

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

*Docket No. 98-1420; Submitted on the Record;
Issued January 27, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his accepted injury.

On September 6, 1995 appellant, then a 45-year-old food inspector, filed a claim for occupational disease alleging that his asthma was caused by factors of his federal employment. He noted that he was first aware that his employment caused his asthma in June 1995.

In a medical report dated June 27, 1995 and received by the Office of Workers' Compensation Programs on September 25, 1995, Dr. Krishna C. Murthy, Board-certified in allergy and immunology, stated that appellant had experienced occupational exacerbation of his asthma at work and recommended that he be removed from his current job and placed in a different location.

On September 28, 1995 the Office accepted appellant's claim for temporary aggravation of an asthmatic condition. The Office further advised appellant that any request for lost wages must be supported by medical evidence establishing disability for work. Appellant stopped work on November 21, 1995 and he received appropriate compensation benefits. He returned to work on February 13, 1996.

In a medical report dated March 22, 1996, Dr. Ronald Balkissoon, an internist, stated that he had examined appellant on March 15, 1996 and noted that appellant had returned to work in a hog slaughtering plant which was smaller than the beef plant he had been working in. He noted that appellant related that, since returning to work, he had become symptomatic on some mornings at approximately 4:00 a.m., but that "this is not out of the ordinary for individuals with asthma to have some sort of nocturnal dip. It can represent an indication of decreased control of their asthma." Dr. Balkissoon also noted appellant's symptoms that he had become short of breath after playing with his son. He prescribed an Epi-pen for appellant's acute asthma attacks,

that appellant remained on AeroBid and that his methacoline test would be repeated in one month's time.¹

On May 14, 1996 the Office notified appellant that his position as a food inspector, the job he returned to on February 13, 1996, fairly and reasonably represented his wage-earning capacity. Appellant's compensation was therefore adjusted to represent no wage-loss disability inasmuch as his earnings represented his pay rate at the time of injury.

In a work capacity evaluation form dated May 24, 1996, Dr. Balkissoon stated that appellant's asthma condition was worse at certain types of processing plants such as beef and turkey slaughterhouse plants, but that his symptoms were better at smaller plants such as hog slaughterhouses. He noted that: "If asthma is difficult to control, then he may not be able to meet [work] demands."

In a medical report dated November 8, 1996, Dr. Balkissoon stated that he had examined appellant on September 13, 1996, that appellant noted increased symptoms with heat and humidity, but that he was relatively stable. Appellant related that "he had some problems while moving hogs or doing tomato picking," but that he was doing better while working at the beef plant. Based on test data taken on September 13, 1996, he stated that appellant had asthma with increased instability and advised appellant to take Flovent puff four times a day for two weeks pending a reassessment at that time.

In a medical report dated May 15, 1997, Dr. Balkissoon stated that he examined appellant on May 2, 1997 and that he was "feeling fairly well with minimum symptoms," and appears "able to tolerate the workplace quite well at the current time." He stated that appellant had asthma, which was clinically stable based on his current medical regimen. Dr. Balkissoon recommended that appellant reduce his use of Flovent puff to twice daily.

On July 3, 1997 appellant filed a claim for recurrence of disability alleging that he sustained a recurrence of his occupational asthma on that day. The employing establishment stated that appellant "was unable to work in a beef or lamb slaughter plant. Assigned to pork slaughter plant and some relief work in a turkey plant required. Employee only able to work in poultry plant for one or two days without signs of distress."

On July 7, 1997 appellant filed a claim for wage loss from July 7 to July 19, 1997.

In an attending physician's report dated July 17, 1997, Dr. Balkissoon stated that appellant had occupational asthma, used high dose inhaled steroids, Aerobid/Flovent, and was also on Serevent and Aibuteral. He noted that:

"[Appellant] has occupational asthma, he has had to periodically take time off from work since December 22, 1995 when I first saw him. He has an allergy to cattle epithelia and there are very strong cleaning disinfecting chemicals which worsen his asthma. He has tried for one and a half years to continue to work in this job using high doses of steroids which do have side effects. Over the past one and a half years there has been a gradual decrease in his breathing tests. I

¹ Appellant's initial methacoline test was administered on June 27, 1995.

think he needs to stop working in this type of work before he develops more severe less reversible asthma.”

In an attending physician’s supplemental report dated the same day, Dr. Balkissoon stated that appellant should be removed from his current work, that he should be retrained, and that prognosis was “good, if he did not return to meat inspection work, may need long term [for life] medication for asthma.”

On July 23, 1997 the Office notified appellant that it received his claim for recurrence of disability and that he would need to submit additional medical evidence in support of his claim of disability due to his asthma condition.

On August 8, 1997 appellant filed a second claim for recurrence of disability alleging that he had sustained a recurrence of his asthma on July 3, 1997.² In an attached narrative report, appellant stated that his condition should be considered a continuation of his work-related asthma and not as a recurrence of disability.

