

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOAN SOO and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Oakland, CA

*Docket No. 98-120; Submitted on the Record;  
Issued October 4, 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 from March 13, 1985 to June 16, 1987, was causally related to exposure to fumes and chemicals at work, particularly tobacco smoke.

The case has been on appeal three times previously.<sup>1</sup> In a March 20, 1989 decision, the Board noted that Dr. Michael A. LeNoir, a Board-certified allergist, acting as an impartial medical specialist, had concluded that appellant did not have any allergies but had some type of adverse reaction in the presence of aerosols and tobacco smoke and recommended that appellant undergo a pulmonary function test. The Board found that the Office of Workers' Compensation Programs should have referred appellant for the pulmonary function test before denying appellant's claim and, therefore, remanded the case for further development. In a November 12, 1992 order, the Board noted that, subsequent to the Board's March 20, 1989 decision, appellant had been referred for further medical testing but had refused to go. The Director of the Office made a motion to remand on the grounds that the Office had subsequently denied her claim but had not informed appellant that the basis of the Office's decision was her obstruction of a medical examination until she appeared for an October 31, 1991 hearing before an Office hearing representative. The Director requested that the January 10, 1992 decision of the Office's hearing representative, which was the first decision on the issue of medical obstruction, be set aside. He noted that appellant had dropped her claim for a pulmonary condition. Dr. LeNoir, therefore, requested that on remand the Office be allowed to refer appellant to an appropriate specialist for an opinion on whether her claimed complex allergies were related to exposure to fumes and tobacco smoke at work. The Board granted the motion. In a July 18, 1996 decision, the Board found that there existed a conflict in the medical evidence. Dr. Jeffrey L. Anderson, an allergist, diagnosed multiple chemical sensitivities, chemical hypersensitivity, allergic rhinitis and sinusitis associated with chemical sensitivity, hypomagnesemia, organic brain syndrome of

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<sup>1</sup> Docket No. 94-1978 (issued July 18, 1996); Docket No. 92-1186 (Order Granting Remand issued November 12, 1992); Docket No. 89-19 (issued March 20, 1989). The history of the case is contained in the prior decisions and is incorporated by reference.

toxic encephalopathy, peripheral neuropathy associated with diabetes and subclinical hypothyroidism. Dr. Anderson indicated that appellant's respiratory symptoms were related to a central hypothalamic autonomic mechanism triggered by chemical toxicity-hypersensitivity reactions upon reexposure. He related the manifestations of appellant's condition to long-time, low-level repeated exposures to tobacco smoke, hair sprays, perfumes, cleaning agents and janitorial supplies, and the outgassing from carpets, modular walls, particle board furniture, bookshelves, photostatic copy machines, inks and materials associated with marker pens. On the other hand, Dr. Robert Freinkel, a Board-certified allergist, diagnosed perennial rhinitis and reported that appellant did not have documentation of true allergy, immunoglobulin mediated symptoms but suggested that the fumes appellant was exposed to acted as irritants. He concluded that appellant had a preexisting condition which was aggravated in an acute episode. Dr. Freinkel subsequently stated that appellant's temporary disability ceased by March 13, 1985. The Board concluded that the case should be remanded for referral of appellant to an appropriate impartial medical specialist.

The Office referred appellant, together with the statement of accepted facts and the case record to Dr. Dionisio A. Fernandes, a Board-certified allergist, for an examination to resolve the conflict in the medical evidence. In an October 16, 1996 report, Dr. Fernandes stated that tests for environmental allergens and food allergens were negative as were pulmonary function tests. He noted that immunoglobulin E test results were low, suggesting that it was unlikely that appellant was allergic to environmental pollens. Dr. Fernandes diagnosed irritant rhinitis with possible upper respiratory airway irritation secondary to acute insult injury from exposure to furniture polish at work. He noted that appellant was in general good condition before this exposure, had a sudden exposure to furniture polish, which resulted in the inhalation of the fumes and most likely caused irritation and inflammation of the mucosal membrane. Dr. Fernandes noted that appellant went away from her environment and felt better. He commented that the improvement was probably because she was no longer exposed to the irritant spray. Dr. Fernandes stated that the negative skin tests for pollen and other environmental allergens confirmed that appellant's reaction or reactivity was more to irritants than to allergens like pollens. He indicated that appellant had a preexisting condition as she had complained in the past of problems with smoke and other irritants which could be characterized as reactive. Dr. Fernandes concluded that the aggravation from the exposure to furniture polish was temporary. He stated that the aggravation caused an immediate reaction in the mucous membrane which can last up to 12 hours. Dr. Fernandes noted that appellant was likely to have a delayed reaction to the exposure which could last up to 72 hours. He, therefore, concluded that the aggravation ceased after 72 hours after the initial exposure. Dr. Fernandes indicated that there was no permanent damage.

In a November 12, 1996 decision, the Office rejected appellant's claim on the grounds that appellant no longer had any residuals of the employment injury.

The Board finds that appellant had no disability after March 13, 1985, due to exposure to chemicals and fumes at work.

In accordance with the most recent Board decision, the Office referred appellant to Dr. Fernandes to serve as an impartial medical specialist. In his report, Dr. Fernandes concluded

that appellant did not have any allergies as shown by negative skin tests for pollens and other allergens. He concluded on the basis of these tests that appellant had a reactive rhinitis to irritants that resolved within 72 hours of the exposure to furniture polish at work. Dr. Fernandes stated that appellant's employment-related aggravation ceased by March 13, 1985. In situations when there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>2</sup> He had an accurate history of appellant's condition and presented a well-rationalized opinion to explain how appellant's exposure to chemical fumes at work caused only a temporary, work-related aggravation of a preexisting condition. Dr. Fernandes' report, therefore, is entitled to special weight and constitutes the weight of the medical evidence. His report establishes that appellant's employment-related disability, due to a temporary aggravation of an underlying, preexisting condition, ceased by March 13, 1985. Appellant, therefore, is not entitled to any compensation after that time.<sup>3</sup>

The decision of the Office of Workers' Compensation Programs, dated November 12, 1996, is hereby affirmed.

Dated, Washington, D.C.  
October 4, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>3</sup> *James P. Hearn*, 29 ECAB 278 (1978).