

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI L. HURST and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Jeffersonville, Ind.

*Docket No. 97-1314; Submitted on the Record;
Issued February 19, 1999*

DECISION and ORDER

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

The issue is whether appellant has any employment-related disability commencing July 14, 1992.

The case has been before the Board on a prior appeal. In a decision dated March 19, 1996, the Board found that the medical evidence was sufficient to require further development of the evidence.¹ The Board noted that appellant had submitted reports from Dr. George Wolverton and Dr. Kirk C. Morgan, Board-certified family practitioners, in support of an employment-related disability on or after July 14, 1992. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By decision dated November 14, 1996, the Office of Workers' Compensation Programs determined that the weight of the medical evidence demonstrated that appellant's medical condition and disability beginning July 14, 1992 was not causally related to the July 6, 1992 employment exposure.

The Board has reviewed the record and finds that further development is needed to resolve a conflict in the medical evidence.

In this case, the Office initially referred appellant to Dr. Richard Gardner, a pulmonary specialist. His June 24 and July 12, 1996 reports, however, were of little probative value as Dr. Gardner stated he could not tell if appellant's disability was causally related to exposure to insecticide in the performance of duty on July 6, 1992. Another pulmonary specialist, Dr. Mitchell A. Pfeiffer, indicated in an August 15, 1996 report that, as a pulmonologist, he was not in a good position to answer questions about a presumed cerebral vascular accident. Appellant was then referred to Dr. Thomas E. Bowser, a Board-certified neurologist.

¹ Docket No. 94-109.

The Board notes that although the accepted condition in this case was temporary aggravation of bronchial asthma, appellant returned to work on July 13, 1992 and her claim for disability subsequent to that date appears to be based on a neurological condition, rather than a pulmonary condition. For example, in his July 8, 1993 report, Dr. Morgan discussed weakness and numbness on the left side, paresthesia and other neurological problems such as poor coordination. Therefore, a referral to a neurologist would appear to be appropriate in this case.

In a report dated October 22, 1996, Dr. Bowser provided a history and results on examination. With regard to appellant's hospitalization from July 23 to 29, 1992, Dr. Bowser reported that he could not find any reproducible evidence to describe a cerebral vascular accident. He further stated:

"Your question related to whether the cerebrovascular accident was caused, aggravated or accelerated by the exposure to insecticides. As I again am not describing her as a cerebrovascular patient, I do not see a pathologic relationship to her complaints. There is obviously a time relationship due to the fact that she began having these problems several days after her exposure to this chemical. Stroke can occur at any age. [Appellant] had multiple preexisting risk factors, including diabetes, hypertension, overweight and elevated triglycerides and cholesterol. I would presume these would be much higher risk in her having a [cerebral vascular accident] event of any type than the brief exposure to this chemical.

"A second part of the question was if this was an aggravating event, was it permanent or temporary. Obviously, any sort of exposure to this for a short period of time, would leave only temporary CNS [central nervous system] abnormalities. I would have expected this temporary aggravation to have ceased within 48 hours of exposure but I must admit I am not a biochemist and cannot say that with certainty.

"I can see where there could have been a partial disability from the time of the exposure through the evaluation in the hospital through July 29, [1992]. From a strictly pathologic and neurologic examination, I really cannot understand why she continued to have the numbness, tingling and fatigue and multiple complaints she has continued to experience. It is obviously a time-related effect to her exposure but I see no physical findings on my neurologic exam[ination], radiologic findings or prior medical records to explain any of these problems. There is obviously the possibility of some secondary gain and psychologic component that could be interfering with this story."

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.² When there are opposing medical reports of virtually equal weight and

² *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.³

The Board finds that the October 22, 1996 report from Dr. Bowser is sufficient to create a conflict in the medical evidence with Drs. Morgan and Wolverton. Dr. Bowser provides an opinion that appellant had preexisting factors for any type of cerebral vascular event, that he could not see any objective neurologic abnormalities and the effects of short exposure to insecticide would be expected to resolve with 48 hours of exposure. This is directly in conflict with the opinions of Drs. Morgan and Wolverton, discussed in the Board's prior decision.

Accordingly, that case will be remanded to the Office for referral to an impartial medical specialist for a reasoned opinion as to whether appellant had a neurological condition causally related to her federal employment and if so, the nature and extent of any disability for work on or after July 14, 1992. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated November 14, 1996 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 19, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ *William C. Bush*, 40 ECAB 1064 (1989).