U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL JOHNSON, JR. and DEPARTMENT OF THE NAVY, NAVAL WEAPONS STATION, Charleston, S.C.

Docket No. 97-1091; Submitted on the Record;
Issued January 13, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a pulmonary condition causally related to factors of his federal employment.

On April 18, 1994 appellant, then a 44-year-old hazardous waste handler, filed an occupational disease claim alleging that he sustained "malfunction of the lungs and diminished breathing capacity" due to exposure to hazardous waste at work. Appellant related:

> "I was assigned to combine various types of hazardous waste into smaller containers. This sickness (shortness of breath, wheezing, fever and chill and the malfunction of my lungs is caused by a prolong[ed] … overexposure of direct inhalation of these chemicals, in which I was working … for the past month and a half. I have never smoke[d] or had any type of breathing problem before this occurred."

Appellant stopped work on March 21, 1994 and did not return.

By letter dated March 17, 1994, appellant's supervisor, Mr. Lawrence J. Galbraith related that appellant was exposed to paint and liquid adhesive waste. He further stated that appellant "was assigned to pour one gallon containers into 55 gallon drums in order to consolidate the waste" rather than pouring the waste into smaller containers. Mr. Galbraith stated that appellant was exposed to these chemicals for three hours per day.

In a report dated March 31, 1994, Dr. Shyam Yallapragada, a Board-certified internist and appellant's attending physician, related that appellant had recently been discharged from the hospital and noted that he continued to have shortness of breath. He found that pulmonary

function studies revealed "significant air flow limitation with restrictive lung abnormalities." Dr. Yallapragada related that appellant could not perform the duties of his workplace and stated:

> "Since [appellant] was exposed to questionable chemicals, I believe that [he] may be sensitive to the chemicals and this may be causing these bronchospasms. I asked [appellant] to get a list of the chemicals he has been using at work so that it can be kept in our records."

In a report dated April 18, 1994, Dr. Yallapragada noted appellant's continued pulmonary problems and opined that he should not work in the environment that precipitated his condition.

In an office visit note dated May 11, 1994, Dr. Yallapragada reviewed appellant's objective studies, discussed his continuing "relentless shortness of breath" and opined that he may be developing amyotrophic lateral sclerosis.

In a letter dated June 10, 1994, appellant stated that his supervisor assigned him a special project combining "various types of hazardous waste chemicals into smaller containers." Appellant stated that he became ill and was taken from work to the hospital, where he remained from March 21 to 27, 1994.

By decision dated July 26, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish that he developed an occupational disease in the performance of duty.

On August 4, 1994 the Office received the results of air sampling obtained by the employing establishment. The air sampling revealed that appellant was exposed to toluene and hexanone within permissible limits.

By letter dated August 19, 1994, appellant, through his attorney, requested a hearing before an Office hearing representative. Appellant submitted the following additional evidence prior to the hearing.

In a hospital report dated March 21, 1994, Dr. Yallapragada related that appellant had a history of shortness of breath over the last week with a cough and that he had been exposed to new painting chemicals over the last few weeks. He diagnosed an acute asthmatic bronchitis, acute exacerbation of bronchitis, possible sinusitis and admitted appellant to the hospital for treatment.

In a report dated May 25, 1994, Dr. Marshall A. White, a Board-certified neurologist, related that appellant had a cervical myelopathy and was currently unsure whether the problem was infections or due to a toxic substrate.

In a report dated May 27, 1994, Dr. Albert F. Finn, who is Board-certified in allergy and immunology, internal medicine and pathology, noted appellant's "abrupt development of respiratory compromise following exposure to various hazardous chemicals." Dr. Finn found that x-rays did not reveal an interstitial condition and that the issue of neuropathy should be

considered. He further opined that it should be ascertained whether appellant had contact with neurotoxic chemicals. In a letter to Dr. Yallapragada of the same date, Dr. Finn diagnosed a profound respiratory impairment and recommended an "aggressive evaluation for an underlying neuromuscular abnormality. I am not aware of the materials, to which he was exposed, though certainly neurotoxic agents may need to be considered."

In an office visit note dated June 10, 1994, Dr. John A. Gross, a Board-certified neurologist, stated that he was evaluating appellant to determine whether he had a neuromuscular disease and noted that he was exposed to the following:

> "In February [appellant] began a new procedure of mixing hazardous waste, transferring them from larger containers to small containers six hours per day. This was performed in an open shed wearing a plastic shield for eye protection but no respiratory protections. Toxins handled included Xylene, Acetone, Methylethylketone and Hexane Malathion, etc. On March 17, 1994 he felt weak, short of breath, was coughing, [and] he had elevated temperature and chills. This was a Friday. The following Monday he had a wheezing attack coming through the gate. He was taken to Trident Emergency Room where he was admitted for one week on the service of Dr. Yallapragada. His working diagnosis was acute allergic asthmatic attack secondary to toxin exposure."

Dr. Gross diagnosed "[a]pparent phrenic nerve palsy, probably secondary to neurotoxin exposure."

In an office visit note dated June 16, 1994, Dr. Yallapragada questioned whether appellant had neuromuscular weakness or diaphragmatic dysfunction and noted that a fluroscopy revealed minimal diaphragmatic movement.

In an office visit note dated June 18, 1994, received by the Office on September 2, 1994, Dr. Gross noted appellant's history of multiple exposures to malathion and indicated that a fluroscopy showed "markedly reduced dyphormatic movements bilaterally." In a report to Dr. Yallapragada dated June 28, 1994, Dr. Gross stated that appellant had no neuromuscular abnormality other than incomplete phrenic nerve lesions bilaterally.

