U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES L. NORFLEET and DEPARTMENT OF THE NAVY, MOTOR TRANSPORT DEPARTMENT, Camp Pendleton, CA

Docket No. 98-2347; Submitted on the Record;
Issued March 7, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he developed a lung condition in the performance of duty.

On March 19, 1997 appellant, then a 53-year-old automotive painter, filed a notice of occupational disease (Form CA-2) alleging that he developed chronic respiratory congestion as a result of his employment-related exposure to chemical and paint fumes.

Appellant alleged that he began his employment at the employing establishment in October 1991, at which time he had no respiratory problems. He stated that from October 1991 until May 1996 he worked with a half face air purifying respirator, provided by his employer but that the work called for the use of a full face supplied air respirator with hood. As a result, his eyes, forehead, neck, hair and scalp were exposed to hazardous chemicals. Appellant indicated that in May 1996 the proper respiratory equipment was provided. Appellant submitted the results of pulmonary function and blood gas testing performed on October 16, 1996, which revealed a mild obstructive ventilatory impairment with significant improvement after utilizing an inhaler, normal lung volumes, normal diffusion capacity and normal room air arterial blood gas results. In a January 16, 1997 report, Dr. Mary C. Cueva, a Board-certified family practitioner, noted that appellant presented for a follow up on his chronic respiratory congestion and dyspnea. Dr. Cueva stated that, "this may be an occupational illness related to spray painting automobiles" and further noted that appellant reported having seen an occupational specialist on base but was told that his test results could have been due to his 20-year smoking history. Dr. Cueva listed her impressions as "possible occupationally-induced pulmonary symptoms" and concluded "I think his dsypnea and chest problem are related to his paint spraying at work."

In response to appellant's claim, the employing establishment submitted a statement from Robert Epperson, appellant's first line supervisor, who stated:

> "During my initial inventory of the body shop equipment after assuming the supervisor position, I found a new full face respirator in a paint shop cabinet. When asked why he did not use it, [appellant] informed me it was hard to see through, it fogged up. I also found a new air supply system with hoods that according to the U.P.S. stickers was delivered and available for use in February of 1997. [Appellant] said he had used this type system in the past but it was cumbersome dragging the hoses around."

Mr. Epperson further stated that the system was set up and put into use in late August 1995 and that an additional system was put into use in May 1996. Mr. Epperson noted that a health hazards study of the paint shop was conducted from May 1996 through January 1997 and that the test results indicated that all paint solvents tested below recommended exposure limits. Mr. Epperson attached the test results and added that these tests results were consistent with test results from prior years. He concluded that he was aware that appellant did some painting on his own but did not know what type of protection, if any, was used at those times.

Also contained in the record is a copy of appellant's SF-171 application for employment dated August 15, 1991 on which appellant indicated that he worked painting automobiles in private industry from 1980 to 1990.

By decision dated May 19, 1997, the Office of Workers' Compensation Programs denied appellant's claim as the evidence submitted failed to establish fact of injury. The Office noted that appellant was advised of the deficiencies in the claim and afforded the opportunity to provide supportive evidence.

By letter dated February 28, 1998, appellant requested reconsideration of the Office's May 19, 1997 decision. Appellant provided evidence obtained from the paint log book that between September 30, 1991 and April 1, 1996 he performed the duties of a painter, using spray painting equipment in the confines of a spray booth on 559 days. Appellant noted, however, that he did not have a record of how many actual hours were spent painting, only the number of days on which he performed at least some painting. Appellant indicated that he performed only three paint jobs outside his regular employment, in a paint booth, using a fresh air supplied respirator, with coveralls and gloves. Appellant reiterated his allegation that he was not provided with the proper respiratory protection and stated that he was unaware that there was any such protection available to him. He added that, when in 1996 he was provided with protection, he immediately began to use it. Appellant also asserted that the 1996 health hazards study was performed after the paint booth had been shut down for months for repairs to bring it up to operation standards. Appellant also stated that he smoked cigarettes, at a rate of one-half to one pack a day, from 1968 to 1992.

