

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. WOODS and SOCIAL SECURITY ADMINISTRATION,
Chicago, IL

*Docket No. 97-2568; Submitted on the Record;
Issued October 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury on May 15, 1996 in the performance of duty.

On May 15, 1996 appellant, then a 46-year-old mail clerk, filed a traumatic injury claim alleging that on that date fumes from the trucks on the docks caused pain in her chest and throat, made her cough and made her nose burn.

In a January 25, 1995 memorandum, an industrial hygienist related that the current permissible exposure limit for carbon monoxide (CO) as set by the Occupational Safety and Health Administration (OSHA) was 35 parts per million and that the Environmental Protection Agency had established that the National Primary Ambient Air Quality Standard for CO in an 8-hour average was nine parts per million. Testing of CO levels on January 19, 1996 indicated 0 parts per million in the basement mailroom, 17 parts per million behind an employing establishment truck backing up to the dock area and 3 parts per million in the dock area after the truck had shut off its engine.

In a report dated May 15, 1996, Dr. Peter Orris, a Board-certified internist specializing in occupational medicine, stated that appellant had upper air way symptoms consistent with the irritant affects of exposure to exhaust fumes and recommended that she be removed from this exposure.

In a form report dated October 3, 1996, Dr. Kanayo K. Odeluga, an internist specializing in occupational medicine, stated that appellant had respiratory irritation due to low levels of exposure to exhaust fumes. He indicated that appellant had been able to return to work on May 15, 1996. Dr. Odeluga stated:

“Although the report of Air Quality ... indicates CO₂ [carbon dioxide] and CO as well as formaldehyde levels are below PEL [OSHA permissible exposure limit], it

is still our recommendation that [appellant] be assigned work in another area, as it appears she is still experiencing irritation at very low levels of resp[iratory] irritants.”

In a letter dated October 23, 1996, Dr. Orris noted that appellant had experienced no further respiratory problems since being removed from the mailroom. He stated that air sampling data revealed that the levels of CO₂, CO and formaldehyde were below the permissible exposure level, in view of the fact that she was experiencing irritation, she should continue to work in another area at the employing establishment.

By decision dated January 30, 1997, the Office of Workers’ Compensation Programs denied appellant’s claim for compensation benefits on the grounds that the evidence of record failed to establish that she had sustained a medical condition causally related to factors of her employment.

In a letter dated April 17, 1997, the employing establishment stated that air quality samples were taken January 19, April 15, August 15 and August 16, 1996 and the results showed the employing establishment was in compliance with OSHA’s guidelines. He stated that on January 19, 1996 several employees complained about fumes and it was later explained that a cement truck was running in the dock area and the building manager asked this contractor to leave the dock area immediately. He stated that the mailroom was adjacent to the dock area but there was two sets of doors that separated the dock from the hallway and another set of doors separating the mailroom from the hallway. He stated that on May 15, 1996 appellant filed her claim stating that fumes from the trucks on the dock were making her ill but that no other employees smelled fumes that day. He stated that appellant was removed from her position because she was unable to perform her duties because of her carpal tunnel syndrome.

By decision dated June 16, 1997, an Office hearing representative affirmed the Office’s January 30, 1997 decision on the grounds that the medical evidence of record failed to establish that appellant sustained an injury in the performance of duty on May 15, 1996.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on May 15, 1996.

A person who claims benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation is caused or adversely affected by his employment.² This burden includes the necessity of furnishing rationalized medical opinion evidence showing a causal relationship between the alleged condition and factors of his employment which is based upon a proper medical and factual background of the claimant and a specific and accurate history

¹ 5 U.S.C. §§ 8101-8193.

² *Birger Areskog*, 30 ECAB 571, 574 (1979).

of employment incidents or factors alleged to have caused or exacerbated the claimed disability.³ The medical evidence submitted by appellant did not meet this criteria.

In this case, appellant alleged that she sustained an injury on May 15, 1996 when she was exposed to exhaust fumes from trucks at work. She submitted medical evidence in support of her claim.

In a report dated May 15, 1996, Dr. Orris, a Board-certified internist specializing in occupational medicine, stated that appellant had upper air way symptoms consistent with the irritant effects of exposure to exhaust fumes and recommended that she be removed from this exposure. In a letter dated October 23, 1996, Dr. Orris noted that appellant had experienced no further respiratory problems since being removed from the mailroom. He stated that air sampling data revealed that the levels of CO₂, CO and formaldehyde were below the permissible exposure level, but, in view of the fact that she was experiencing irritation, she should continue to work in another area at the employing establishment. However, in these reports, Dr. Orris did not provide a diagnosis, supported by medical rationale, of any medical condition caused by an exposure to exhaust fumes on May 15, 1995. Furthermore, he did not opine that appellant was disabled due to the incident. Although Dr. Orris indicated that appellant should not be exposed to exhaust fumes in the future, the possibility of a future injury does not constitute an injury under the Act.⁴ Due to these deficiencies, these reports are not sufficient to establish that appellant sustained an injury on May 15, 1995 causally related to factors of her employment.

In a form report dated October 3, 1996, Dr. Odeluga, an internist specializing in occupational medicine, stated that appellant had respiratory irritation due to low levels of exposure to exhaust fumes. He indicated that appellant had been able to return to work on May 15, 1996. Dr. Odeluga stated that the levels of CO, CO₂ and formaldehyde were below permissible exposure limits but that appellant should be assigned to another work area as it appeared that she was experiencing irritation at very low levels of exposure to irritants. However, although he indicated that appellant had experienced some respiratory irritation, he did not diagnose a medical condition, supported by medical rationale, as causally related to the incident on May 15, 1996. Furthermore, he stated that appellant had been able to return to work on May 15, 1996, the date of the incident. Dr. Odeluga did not opine that appellant was disabled due to the exposure. He stated that appellant should not work in an area where she would be exposed to fumes. However, as noted above, the possibility of future injury does not constitute an injury under the Act. Due to these deficiencies, this report does not discharge appellant's burden of proof.

³ *Philip J. Deroo*, 39 ECAB 1294, 1297 (1988); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁴ *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

The June 16 and January 30, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member