U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY ROSE JENSEN and DEPARTMENT OF THE ARMY, MASSACHUSETTS ARMY NATIONAL GUARD, Reading, Mass.

Docket No. 97-1432; Submitted on the Record;
Issued April 21, 1999

DECISION and ORDER

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

The issue is whether appellant established that she sustained a recurrence of disability after September 14, 1993 causally related to her employment-related chemical sensitivity syndrome, anxiety and depression.

The facts in this case indicate that on August 27, 1991 appellant, then a 43-year-old budget analyst, filed an occupational disease claim, stating that exposure to a pesticide at work caused respiratory and neurological problems.[1] On August 26, 1992 the Office of Workers' Compensation Programs accepted that she sustained employment-related chemical sensitivity syndrome with secondary anxiety and depression. She missed intermittent periods of work and received appropriate compensation. On December 17, 1993 she filed a recurrence claim, stating that she became disabled on September 14, 1993 because of varnishing at work[2] and continued to file Forms CA-8 claims for continuing compensation thereafter. By decision dated February 2, 1994, the Office rejected the claim on the grounds that the evidence failed to establish causal relationship between the recurrence and the employment injury. On February 7, 1994 and October 17, 1995 appellant requested reconsideration and submitted additional evidence.[3] In decisions dated November 16, 1994 and March 6, 1996, the Office denied modification of the prior decision. The instant appeal follows.

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

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[1] The record indicates that in April 1991 appellant's workplace was sprayed with the insecticide Dursban.

[2] On the claim form, the employing establishment stated that appellant was "removed from the alleged area of exposure to the opposite area of the building to accommodate her needs and was then relocated to another area away from any further exposure."

[3] The record indicates that on March 9, 1995 appellant filed an application for review with the Board. This appeal was docketed as number 95-1622 and, by order dated September 27, 1995, the case was dismissed following appellant's request for withdrawal so that she could submit new evidence to the Office.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[4] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[5] Causal relationship is a medical issue,[6] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

The relevant medical evidence includes numerous Office form reports in which both appellant's treating psychologist, John H. Heckler, Ph.D., and her treating physician, Dr. Barbara Scolnick, who is Board-certified in both internal medicine and preventive medicine, advised that she could not work due to the employment-related condition.

By letter dated December 14, 1993, Dr. Scolnick advised:

> "There is a tremendous amount of controversy regarding the etiology and treatment of [multiple chemical sensitivity]. My opinion is that it is best to understand that the patient is suffering, offer optimism that things will probably get better, avoid some expensive 'sensitivity treatment' and definitely offer psychotherapy. [Appellant] has done all the above and continued to work until September 14, 1993 when all the anxiety and difficulties became too much. Hopefully she will return to work after a hiatus gives her time to heal."

In a February 27, 1994 report, Dr. Scolnick related:

> "[Appellant] never felt well, although she never gave up, and there were ups and downs. In September 1993 she was under continued stress, plus her mother who lives with [her] was ill, and [appellant] also developed another medical problem. While both her therapist and I had thought it best in the past to encourage her efforts to work, at this point it became clear the anxiety was overwhelming and it

[4] *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

[5] *Frances B. Evans*, 32 ECAB 60 (1980).

[6] *Mary J. Briggs*, 37 ECAB 578 (1986).

[7] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

was in her best interest to remove herself from the constant stress of avoiding chemicals and smells at work and take some time to feel better."

In a report dated February 13, 1995, Dr. Heckler advised:

"The *medical leave of absence* of [appellant] from October 1993 into January 1994 was determined as *medically necessary* by both Dr. Scolnick, the occupational health physician, and myself because of a buildup of both chemical reactions to her workplace and other environments and reactions/precipitants of a psychological nature which were inhibiting her daily functioning and setting off a cycle of chemical reactions and emotional problems that were largely unresolvable without [appellant] taking a 'leave.' In particular, [appellant] was experiencing severe anxiety attacks with episodes of depression."

* * *

"It is, therefore, my opinion that [appellant] is physically and emotionally impaired because of multiple chemical sensitivity and the two interplay in a manner to provoke one another. Both conditions are ongoing and will interfere in daily and work functioning. The leave of absence was medically necessary for both medical and psychological reasons and she should be compensated for this time given that these two problems are conjointly the outcome of her job injury in April 1991."

Finally, in a report dated October 23, 1995, Dr. Scolnick noted appellant's history of injury and stated that her symptoms had progressed to the point that even slight odors such as the detergent aisle of a supermarket, people with perfume, etc. set off a reaction marked by a complex of symptoms including headache, difficulty concentrating, shortness of breath and stuffy feeling which could last for hours to days. Dr. Scolnick concluded, "In my opinion, [appellant's] disorder and all its manifestations are clearly related to her unfortunate exposure at work in April of 1991."

While these reports are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. As both Dr. Heckler and Dr. Scolnick indicated that appellant could not work due to her employment-related condition, these opinions are sufficient to require further development of the record.[8] It is well established that proceedings under the Act[9] are not adversarial in nature,[10] and while the claimant has the burden to establish entitlement to compensation, the Office shares

[8] *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second-opinion evaluation.

[9] 5 U.S.C. §§ 8101-8193.

[10] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

responsibility in the development of the evidence.[11] The Board further notes that, in its February 2, 1994 decision, the Office questioned whether appellant was exposed to fumes at the employing establishment on September 14, 1993. The record, however, does not indicate that the Office asked the employing establishment for information regarding this alleged exposure. On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether her accepted conditions were aggravated or exacerbated to the point that she could not work for the periods in question. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated March 6, 1996 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
April 21, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[11] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).