

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH E. ALEXANDER and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Oklahoma City, Okla.

*Docket No. 97-1277; Submitted on the Record;
Issued February 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained injuries as a result of exposure to Ethylene Oxide (EtO) during his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

In the present case, appellant filed a claim on March 8, 1996 alleging that he sustained a pulmonary condition, left sided neuropathy, angina and arrhythmia causally related to his federal employment. Appellant submitted a letter dated April 22, 1996 to the employing establishment asserting that he had been exposed to high concentrations of EtO while employed as a medical supply technician during the years 1983 to 1985. In response to a May 16, 1996 letter from the Office requesting additional information, appellant submitted a May 20, 1996 letter describing his alleged exposure to EtO during his federal employment.

By decision dated July 31, 1996, the Office denied appellant's claim on the grounds that he had failed to meet his burden of proof. Appellant requested reconsideration, and by decision dated September 12, 1996, the Office determined that the evidence submitted was insufficient to warrant merit review of the prior decision.

In a letter dated October 3, 1996, appellant requested an oral hearing. By decision dated January 30, 1997, the Office's Branch of Hearings and Review denied appellant's request for a hearing. In a letter dated March 4, 1997, appellant again requested reconsideration of his claim. By decision dated March 27, 1997, the Office denied the reconsideration request without merit review of the claim.

The Board finds that appellant has not established an injury causally related to chemical exposure in his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.² Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.³

The Board notes that the Office found, in its July 31, 1996 decision, “insufficient or conflicting evidence” regarding whether the exposure occurred as alleged. The Board finds that appellant has not submitted sufficient evidence to support that any of his physical conditions was caused or aggravated by exposure to EtO during his federal employment.

In order to meet his burden of proof, however, appellant must submit probative medical evidence establishing not only a diagnosed condition but containing a reasoned opinion as to causal relationship between the diagnosed condition and the chemical exposure during federal employment. Appellant submitted a May 14, 1996 report from Dr. Farhat Husain, a neurologist, who provided results on examination and diagnosed multiple sclerosis. Dr. Husain does not provide an opinion as to the cause of appellant’s condition.

The Board finds no medical evidence which provides a reasoned opinion, based on a complete background, that multiple sclerosis or any of the conditions identified by appellant in his narrative statements (pulmonary edema, left sided neuropathy, angina, or arrhythmia) are causally related to exposure to EtO in federal employment. Appellant accordingly has not met his burden of proof in this case.

The Board further finds that the Office properly denied appellant’s request for a hearing.

The Office’s regulations provide in pertinent part:

“A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. § 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing,

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

² *See Walter D. Morehead*, 31 ECAB 188 (1979).

³ *Manuel Garcia*, 37 ECAB 767 (1986).

or if review of the written record as provided by paragraph (b) of this section has been obtained.”⁴

In this case, appellant had requested reconsideration of the July 31, 1996 decision by letter dated August 7, 1996 and the Office had issued a September 12, 1996 reconsideration decision, prior to his October 3, 1996 hearing request. Since appellant had requested reconsideration prior to requesting a hearing, he is not entitled to a hearing as a matter of right.

Although appellant is not entitled to a hearing as a matter of right, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.⁵ In the January 30, 1997 decision, the Office advised appellant that his request for a hearing was further denied on the grounds that the issue could be addressed by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office’s discretionary authority.⁶ There is no evidence of an abuse of discretion in this case.

The decisions of the Office of Workers’ Compensation Programs dated March 27 and January 30, 1997, September 12, 1996 and July 31, 1996 are affirmed.

Dated, Washington, D.C.
February 4, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁴ 20 C.F.R § 10.131(a).

⁵ See *Herbert C. Holley*, 33 ECAB 140 (1981).

⁶ *Mary B. Moss*, 40 ECAB 640, 647 (1989).