

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. McFARLAND and DEPARTMENT OF THE NAVY,
PUGENT SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 95-2828; Submitted on the Record;
Issued January 8, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof in establishing that she had any disability after April 22, 1994 causally related to factors of her federal employment or her accepted employment injury of temporary aggravation of allergic sinusitis.

On July 5, 1993 appellant, then a 39-year-old supply technician, filed an occupational disease claim, alleging that her rhinitis, sinusitis, asthma and eye irritation were caused by poor ventilation in her workplace at Building 467. On October 1, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of allergic sinusitis and indicated that if appellant wished to file a claim for compensation, it must be accompanied by appropriate documentation establishing that she was disabled for work during the claimed time period. Appellant filed a CA-8 form covering the period October 19 to 22, 1993 for which she received appropriate compensation. Appellant stopped work on December 27, 1993. She filed a CA-8 form covering the period December 27, 1993 to January 6, 1994 and thereafter filed additional forms for intermittent periods of compensation. By decision dated June 20, 1994, the Office found that appellant was temporarily totally disabled as of December 27, 1993 but that her disability ceased no later than April 22, 1994. The Office denied compensation for any period after April 22, 1994. By merit decision dated July 19, 1995, the Office affirmed the June 20, 1994 decision on the grounds that the evidence submitted was not sufficient to warrant modification.

The Board has carefully reviewed the case record on appeal and finds that appellant has not met her burden of proof in establishing that she had any disability after April 22, 1994 causally related to factors of her federal employment.¹

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.² As part of this burden, the claimant must present rationalized medical evidence based upon a complete factual background showing causal relationship.³ 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, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁴ 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 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, her disqualification for continued employment is due to the underlying condition, without any contribution by the employment.⁵

In the present case, appellant submitted reports by Drs. Robert W. Enquist, a Board-certified internist, Preston A. Rice, an otolaryngologist, and Patricia A. Sparks, who is Board-certified in preventive medicine. In a report dated January 18, 1994, Dr. Enquist stated that appellant had "known allergic rhinitis" and has a rhinitis-sinusitis syndrome with postnasal drainage which developed significant reactivity to her work environment. He reported that appellant improved when away from this atmosphere. Dr. Enquist indicated that "if the patient is removed from her work environment the patient may have continued rhinitis, possible sinusitis; however, as noted, the exacerbation related to this environment would not be present." He

¹ The Board notes that this case does not involve a termination of compensation wherein the burden of proof is on the Office to establish that the termination was justified. Rather, appellant had a continuing burden of proof with respect to establishing that she was disabled for the periods of time claimed in the various CA-8 forms she filed. *See Donald Leroy Ballard*, 43 ECAB 876 (1992). The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on August 18, 1995, the only decision before the Board is the Office's July 19, 1995 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁴ *Dennis L. O'Neill*, 29 ECAB 259 at 261 (1978).

⁵ *See Joseph C. Sanderson*, 35 ECAB 864 (1984).

concluded that appellant returned to baseline with minimal symptomatology following removal from the premises. In his November 8, 1993 form report, Dr. Price diagnosed Eustachian tube dysfunction which he indicated was related to the claimed condition by checking the corresponding box. In her January 6, 1994 report, Dr. Sparks diagnosed “allergic/vasomotor rhinitis/sinusitis” that was “initiated because of the underlying atopic disease” but was “significantly exacerbated by the workplace exposure to poor quality indoor air ... more probably than not.” While these reports support appellant’s claim for continuing disability on or about December 1993, none of the doctors address whether appellant was disabled after April 22, 1994, the central issue in this case. Thus, this medical evidence is insufficient to discharge appellant’s burden of proof.

Appellant underwent a second opinion examination by Dr. Rick L. Johnson, a Board-certified allergist and Teresa Jacobs, a pulmonary specialist, on April 22, 1994. Dr. Johnson diagnosed rhinosinusitis related to workplace irritants as well as house dust and mold spore and reactive airway disease related to her work exposure. He noted that appellant had been off work since December 1993 and stated that her symptoms had fully resolved. He concluded that at the time of his examination appellant did not have any objective evidence of pulmonary disease and he saw no residual disability. Dr. Jacobs indicated that appellant had no objective evidence of pulmonary disease as a result of dust exposure and that there was neither radiographic nor functional evidence of pneumoconiosis or asthma. She concluded that there was no current pulmonary disability and there should not be any restrictions to her employment based on her respiratory status. The Office requested clarification from Drs. Johnson and Jacobs concerning the date appellant became totally disabled and when that disability ceased. Dr. Johnson responded that appellant was disabled effective December 27, 1993 and was normal as of her April 22, 1994 examination. He noted that appellant was still disabled from working in her prior environment although she was not disabled by any objective criteria from working where she was not exposed to that particular type of dust. The reports by Drs. Johnson and Jacobs constitute the weight of the medical evidence regarding appellant’s disability status on or about April 22, 1994. The doctors thoroughly reviewed the medical evidence of record and examined appellant prior to providing a well-reasoned opinion that as of the date of her April 22, 1994 examination, appellant was normal from a pulmonary standpoint and did not have any residuals from her accepted employment injury. The subsequently submitted April 18, 1994 report by Dr. David S. Buscher, a Board-certified family practitioner, is not sufficient to overcome these well reasoned and rationalized reports. Dr. Buscher diagnosed reactive airways dysfunction syndrome, chronic rhinitis and sinusitis and multiple chemical sensitivities and indicated that because of these conditions appellant was no longer able to work at the employing establishment. He concluded that she continued to be totally disabled due to her occupationally caused condition. As previously noted, although appellant is entitled to compensation for periods of disability due to aggravation of a preexisting condition, in this case allergic rhinitis, once that aggravation is resolved, appellant is no longer entitled to compensation even if she is medically disqualified from her position. Thus, Dr. Buscher’s report which essentially finds appellant totally disabled due to medical disqualification is not sufficient to establish total disability as the doctor has not provided any objective findings or diagnosed any permanent residual conditions related to factors of appellant’s federal employment. Appellant has not met her burden of proof to establish any disability after April 22, 1994 causally related to factors of her federal employment.

The decision of the Office of Workers' Compensation Programs dated July 19, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 8, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member