

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID F. MEADOR and DEPARTMENT OF LABOR, OCCUPATIONAL
HEALTH & SAFETY ADMINISTRATION Charleston, W.Va.

*Docket No. 97-702; Submitted on the Record;
Issued September 25, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an injury while in the performance of duty.

On October 17, 1996 appellant, then a 37-year-old industrial hygienist, filed a claim for compensation alleging that he sustained hyperkeratosis of the nasal nares caused by the combined effect of a respirator and a pair of safety glasses rubbing against his nose. Appellant submitted an October 8, 1996 medical report from Dr. Teresa Thacker, appellant's treating physician with a specialty in family practice, who stated that appellant's respirator mask appeared "to be causing some irritation to the right nares," and that he required a different type of mask

By decision dated November 21, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that fact of injury was not established by the evidence of record.

The Board finds that this case is not in posture for decision.

Section 10.110(b) of Title 20 of the Code of Federal Regulations¹ provides that if a claimant submits evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects of the proof and grant at least 30-calendar days for the claimant to submit the evidence required to meet the burden of proof.

In the instant case, the evidence currently of record is not sufficient to establish that appellant's nasal condition was causally related to his employment. However, the record also fails to disclose that the Office notified appellant after receipt of his claim regarding the type of

¹ 20 C.F.R. § 10.110(b).

proof necessary to establish his claim or that it granted him 30-calendar days to submit such evidence to establish his claim consistent with its procedural requirements.

The case requires further development on whether appellant's nasal irritation was causally related to his employment. The Office is required to inform appellant regarding the defects of his proof, and grant 30-calendar days from the date of the notice to submit the evidence required to meet the burden of proof.

After such further development as the Office deems necessary, a *de novo* decision should be issued.

The decision of the Office of Workers' Compensation Programs dated November 21, 1996 is set aside and the case remanded for proceedings consistent with this decision.

Dated, Washington, D.C.
September 25, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member