

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUNE A. DEANS and ENVIRONMENTAL PROTECTION AGENCY,  
OFFICE OF WATER PROGRAMS, Atlanta, Ga.

*Docket No. 96-1019; Submitted on the Record;  
Issued July 10, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs, in its January 9, 1996 decision, to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in this case.

On December 12, 1986 appellant, then a 45-year-old environmental protection assistant, filed a claim for "tight building syndrome (inadequate indoor air quality) and sensitivity to chemical office environment." This is the second appeal of this case. By decision dated October 18, 1991,<sup>1</sup> the Board remanded the case to the Office. The Board found that appellant had submitted medical evidence which was generally supportive of her claim, however, the Office had not prepared a statement of accepted facts and therefore the Office had not properly assessed the medical evidence of record. The Board remanded the case to the Office for preparation of a statement of accepted facts and referral to an appropriate specialist for a well-rationalized opinion as to whether appellant sustained any allergic reaction or heightened sensitivity to formaldehyde or other organic volatile chemical causally related to factors of her federal employment and, if so, if appellant had any periods of disability due to such condition. The facts of the case are fully set forth in the prior decision and are hereby incorporated by reference. By decision dated July 23, 1992, the Office accepted the claim for temporary aggravation of allergic rhinitis and sinusitis due to claimant's exposure to volatile organic chemicals in her employment, with the aggravation ceasing by December 18, 1986. The Office further found that the evidence of record did not establish that the claimant sustained any allergic reaction heightened sensitivity to formaldehyde causally related to factors of her federal

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<sup>1</sup> Docket No. 91-860 (issued October 18, 1991).

employment. The Office denied modification of the prior decision on August 9, 1993 and November 16, 1994. On January 9, 1996 the Office denied appellant's application for review.

The Board finds that the Office did not abuse its discretion in this case by denying merit review on January 9, 1996.

On April 28, 1992 following the Board's remand of this case to the Office, appellant was evaluated by Dr. Nathan Segall, Board-certified in internal medicine, at the Office's request. In a report dated July 10, 1992, Dr. Segall reported in response to the question as to whether appellant sustained an allergic reaction or heightened sensitivity to formaldehyde or other volatile chemicals due to employment factors, that there tended to be a temporal relationship between appellant's sensitivity and her exposure at work and an antibody to formaldehyde was found to be positive. Dr. Segall noted that appellant had experienced recurrent difficulties suggestive of upper respiratory symptomatology that very well may have been aggravated by her exposure at work to volatile organic compounds, and/or other unrecognized or nondocumentable sensitivities particularly house dust and house dust mites. Dr. Segall stated that that he had no definitive evidence, however, and a broncho provocation challenge in a blinded fashion to formaldehyde would be required to document the condition. Dr. Segall concluded that appellant currently had normal pulmonary function measurements and he could not ascertain when appellant's condition returned to its baseline state.

Appellant subsequently submitted a report dated September 27, 1993 from Dr. Elaine B. Panitz, Board-certified in internal medicine. Dr. Panitz noted that when appellant transferred to the employing establishment in 1984, partitions were being installed in the workplace. Due to employee complaints NIOSH and EPA investigations were performed which documented elevated levels of formaldehyde in appellant's work area. Dr. Panitz stated that approximately nine months after the installation of the partitions, appellant began to develop symptoms consistent with formaldehyde sensitization, appellant continued to work in various locations in the employing establishment and had progressive respiratory and neurotic illness and became unable to tolerate low-level formaldehyde emissions in her nonwork environment. Dr. Panitz reviewed appellant's past medical findings, noting appellant's abnormal evaluation findings specifically to formaldehyde, and thereafter concluded that appellant developed formaldehyde sensitization in the wake of her exposure to elevated levels of formaldehyde gas in her workplace. Her sensitization, as explained by Dr. Panitz, included the development of eye, skin, respiratory and neurologic illness when exposure to formaldehyde, even at low levels, and because of the sensitization to formaldehyde, appellant now had a disabling sensitivity to other low level sources of formaldehyde in work and nonwork environments. Finally Dr. Panitz explained that although appellant ceased working at the employing establishment in March 1990, her condition (formaldehyde sensitization) continued, and this condition was permanent and lifelong, and could be expected to wax and wane with environmental exposures to formaldehyde.

The Office in a merit decision dated November 16, 1994 found that Dr. Segall's report was entitled to greater weight as he had explained that definitive evidence was necessary, such as broncho provocative challenge in a blinded fashion to formaldehyde, to document sensitivity to formaldehyde, rather than other possible causes. The Office therefore found that the weight of the medical opinion evidence did not establish that appellant had sustained a reaction to or

increased sensitization to formaldehyde at work, and that appellant had not established that her condition on or after December 18, 1986 was causally related to her employment.

As the Office's last merit review of the claim was issued on November 16, 1994, more than one year prior to the filing of appellant's appeal, the Board lacks jurisdiction to review that decision.<sup>2</sup>

Appellant thereafter on November 13, 1995 requested reconsideration and submitted pulmonary function and provocation reports from Piedmont Hospital dated September 28, 1995. While appellant's representative requested additional time through December 31, 1995 to submit narrative medical report explaining these test reports, no further evidence was received by the Office.

The Office's regulations at 20 C.F.R. §10.138(b)(1) provide that a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>3</sup>

The pulmonary function reports submitted by appellant were unsigned by a physician and offered no medical interpretation of the test results. The issue in appellant's case was whether she had sustained sensitivity to formaldehyde which disabled her after December 18, 1986. Without further medical interpretation, the Board is unable to determine whether these tests in any respect measured appellant's sensitivity to formaldehyde or established a continuing disability due to appellant's accepted employment conditions. Without further medical explanation, these reports lack relevancy to the issues in this case. Appellant did not show that the Office had erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered, or submitted new, relevant evidence not previously considered by the Office. The Board therefore concludes that the Office did not abuse its discretion by denying merit review in this case.

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<sup>2</sup> See *Saundra B. Williams*, 46 ECAB 546 (1995).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2); *Norman W. Hanson*, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated January 9, 1996 is hereby affirmed.

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

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member