In a medical report dated the same day, Dr. Balkissoon stated that he had been treating appellant since December 1995 at which time he demonstrated “fairly significant asthmatic symptoms.” He noted that appellant’s skin test revealed positive to cattle epithelium. Dr. Balkissoon also noted that he has had to treat appellant with increased doses of inhaled steroids, yet appellant “still demonstrated periodic exacerbations of his asthma and in fact demonstrated an alarming drop in his forced expiratory volume (FEV₁) and forced vital capacity (FVC) when seen in January and July this year. Fortunately, he demonstrated improvements in his spirometry once he was removed from work.” Dr. Balkissoon noted appellant’s concerns “about long-term consequences of requiring high dose inhaled steroids to remain at work.” He stated:

“I am quite certain that without high dose inhaled steroids, [appellant] would become quite sick and require frequent absences from work. Further, it is likely that with ongoing long-term exposure, [appellant] will develop irreversible decline in his pulmonary function while at the current levels these remain relatively well preserved. Clearly this is an instance where primary intervention [*i.e.*, Removal from ongoing exposure], is the medically prudent path to follow. Hence, it is my reasoned medical opinion [appellant] should be considered 100 percent disabled from his current type of work. [Appellant] first developed this condition while working in the Beef Processing Plants. It is recognized that occupational asthma may persist despite removal from the inciting agent or antigen. Hence, it is irrelevant whether or not [appellant] has been removed from exposure to beef slaughtering as there are numerous other chemical irritants including ammonia, other disinfecting cleaners and other strong odors found on the slaughterhouse floor that would be highly irritating to an individual who has developed asthma. It is likely they could lead to frequent exacerbation. Hence, I feel that [appellant] over the past year and a half has demonstrated that he requires high-dose maintenance steroids to continue to work in the meat inspection environment. It is likely that once removed from this environment he

² Appellant’s July 3, 1997 claim for recurrence of disability also alleged recurrence on July 3, 1997.

will be able to taper his inhaled steroids use and likely reduce the risk of developing serious side effects from this medication.”

In a decision dated September 8, 1997, the Office denied appellant’s claim for recurrence of disability on the grounds that the medical evidence of record was insufficient to establish that appellant had sustained a recurrence of his asthma condition. The Office stated that no further medical treatment was authorized.

On September 16, 1997 appellant requested reconsideration, noting that the Office had denied his claim and “stopped any further medical care and my medication.”

In a decision dated October 14, 1997, the Office noted that it had denied appellant’s claim for recurrence of disability on September 8, 1997 because appellant failed to establish disability commencing July 3, 1997 due to his accepted asthma condition. However, the Office set aside that portion of the September 8, 1997 decision which denied appellant continued medical care and medication due to his accepted occupational asthma.

On December 12, 1997 appellant requested reconsideration noting the Office denied him “‘disability for wage loss’ beginning July 3, 1997 and continuing.” In support appellant submitted a medical report dated November 18, 1997 from Dr. Balkissoon. In that report Dr. Balkissoon addressed appellant’s medical history, noting that he had been reassigned to a hog and turkey plant to accommodate his allergies towards beef processing plants. He noted that appellant continued to be symptomatic, resulting in a July 1997 “severe exacerbation and had a significant drop in his pulmonary function.” Dr. Balkissoon further noted that appellant “has shown evidence of a progressive decline in his pulmonary function, which is potentially irreversible.” He noted that appellant had an improved pulmonary function when he was off work in July, noting that his condition would worsen with workplace exposure. Dr. Balkissoon stated that appellant’s current treatment, although demonstrating a “significant reversibility at this point,” came by use of “high dose inhaled steroids [taken] regularly. These do carry significant risks and are needed as a direct result of workplace exposure.” He also noted that the use of steroids did not prevent the long-term progression of asthma if a person continued to be exposed to the causative agents. He noted appellant’s work history revealed ongoing exposures in the workplace which caused a deterioration of his asthma requiring high dose steroid treatment. Dr. Balkissoon concluded by stating there was a significant health risk associated with appellant continuing to work in the slaughterhouse environment. In an attending physician’s report dated November 14, 1997, Dr. Balkissoon noted that appellant was totally disabled due to his occupational asthma.

In a decision dated January 30, 1998, the Office denied appellant’s request for reconsideration on the basis that the additional report of Dr. Balkissoon was cumulative in nature.

The Board has reviewed the record and finds that the case is not in posture for decision.

In the present case, appellant’s claim was accepted for a temporary exacerbation of asthma, due to workplace exposure. In support of his claim of a recurrence of disability commencing July 3, 1997, appellant submitted several reports from Dr. Balkissoon who noted his history of continued intermittent exposure to cattle epithelium and other animal matter irritants. Dr. Balkissoon reviewed his treatment of appellant and stated that his continued

exposure to occupational irritants caused a decline in appellant's pulmonary functioning which persisted despite the use of high dose steroid medications. He opined that appellant was totally disabled for work. The Board notes that, while Dr. Balkissoon's report is not sufficiently rationalized to meet appellant's burden of proof,³ his opinion that appellant's disability is causally related to the accepted employment condition is sufficient to require that the Office further develop the case.⁴

Therefore, upon remand, the Office should refer appellant, together with a statement of accepted facts, questions to be answered and the complete case record, to either Dr. Balkissoon or another appropriate medical specialist for further evaluation. After such further development of the case record as the Office deems necessary, an appropriate merit decision shall be issued.

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 30, 1998, October 14 and September 8, 1997 are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
January 27, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ The Board notes that, absent a statement of accepted facts and specific questions, Dr. Balkissoon's reports addressed potential health concerns regarding appellant's exposure to the slaughterhouses and his use of steroids as well as noting appellant's current exacerbation of asthma as result of his exposure.

⁴ *Horace Langhorne*, 29 ECAB 820 (1978).