In response, the employing establishment submitted a statement from Timothy A. Nichols, an agency labor relations officer, who stated that, "[a]t the time the new supervisor came on staff, in September of 1995, he conducted an inventory and found a full-face air supplied respirator in a locker in the painting area. Although the claimant denied ever using this

specific equipment he was the primary painter at the time and the equipment had been used so much that it was soiled beyond use. Appellant had advised his supervisor that he had used equipment such as this but did not like it because it was cumbersome and difficult to work with." Mr. Nichols noted that the paint booth had been closed for modifications but stated that it was only being improved and had already been up to specification at the time the additional modifications were made.

Appellant submitted a medical report from Dr. Mark Yamanaka, a physician Board-certified in internal medicine and pulmonary disease to whom he had been referred by Dr. Cueva. In a June 9, 1997 report, Dr. Yamanaka indicated that appellant had been painting at the employing establishment since 1971, that he had used improper equipment until the last decade and that appellant had first noticed his respiratory symptoms about 20 years after he started painting. He noted appellant's allegations that whenever he walked into a room that had fumes in it, he would become short of breath and while his lunch time two-mile walks had become difficult, when at home over the weekend he could exert himself without difficulty. Dr. Yamanaka recorded a smoking history of one-half a pack a day from 1968 to 1992 and noted that pulmonary function testing revealed mild obstructive airways disease. After performing a complete physical examination, Dr. Yamanaka diagnosed asthma and stated:

> "He does have an adverse response to the fumes at his work that causes him shortness of breath. Because of the combination of bronchospastic airways disease and the irritant effect of the fumes at his work he has been advised to change his job so that he is not exposed to the fumes."

Dr. Yamanaka further diagnosed an upper respiratory tract inflammation, which he indicated "may also be related to the fumes at work."

Dr. Cueva submitted a letter dated July 29, 1997 in which she stated that appellant had a diagnosis of "bronchospasm, long term, which is exacerbated by fumes of any kind. This not only included paint fumes, which he used to be exposed to but now also exhaust and oil fumes. He basically has obstructive pulmonary disease, which is worsened by occupational exposure…. He can do most any other kind of work as long as no fume exposure is involved."

In a decision dated May 6, 1998, the Office denied modification of the May 19, 1997 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition

[1] 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[4] The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.

The second requirement to establish fact of injury is that the employee must submit sufficient evidence, usually in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] As part of this burden, the employee must submit rationalized medical evidence based upon a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related condition.[6]

In this case, appellant's job required him to spray paint automobile bodies and he performed this duty on 559 days between September 30, 1991 and April 1, 1996. Furthermore, while the record is unclear as to the precise duration and degree of appellant's exposure to paints and associated chemicals, appellant's statement that he wore only a half face respirator rather than full respiratory protection is generally supported by the statement of his immediate supervisor, Mr. Epperson, that during his initial inventory of the paint shop, he found a "new" full face respirator in a locker as well as other protective equipment, which had never been used. This evidence indicates that appellant had some degree of exposure to paint and chemical fumes between 1991 and 1996. However, the medical evidence of record is insufficient to support that appellant developed a respiratory condition due to such exposure as the medical reports fail to contain a rationalized opinion explaining the relationship between any job-related exposure appellant may have sustained and his diagnosed respiratory condition. Drs. Cueva and Yamanaka state only that appellant has asthma and, therefore, should avoid exposure to fumes, but neither physician indicates the cause of this condition. An accurate history of the etiology of

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

appellant's respiratory condition is critical in light of appellant's 20-year smoking history and his exposure to paint fumes while working in private industry. Similarly, while both physicians indicate that exposure to fumes in his employment may have aggravated his lung condition, the reports of Drs. Cueva and Yamanaka are not sufficient to establish an aggravation of appellant's lung condition due to factors of his employment as a painter. The physicians' reports are not based on a full history of appellant's occupational exposure to paint or provide sufficient explanation for their stated conclusions.

The Office provided appellant with opportunities to cure the deficiencies in the claim but he failed to submit sufficient medical evidence to substantiate his claim. Appellant, therefore, has failed to meet his burden of proof to establish that he sustained an employment injury and thus has failed to establish fact of injury.

The decision of the Office of Workers' Compensation Programs dated May 6, 1998 is affirmed.

Dated, Washington, D.C.
March 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member