

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MARGARET L. O'DELL and DEPARTMENT OF VETERANS AFFAIRS,  
LEBANON VETERANS HOSPITAL, Lebanon, PA

*Docket No. 97-1615; Submitted on the Record;  
Issued October 22, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly rescinded its determination that appellant was entitled to compensation for the period October 13 through 17, 1988, due to her accepted exposure to fumes at work on October 13, 1988; and (2) whether appellant has established that she sustained a pulmonary condition in the performance of duty causally related to her accepted October 13, 1988 exposure to fumes or to factors of her federal employment.

This is the third appeal in this case. In its decision and order dated June 3, 1993,<sup>1</sup> the Board found that appellant had not established that she either sustained a period of disability causally related to her accepted October 13, 1988 exposure to fumes or that she sustained a pulmonary condition in the performance of duty causally related to her accepted employment injury or to factors of her federal employment. In its decision and order dated July 18, 1995,<sup>2</sup> the Board found that appellant had not established that she sustained a period of disability causally related to her accepted October 13, 1988 exposure to fumes and that appellant had not established that her pulmonary condition was causally related to her October 13, 1988 exposure to fumes or to factors of her federal employment.

The facts and history of the case as set forth in the Board's prior decision are hereby incorporated by reference.

By letter dated November 29, 1995, appellant requested reconsideration and submitted the September 30, 1993 report by Dr. Clifford S. Mitchell, a Board-certified physician in internal

---

<sup>1</sup> Docket No. 92-1746. Appellant's petition for reconsideration was dismissed at her request by order dated July 19, 1993.

<sup>2</sup> Docket No. 94-1337. Appellant's petition for reconsideration was denied as she failed to establish any error of fact or law warranting further review in an order dated September 26, 1995.

medicine and occupational medicine. In his September 30, 1993 report, Dr. Mitchell noted that appellant had been exposed to fumes in her office such that on October 13, 1988 she experienced such severe shortness of breath she was out of work until October 17, 1988. Regarding her reactive airways disease or asthma, he noted that prior to October 1988 she had been exposed to a variety of fumes and opined that it was due to exposure to a toxic agent which she had inhaled. He concluded that appellant had “experienced reactive airways disease which is almost definitely related to a chemical exposure, more likely than not occurring at your workplace.” Dr. Mitchell also noted that he could not tell her “specifically what agent caused her condition.”

By decision dated March 1, 1996, the Office found that the evidence established that appellant was entitled to compensation for the period October 16 and 17, 1988, provided appellant was scheduled to work those days. In finding appellant entitled to compensation, the Office relied upon the September 30, 1993 report from Dr. Mitchell which it found “sufficiently unequivocal to constitute support of a period of disability.” The Office found the evidence insufficient to establish any disability after October 17, 1988.

By decision dated March 29, 1996, the Office vacated the March 1, 1996 decision on the basis that the evidence submitted was insufficient to establish that appellant had any work-related disability or a pulmonary condition due to her accepted October 13, 1988 exposure to fumes or factors of her employment. The Office determined that Dr. Mitchell’s report was insufficient to establish either a pulmonary condition or any work-related disability.<sup>3</sup> The Office found that appellant’s only entitlement was to medical treatment for the period October 13, 1988 to August 27, 1990.

The Board finds that the Office improperly rescinded its determination that appellant was entitled to compensation for the period October 13 through 17, 1988, due to her accepted exposure to fumes at work on October 13, 1988.

Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim.<sup>4</sup> To satisfy its burden, the Office cannot merely second-guess the initial set of adjudicating officials but must establish through new evidence, legal arguments or rationale, that its acceptance was erroneous.<sup>5</sup>

In the instant case, the Office, in its March 29, 1996 decision, declared that its finding that appellant was entitled to compensation for the period October 13 through 17, 1988 was rescinded. No new medical evidence to support this finding was discussed in the memorandum

---

<sup>3</sup> The Office noted that the Board had access to Dr. Mitchell’s September 30 and July 23, 1993 reports, at the time of its September 26, 1995 order denying appellant’s petition for reconsideration of the Board’s July 3, 1995 decision. The Board noted that in its September 26, 1995 order, denying appellant’s petition for reconsideration, that appellant had submitted new evidence which could not be considered by the Board on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>4</sup> *Gareth D. Allen*, 48 ECAB \_\_\_\_\_ (95-1184, issued April 15, 1997); *Daniel E. Phillips*, 40 ECAB 1117-1120 (Docket No. 1989).

<sup>5</sup> *Id.*

to the Director nor was any new legal argument or rationale provided supporting rescission of the acceptance that appellant was entitled to compensation for the period October 13 through 17, 1988, provided she was scheduled to work those days. For this reason, the Board finds that the Office has failed to meet its burden of proof to justify its rescission of appellant's entitlement to compensation for the period October 13 through 17, 1988.<sup>6</sup>

The Board further finds that appellant has not established a pulmonary condition in the performance of duty causally related to her accepted October 13, 1988 exposure to fumes or to factors of her 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. The medical evidence required to establish a causal relationship is rationalized medical opinion 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.<sup>7</sup>

In this case, appellant alleged that she sustained her diagnosed condition of reactive airways disease due to either her accepted exposure to fumes on October 13, 1988 or to factors of her federal employment. In support of her claim, appellant submitted a September 30, 1993 report from Dr. Mitchell. His report is of limited probative value on the relevant issue of the present case, in that it does not contain adequate medical rationale in support of his opinion that appellant's reactive airways disease was "almost definitely related to a chemical exposure, more likely than not occurring at your workplace." While the opinion of a physician supporting causal connection need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal.<sup>8</sup> Dr. Mitchell's opinion is speculative as he opined that appellant "most likely" developed her condition at work. The Board notes that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is

---

<sup>6</sup> The Board notes that the record contains evidence from the employing establishment dated March 21, 1988, indicating that appellant used four hours of sick leave on October 13, 1988, eight hours on October 14, 1988 had days off for October 15 and 16, 1988 and returned to work on October 17, 1988.

<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>8</sup> *See Philip J. Deroo*, 39 ECAB 1294 (1988).

a causal relationship between the two.<sup>9</sup> Appellant has failed to submit sufficient reliable, probative and substantial evidence to support that she sustained a pulmonary condition causally related to either her accepted October 13, 1988 exposure to fumes or to factors of her federal employment.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 29, 1996 is reversed in part and affirmed in part and the decision dated March 1, 1996 is affirmed.

Dated, Washington, D.C.  
October 22, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

---

<sup>9</sup> See, e.g., *Norman E. Underwood*, 43 ECAB 719 (1992).