

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARNELL E. BRYANT and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Philadelphia, Pa.

*Docket No. 97-510; Submitted on the Record;
Issued May 12, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained disability subsequent to April 28, 1995 causally related to her federal employment.

On June 17, 1994 appellant, a 53-year-old taxpayer service supervisor, filed a Form CA-2 claim for benefits based on occupational disease. Accompanying the form was a June 17, 1994 statement from appellant in which she asserted she had contracted respiratory symptoms at her workplaces, including headaches, bronchitis, dizziness and recurring sinus infections at the employing establishment from 1987 through 1994 because she had been exposed to areas with poor air quality and poor ventilation. Appellant also attached a June 15, 1994 report from Dr. Yves J. Jerome, a specialist in general surgery, who stated that he had been treating appellant since 1988 for respiratory infections, parapleuritis, inflammation in the walls of her chest, paranasal sinusitis and shortness of breath, and recommended that appellant be removed from her workplace.

By decision dated December 2, 1994, the Office of Workers' Compensation Programs denied appellant's claim, finding that appellant failed to submit sufficient medical evidence establishing that the claimed conditions and/or disabilities were caused or aggravated by factors of her employment.

By letter dated December 9, 1993, appellant requested reconsideration.

By decision dated March 16, 1995, the Office denied appellant's claim finding that the medical evidence she submitted was not sufficient to warrant modification of its previous decision.

By letter dated March 31, 1995, appellant's attorney requested reconsideration.

By decision dated July 5, 1995, the Office denied appellant's claim finding that the medical evidence she submitted was not sufficient to warrant modification of its previous decision.

By letter dated December 14, 1995, appellant's attorney requested reconsideration. In support of her claim, appellant's attorney submitted a November 10, 1995 medical report from Dr. John P. Simelaro, an osteopath. He related that appellant began to experience symptoms of chest congestion and severe sinusitis when she began working on the first floor of a building located just above a parking garage from which cars would enter and exit all day long. Dr. Simelaro stated that appellant would inhale the car fumes all day long and indicated he had access to a report prepared by the United States Public Health Service which reviewed the indoor air quality at the worksite. He stated that this report indicated that there was elevated contaminants of organic and inorganic gases in the area where appellant worked and that during the entire time she worked there she was never informed that she was exposed to these gases or provided with a protective mask to shield herself from the effect of these gases.

Dr. Simelaro found that appellant had chronic and lower respiratory hypersensitivity as a result of the inhalation of inorganic and organic particles incurred at her job with the employing establishment and that she continued to suffer respiratory symptoms. He concluded that the headaches from which appellant currently suffered could have been caused by long-term exposure to carbon monoxide and he recommended a neurological consultation to further investigate appellant's situation.

On the basis of this new evidence, the Office, by letter dated January 18, 1996, authorized a full merit review of appellant's claim and by letters dated February 7, 1996 referred appellant for a second opinion examination with Dr. Julia B. Brody, Board-certified in internal medicine, to determine whether appellant's claimed condition was caused or aggravated by factors of her employment.

Dr. Brody examined appellant on March 4, 1996 and submitted a report dated March 5, 1996. She reviewed the statement of facts and appellant's medical and employment history, had appellant undergo a chest x-ray and pulmonary function tests and stated findings on examination. Dr. Brody concluded that appellant's pulmonary function tests revealed reversible air flow obstruction and hyperinflation consistent with obstructive lung disease, possibly related to a past cigarette smoking history. She stated that the fact appellant worked in a small room where she was exposed to contact with multiple coworkers and occasionally the general public may have been related to recurrent upper respiratory infections which could have triggered her episodes of sinusitis and bronchitis, although she considered this to be a normal workplace situation and not a hazard *per se*. Dr. Brody further stated that, although there some evidence of some excessive levels of carbon dioxide and impaired ventilation which may have contributed to some of her symptoms, she advised that her ongoing symptoms of sinusitis and obstructive lung disease were present on their own and were not caused by the workplace exposure.

