

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD W. MILLS and DEPARTMENT OF AGRICULTURE,
FOOD SAFETY & INSPECTION SERVICE, Longmont, CO

*Docket No. 99-1044; Submitted on the Record;
Issued August 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established disability beginning July 3, 1997 causally related to his exposure to fumes and irritants in his employment as a food inspector.

On October 21, 1997 appellant filed a claim for occupational asthma, which he attributed to his exposure to high humidity and temperatures and to smokehouses and spices in his employment as a food inspector. Appellant stopped work on July 3, 1997. By letter dated November 9, 1997, the Office of Workers' Compensation Programs advised appellant that his claim was accepted for "aggravation/exacerbation of preexisting asthma," that he could file a claim for lost wages and that any such claim must be supported by medical rationale. Appellant's application for disability retirement was approved on January 27, 1998.

By decision dated December 1, 1997, the Office found that appellant was not entitled to compensation for loss of wages beginning July 9, 1997 on the basis that he was removed from work to prevent a future injury.¹ Appellant requested a hearing, which was held on July 20, 1998. By decision dated October 13, 1998, an Office hearing representative found that appellant had failed to establish that he was totally disabled beginning July 3, 1997.

Where employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the period of disability related to the aggravation. Where the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect, which the employment factors might have on the underlying condition. Under such circumstances, the

¹ By decision dated September 8, 1997, the Office found that appellant's disability beginning July 3, 1997 was not a recurrence of disability related to its previous acceptance of exacerbation of asthma. The Office affirmed this decision by decision dated October 14, 1997 and by decision dated January 30, 1998 refused to reopen appellant's claim for further review of the merits of the claim for a recurrence of disability.

employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.²

In the present case, the Office accepted that appellant sustained an aggravation or exacerbation of preexisting asthma due to his exposure to fumes and irritants in his employment as a food inspector. Given this acceptance, a July 3, 1997 report from Dr. Ronald Balkissoon, appellant's attending specialist in occupational, environmental and pulmonary medicine, is sufficient to establish a period of temporary total disability. In this report, Dr. Balkissoon stated, "[Appellant] has experienced a worsening of his respiratory condition related to work exposures. I think he should be off work at least until I see him next week." This report shows an employment-related aggravation of appellant's asthma causing disability for the one week before Dr. Balkissoon anticipated examining appellant again. Dr. Balkissoon did not examine appellant again until July 16, 1997, but his report of that date shows that the aggravation noted in the July 3, 1997 report was only temporary. In the July 16, 1997 report, Dr. Balkissoon stated that, since the July 3, 1997 visit, appellant "has actually improved quite significantly and is feeling much better. He notes a decrease in his shortness of breath, cough and wheezing." Dr. Balkissoon also stated, "there has been evidence of a gradual decline in pulmonary function testing, which fortunately appears to be reversible when he takes time off work. It is my reasoned medical opinion that [appellant] should seriously consider discontinuing work in the meat inspection industry as it is likely to lead to progressive decline in his pulmonary function and increased medication requirement."

While Dr. Balkissoon in this and other reports recommends that appellant discontinue working as a food inspector, these reports reflect that this recommendation is based not on current disability but on a fear of future injury upon further work exposure. In a report dated July 17, 1997, Dr. Balkissoon stated, "I think he needs to stop working in this type of work before he develops more severe, less reversible asthma." In a report dated August 8, 1997, Dr. Balkissoon stated that "it is ... likely that with ongoing long-term exposure, [appellant] will develop irreversible decline in his pulmonary function while at the current time these remain relatively well preserved." The Board has stated, "fear of future injury is not compensable. There must be medical evidence showing that appellant is currently disabled for work due to his employment-related condition."³ The medical evidence shows that appellant was disabled for work only from July 3 to 16, 1997 due to the accepted aggravation of his asthma and the case will be remanded to the Office for payment of compensation for this period of temporary aggravation.

Appellant contends that his occupational exposures caused rather than exacerbated or aggravated his asthma. If this were so, compensation could be payable beyond July 16, 1997, as it would be appellant's employment-related increased susceptibility to future injury from

² *James L. Hearn*, 29 ECAB 278 (1978).

³ *William A. Kandel*, 43 ECAB 1011 (1992); see *Gaeten F. Valenza*, 39 ECAB 1349 (1988). (In this case involving aggravation of asthma, the Board stated, "the possibility of future injury does not constitute an injury under the Federal Employees' Compensation Act and, therefore, no compensation can be paid for such a possibility.")

continued exposure that would be preventing him from continuing to work.⁴ The weight of the medical evidence, however, supports a temporary and reversible aggravation of asthma by employment factors rather than direct causation. In addition to the statements from Dr. Balkissoon quoted above, this doctor also stated in a November 18, 1997 report that appellant “typically improves significantly when removed from work” and that “there appears to have been significant reversibility to this point.”

The only support for direct causation is seen in a November 14, 1997 report from Dr. Balkissoon on an Office form: “This patient is repeatedly exposed to animal proteins and various chemicals such as ammonia, which are the cause of his asthma....” Dr. Balkissoon, however, provided no medical rationale for this support of direct causation.⁵ The weight of the medical evidence establishes that appellant’s asthma was temporarily aggravated or exacerbated by his employment exposures.

The decision of the Office of Workers’ Compensation Programs dated October 13, 1998 is modified to reflect that appellant is entitled to compensation from July 3 to 16, 1997 and affirmed as modified.

Dated, Washington, D.C.
August 28, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁴ See *Fred Rambus*, 34 ECAB 325 (1982).

⁵ Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee’s burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).