diagnosis was history of sensitization to chemicals at work with good response to avoidance of exposure and treatment with bronchial dilators. Dr. Glass stated that in the past, protective equipment and clothing used by appellant was adequate, but not sufficient to avoid exposure at all times while at the workplace. He noted that sensitization to plastics was widely known to create an adverse reaction to exposure even to low doses. Dr. Glass stated that appellant had no known preexisting condition and his temporal relationship to clinical manifestation was consistent with that type of exposure and was supported by the result of the methachlorine challenge test performed in 1993. Currently, Dr. Glass stated that appellant had a normal pulmonary and neurological function examination, and that appellant's employment had not altered his baseline. However, he noted that appellant had a psychiatric diagnosis of somatization and hypochondriasis. Dr. Glass concluded that appellant should avoid further exposure to chemicals in the workplace unless a more current methacholine challenge was performed, as sensitization to agents such as isocyanate and other chemicals could rapidly reverse after removal from exposure, but further exposure would likely increase his sensitivity thus causing him to sustain restrictions in his workplace, contacts and requiring avoidance of further exposure. In a supplemental report dated June 5, 1995, Dr. Glass stated that appellant had several discreet episodes of sensitization to chemicals at work including episodes of bronchospasm in April 1990, episodes of wheezing in May 1990, acute bronchitis in December 1990, and exposure at work in October 1991. Dr. Glass stated that appellant could no longer work with plastics or in areas where plastic manufacturing process are in place. He also stated that as of his examination on April 12, 1995, appellant had normal pulmonary and neurological functions, however, it was unknown when appellant returned to his baseline condition. He indicated that to determine if appellant had returned to baseline, a repeat methacholinic challenge test would have to be performed to determine if appellant was still sensitive to isocyanates.

The medical question that remains to be resolved regarding appellant's accepted injury is whether appellant has any permanent work-related residuals from his accepted employment injury which would cause any disability for work. If residuals of appellant's employment injury prevent him from performing the duties of the job he held when injured, he is disabled within the meaning of the Federal Employees' Compensation Act, and has a partial loss of wage-earning capacity. On the other hand, if there are no residuals of appellant's employment injury and his disqualification is due to an underlying condition without any contribution by the employment, he is not entitled to compensation under the Act.²

The Board differentiated these two situations in the cases of *Dennis L. O'Neill* and *James L. Hearn*. In *O'Neill*, the Board stated:

² *James Bain, Jr.*, 39 ECAB 455 (1988).

“If the medical evidence establishes that residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.”³

In *Hearn*, the Board stated:

“Where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. However, where, as in the present case, the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect which the employment factors might have on the underlying condition. Under such circumstances, his disqualification for continued employment is due to the underlying condition, without any contribution by the employment.”⁴

In the present case, the medical evidence is insufficient to permit a full adjudication of the question of whether appellant’s employment injury resulted in a temporary aggravation of an underlying condition with no resulting permanent residuals, or whether the employment injury caused a new condition or interacted with an underlying condition, with resulting permanent residuals which continue to cause appellant to have disability for work. Dr. Glass’ report suggests that appellant had no preexisting underlying condition. On remand, the Office shall further develop the medical evidence to determine whether all residuals of the accepted condition have ceased, and if not, whether appellant remains disabled for work. After such further development as necessary, the Office shall issue a *de novo* decision.

³ *Dennis L. O’Neill*, 29 ECAB 259 (1978).

⁴ *James L. Hearn*, 29 ECAB 278 (1978).

The decision of the Office of Workers' Compensation Programs dated July 31, 1995 is affirmed regarding the finding that appellant has not established any neurological or psychological condition causally related to his employment, and set aside regarding the findings that appellant had no pulmonary condition causally related to the accepted injury and that appellant's accepted condition of chemical sensitivity ceased by April 12, 1995.

Dated, Washington, D.C.
February 10, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member