In a decision dated March 20, 1996, the Office modified its previous decision, finding that appellant had submitted medical evidence indicating she had sustained an employment-

related respiratory condition causally related to factors of her employment for intermittent hours claimed from June 1 through June 24, 1994. The Office found that Dr. Brody's opinion represented the weight of the medical evidence, noting that Dr. Simelaro did not have appellant's complete medical history or a copy of the statement of accepted facts in his possession and did not definitively conclude that appellant had a pulmonary or sinus condition causally related to employment factors. The Office stated that appellant was not entitled to compensation subsequent to the date because she was no longer exposed to poor ventilation and increased carbon monoxide; *i.e.*, the date she accepted disability retirement from the employing establishment.¹ The Office advised appellant that she could claim other periods of lost time prior to her retirement by submitting Forms CA-8, accompanied by supporting medical evidence indicating that her accepted conditions caused her to miss work on these dates.

Appellant's attorney submitted an April 8, 1996 Form CA-8 requesting wage loss for the period from May 13, 1994 through April 28, 1995 and a handwritten summary from appellant documenting the specific hours for which she requested wage-loss compensation. The Office accepted appellant's claim for wage-loss compensation based on these dates.

By letter dated April 8, 1996, appellant's attorney requested reconsideration. In support of the request, appellant's attorney submitted a Form CA-20 from Dr. Jerome dated April 8, 1996 and a May 6, 1996 report from him. In the Form CA-20, Dr. Jerome indicated that appellant continued to experience symptoms from her respiratory condition which he believed were causally related to employment factors.

In his May 6, 1996 report, Dr. Jerome stated that he treated appellant six times from October 1993 through May 1994 for sinusitis, bronchitis with cough, headaches and fatigue. He stated that on May 13, 1994 appellant's symptoms were so severe that she had to leave work and that based on his examination appellant had severe respiratory infections. Based on the results of tests appellant underwent at this time, Dr. Jerome concluded that she had Legionnaire's disease titer and he referred her to a pulmonary specialist for further evaluation. He stated that appellant was totally disabled for two weeks, returned to work on a part-time basis for four hours per day on two separate occasions and was reinfected each time she returned to the work environment.

Dr. Jerome concluded that appellant was presently totally disabled because of chronic sinus and chronic pulmonary disease caused or aggravated by her exposure to noxious gases and fumes at the workplace. He specifically stated that appellant's long-term exposure to the polluted environment directly caused or aggravated her present conditions; *i.e.*, sinusitis, bronchitis and chronic obstructive pulmonary disease.

In a decision dated August 16, 1996, the Office denied modification, finding that appellant failed to submit medical evidence sufficient to warrant modification.

The Board finds that appellant has not met her burden of proof in establishing that she sustained disability subsequent to April 28, 1995 causally related to her federal employment.

¹ The Office found that any disability sustained by appellant subsequent to that date would be causally related to her 30-year smoking habit.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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. The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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, 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.⁵

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her claimed disability subsequent to April 28, 1995 and the accepted employment-related condition. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

In support of her claim, appellant submitted the April 8, 1996 Form CA-20 and May 6, 1996 medical report from Dr. Jerome. The form merely indicated, in a summarized and general manner, that appellant was currently disabled due to her respiratory conditions. The May 6, 1996 report indicated that appellant was presently disabled due to chronic sinusitis, bronchitis and chronic obstructive pulmonary disease, which were caused or aggravated by long-

² 5 U.S.C. §§ 8101-8193.

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

term exposure to the polluted environment at her worksite. This report, however, did not provide a probative, rationalized medical opinion establishing that appellant was disabled subsequent to the specific periods when she was directly exposed to noxious elements at her workplace.⁷ Dr. Jerome did not describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed respiratory conditions.

Dr. Jerome's opinion is of limited probative value as it does not contain any medical rationale explaining how or why appellant's chronic respiratory conditions are currently affected by or related to factors of employment.⁸ Causal relationship must be established by rationalized medical opinion evidence. Appellant has failed to submit such evidence which would indicate that her work-related respiratory conditions caused any wage loss beyond April 28, 1995.

Consequently, appellant has not met her burden of proof, as she failed to establish that she sustained any employment-related disability subsequent to April 28, 1995.

The decisions of the Office of Workers' Compensation Programs dated August 16 and March 20, 1996 are hereby affirmed.

Dated, Washington, D.C.
May 12, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *Id.*