In an office visit note dated January 24, 1995, Dr. Yallapragada found that appellant had a "history of bilateral diaphramatic paralysis from organophosphate poisoning at work with significant restrictive lung disease."

A hazardous waste storage/transfer record from the employing establishment indicates that containers of assault herbicide residue rinsate and malathion liquid residue rinsate arrived on October 6, 1993 and were shipped out on March 24, 1994, contemporaneous with appellant's development of severe respiratory distress. A uniform hazardous waste manifest signed by Mr. Galbraith, appellant's supervisor, in October 1993 indicates the existence of containers of otto fuel solids and liquids at the employing establishment.

At the hearing, held on April 25, 1995, appellant testified that he was twice exposed to malathion in March 1994, exposed to assault herbicide and exposed to otto fuel.

In a report dated May 23, 1995, Dr. Yallapragada diagnosed bilateral diaphragmatic dysfunction and recurrent intermittent acute bronchospasms possibly caused by exposure to organic phosphates at work. He stated, "There is also a possibility of a sensitization of his bronchial lining with these chemicals, which is causing this reactive airway disease and bronchospasm."

By letter dated May 17, 1995, an official with the employing establishment stated that appellant's supervisor denied his exposure to "salt [sic] herbicide auto [sic] fuel and malathion." The official indicated that appellant was exposed to paint, liquid adhesive wastes and grease and that only empty containers of malathion were stored and shipped on the premises. Included with the May 17, 1995 letter, was a statement dated September 9, 1994, from appellant's supervisor, who denied appellant's exposure to organophosphates and stated that while empty containers of hexane malathion were stored on the premises the containers were shipped without processing.

By decision dated July 31, 1995, the Office hearing representative affirmed the Office's July 26, 1994 decision. The hearing representative found that appellant had not established that he was exposed to malathion, assault herbicide or otto fuel in the performance of his duties.

In a report dated August 31, 1995, Dr. Cary E. Fechter, a Board-certified internist, noted appellant's exposure to malathion, a herbicite, polypropyelne, mercury, lindane and insect repellents in his workplace and stated that "[t]hese agents, even in low exposures, may cause bronchospasstic lung disease and in higher toxic levels, may cause persistent asthmatic bronchitis." He diagnosed, *inter alia*, normal diaphragmatic neurological function based on Dr. Gross' July 20, 1994 report, and persistent moderate obstructive lung disease, which "may be work related as [appellant] never smoked."

By letter dated July 30, 1996, appellant, through his attorney, requested reconsideration of his claim. Appellant submitted an affidavit from a coworker dated July 20, 1996, who stated that he and appellant were exposed to otto fuel and malathion.

By decision dated October 24, 1996, the Office denied modification of its prior decision.

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

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 the 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 medical evidence required to establish a causal relationship, generally, is rationalized medical

[1] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

opinion evidence.[2] Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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,[3] must be one of reasonable medical certainty,[4] 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.[5] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.[6]

In this case, appellant alleged that he sustained a medical condition due to exposure to hazardous waste at work. The evidence of record shows that appellant worked transferring chemicals between containers prior to his hospitalization in March 1994 for acute asthmatic bronchitis.

In a report dated March 31, 1994, Dr. Yallapragada, a Board-certified internist, found that appellant had been exposed to "questionable chemicals" at work which might be the cause of his bronchospasms and requested a list of chemicals, to which he had been exposed. Dr. Yallapragada referred appellant to a neurologist to determine whether appellant had neuromuscular weakness or diaphragmatic dysfunction. In an office visit note dated January 24, 1995, Dr. Yallapragada concluded that appellant had "history of bilateral diaphramatic paralysis from organophosphate poisoning at work with significant restrictive lung disease." In an office visit note dated June 10, 1994, Dr. Gross, a Board-certified neurolgoist, noted appellant's exposure to various chemicals at work and diagnosed "phrenic nerve palsy, probably secondary to neurotoxin exposure." In a report dated August 31, 1995, Dr. Cary E. Fechter, a Board-certified internist, noted appellant's exposure to malathion, a herbicite, polypropyelne, mercury, lindane and insect repellents in his workplace and stated that "[t]hese agents, even in low exposures, may cause bronchospasstic lung disease and in higher toxic levels, may cause persistent asthmatic bronchitis." These reports from the several physicians who examined appellant provide some support for his allegation that he sustained a lung condition due to exposure to chemicals and hazardous waste in the workplace and are sufficient to require further development by the Office.

[2] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[3] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[4] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[5] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[6] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

The Board further notes that in a letter dated March 17, 1994, appellant's supervisor indicated that appellant was exposed to paint and liquid adhesive waste. Appellant contends that he was also exposed to malathion, otto fuel and assault herbicide. Documents from the employing establishment lend some support to appellant's contention, as containers of malathion and assault herbicide residue were shipped contemporaneous with the development of appellant's illness. The Board has stated that while it is the burden of an employee to establish his or her claim, the Office also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[7]

On remand, the Office should obtain clarification from a knowledgeable source at the employing establishment regarding the specific chemicals, to which appellant was exposed. The Office should further prepare a statement of accepted facts containing a comprehensive list of all the chemicals and other substances, to which appellant was exposed in the workplace and then refer appellant to a medical specialist for an examination and an evaluation as to whether he sustained any medical condition or disability causally related to his employment. After such additional development as it deems necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated October 24, 1996 is set aside and the case is remanded for further proceedings in accordance with this decision.

Dated, Washington, D.C.
January 13, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *Richard A. Patterson*, 39 ECAB 662 (1988).