

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUDY SCHMIDT and U.S. POSTAL SERVICE,  
POST OFFICE, Tarzana, Calif.

*Docket No. 97-1991; Submitted on the Record;  
Issued March 29, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant's disability due to exposure to chemicals on August 10 and 11, 1994 ended by August 25, 1994.

On August 16, 1994 appellant filed a claim for headache, stomach ache, dizziness, burning in the chest, and nausea which she attributed to her exposure to a strong odor in the elevator and hallways of a building to which she delivered mail. Appellant listed the date-of-injury as August 9, 1994, but later clarified that the exposure actually occurred on August 10 and 11, 1994. By letter dated July 18, 1995, the Office of Workers' Compensation Programs advised appellant that it had accepted that she had sustained upper respiratory tract irritation due to her exposure to chemicals. By decision dated July 19, 1995, the Office found that the weight of the medical evidence established that appellant had no residuals of this condition and that it had disabled her for no more than two weeks. Compensation was paid through August 25, 1994. By decision dated May 16, 1996, an Office hearing representative affirmed the Office's July 19, 1995 decision.

The Board finds that there is a conflict of medical opinion in this case.

Both of appellant's attending physicians, Dr. Gerald Kovar, a Board-certified internist and Dr. Frederick H. Yorra, a Board-certified internist, also Board-certified in the subspecialty of pulmonary diseases, concluded that appellant's diagnosis was "[b]ronchitis with airway inflammatory changes likely initiated by a chemical exposure on a single occurrence with persistent symptomatology." In a report dated February 2, 1995, Dr. Kovar stated that he was still treating appellant for bronchitis and that she could not yet return to work. In a report dated March 14, 1996, Dr. Kovar stated that appellant was "under my care for bronchitis with airway inflammatory changes, which were initiated by chemical exposure on a single occurrence with persistent symptomatology. In this report Dr. Kovar noted that appellant was still having "recurrent episodes of bronchitis, bronchospasm, cough and wheezing."

Dr. Phillip Harber, who is Board-certified in preventive medicine, occupational medicine, internal medicine and pulmonary diseases, prepared an April 20, 1995 report, upon referral by the Office for a second opinion. In this report Dr. Harber concluded that “it does not appear likely that the exposure in the course of her letter carrier work led to her ‘respiratory disease.’” Dr. Harber stated that there did “not appear to have been any specific agent which produces asthma on an allergic/sensitization basis,” that the dosage to which appellant was exposed did not appear to be high enough to cause reactive airways dysfunction syndrome and that if appellant had “irritant-induced transient worsening of preexisting asthma, the problems should have resolved within one or, at most, two weeks.” Dr. Harber also stated that it was possible that appellant had nonspecific upper airway irritation, as her symptoms were “very suggestive of upper respiratory tract irritation.” Dr. Harber stated that this was unlikely in the absence of eye and nose symptoms in the early phases, and that, at most, it produced transient symptoms and no more than two weeks of disability.

Although Dr. Harber’s report contains more rationale than the reports of Drs. Kovar and Yorra, it is not entitled to so much more probative value than their reports that it constitutes the weight of the medical evidence. This is largely because Dr. Harber’s conclusions are based in large part on his conclusion that appellant’s exposure was too low for severe effects to have been caused. His conclusion on appellant’s exposure was based on the absence of symptoms in other persons in the building. Contrary, however, to Dr. Harber’s statement that “there is no information directly from others who were present in the building,” the case record contains statements from six individuals who were in the building to the effect that a strong odor in the elevators and hallways at the time of appellant’s exposure was causing nausea and headaches. Appellant also testified at a March 19, 1996 hearing, that she experienced burning in her eyes, throat and nose at the time of her exposure, which is contrary to the history relied upon by Dr. Harber.

To resolve this conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,<sup>1</sup> refer appellant to an appropriate medical specialist for a reasoned medical opinion on the period of disability and need for medical care due to her August 10 and 11, 1994 exposure to chemicals. The Office should then issue an appropriate decision on this issue.

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<sup>1</sup> 5 U.S.C. § 8123(a) states in pertinent part “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”

The decision of the Office of Workers' Compensation Programs dated May 16, 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.  
March 29, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member