

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. BUTLER and DEPARTMENT OF THE INTERIOR,
U.S. FISH & WILDLIFE SERVICE, Hadley, Mass.

*Docket No. 97-528; Submitted on the Record;
Issued October 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained any medical conditions or disability while in the performance of duty.

On February 28, 1994 appellant, then a 44-year-old realty appraiser, filed an occupational disease claim, alleging that he sustained respiratory problems due to chemical irritants and improper ventilation at work. In a supplemental statement, appellant indicated that he was exposed to carbon dioxide, formaldehyde and other unidentified environmental air contaminants when the employing establishment moved to a new building in January 1993 and that the air supply in his former duty station, in an older building, did not have proper air ventilation. In a decision dated October 21, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish that he was exposed to the identified substances at the time, place, or in the manner alleged, and the medical evidence did not establish any medical condition or disability causally related to the alleged contaminants or conditions. Therefore, fact of injury was not established. In a decision dated July 10, 1995, finalized on July 13, 1995, an Office hearing representative found that appellant did establish exposure to formaldehyde as alleged, but affirmed the Office's October 21, 1994 decision on

the grounds that the medical evidence did not establish fact of injury. In a merit decision dated August 23, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish that modification of the Office's prior decisions was warranted.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not established that he sustained any medical condition or disability causally related to factors of his federal employment.¹

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.³ In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁶ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁷

In the present case, an Office hearing representative found that appellant established exposure to formaldehyde while in the employing establishment based on a review of indoor air quality tests performed by the General Services Administration (GSA) and the Occupational Safety and Health Administration (OSHA). These tests revealed that appellant was exposed to

¹ 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 his appeal with the Board on November 2, 1996, the only decision before the Board is the Office's August 23, 1996 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

³ *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 3.803.2a (September 1980).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Manuel Garcia*, 37 ECAB 767 (1986).

formaldehyde at levels above the guideline set by GSA according to tests performed in October and November 1993, and, therefore, exposure was demonstrated and the first prong of fact of injury was established. Nonetheless, fact of injury is not established as appellant has not submitted evidence which is sufficient to establish that he sustained a personal injury as a result of exposure to the identified substance. Appellant submitted the following medical reports: Dr. Rich Rosen, a general practitioner and appellant's treating physician, indicated that appellant was first diagnosed with asthma in 1992 and that, although appellant had some problems before he began working with the employing establishment, his symptomatology was aggravated after he began working in the employing establishment's new building. In a July 1994 report, Dr. Rosen indicated that when appellant was working elsewhere, his symptoms improved and that some of his symptomatology may be associated with exposure to irritants or allergens at the employing establishment. In a report dated July 13, 1995, Dr. Paul F. Walker, a Board-certified allergist, provided a history of appellant working in a building that was sealed while under construction and indicated that he believed that construction dust was now distributed throughout the building. He noted that appellant's symptoms appeared milder when he was outside the employing establishment and that there is circumstantial evidence that suggests that appellant's symptomatology began temporally when appellant entered the building which was obviously contaminated by a variety of materials and substances. In a report dated March 14, 1996, Dr. Charles R. Weeber, a general practitioner, noted that appellant was under his care for allergic rhinitis and asthma secondary to multiple chemical irritants. In a report dated April 8, 1996, Drs. James L. Jordan, a general practitioner, and Thomas Hicks, a Board-certified family practitioner, noted that appellant first developed asthma in August 1992 while in Maine and that since moving to his new office in January 1993 with the employing establishment he had developed itchy and swollen eyes, nasal congestion and headaches. They diagnosed symptoms consistent with an asthmatic or allergic responses with a temporal relationship to the building in which appellant worked. None of these reports are sufficient to discharge appellant's burden of proof since they are all speculative in nature and do not demonstrate that the physicians had a complete factual history when providing their opinion. Specifically, Dr. Rosen reported that appellant's symptoms "may" be related to his work environment and this language is speculative in nature.⁸ He also indicates that no allergy testing has been performed by appellant. Thus, there is no medical evidence to establish that appellant has any particular chemical sensitivities of any kind, or any sensitivity to formaldehyde, the accepted identified substance to which appellant was exposed. None of the reports by Drs. Walker, Weeber, Jordan and Hicks provides a full factual history as they have not identified any particular chemicals, materials or substances to which appellant was exposed in the employing establishment as a source of his diagnosed conditions. The physicians' general conclusions that appellant had some type of allergic response to chemicals or substances at work are vague and therefore are also speculative in nature.⁹ As none of the medical evidence provides a definitive nexus between appellant's diagnosed conditions and the accepted exposure to formaldehyde in the workplace, appellant has not met his burden of proof in establishing fact of injury.

⁸ *Charles A. Massenzo*, 30 ECAB 844 (1978).

⁹ *Id.*

The decision of the Office of Workers' Compensation Programs dated August 23, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 15, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member