U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN McELROY and DEPARTMENT OF THE NAVY, PUBLIC WORKS CENTER, Pearl Harbor, HI

Docket No. 00-280; Submitted on the Record;
Issued August 17, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a chemical sensitivity condition causally related to her July 8, 1997 exposure to shampooed carpet at work; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On October 2, 1997 appellant, then a 60-year-old secretary, filed a notice of occupational disease claiming "chemical sensitivity" caused by her July 8, 1997 exposure to shampooed carpet at work. The shampooed carpet was located in an office next to appellant's and in the hallway leading to the women's restroom. Appellant also claimed that the smell "got into the common air conditioner" and carried into her department. Appellant stated that she suffered a headache, laryngitis and was "weak" due to the exposure.

In other statements, appellant claimed that her chemical sensitivity condition was also related to her exposure to glue for linoleum and carpet, chemicals in furniture, pesticides, unknown chemicals coming from the air conditioner, gasoline being poured into tanks at a neighboring gas station, an odor from a drain pipe in the ladies' room, construction across the street and "hazardous water" in a hole. The only issue in this case, however, is appellant's July 8, 1997 specific exposure to shampooed carpet at work.

Appellant submitted medical information preexisting her July 8, 1997 exposure pertaining to a previous claim. Appellant also submitted reports from Dr. George M. Ewing, a Board-certified allergist and immunologist, dated July 28 and September 15, 1997.

By decision dated November 25, 1997, the Office denied appellant's claim since the medical evidence failed to establish that appellant sustained any condition causally related to her specific, limited July 8, 1997 work exposure.

The Office also noted that appellant had a prior accepted claim for temporary aggravation of a preexisting allergic blepharoconjunctivitis, for which benefits had been terminated on March 30, 1995.

Regarding appellant's allegations of other exposures, the Office found that appellant had not established any other exposure other than the July 8, 1997 exposure to shampooed carpet.

By letter dated December 17, 1997, appellant requested an oral hearing.

By decision dated October 28, 1998, the hearing representative affirmed the Office's November 25, 1997 decision.

By letter dated June 25, 1999, appellant requested reconsideration.

In a nonmerit decision dated July 12, 1999, the Office denied appellant's application for review.

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a chemical sensitivity condition causally related to her July 8, 1997 exposure to shampooed carpet at work.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[1]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[2]

The Board notes that the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.[3] Neither the fact that the condition became apparent during a period of employment, nor the belief of

[1] *Vicky L. Hannis*, 48 ECAB 538 (1997).

[2] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[3] *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

appellant that the condition was caused or aggravated by employment factors, is sufficient to establish causal relation.[4] Causal relationship is a medical issue that can be established only by medical evidence.[5]

In the instant case, appellant's employing establishment submitted information contesting appellant's claim, indicating that the rugs had been steam cleaned and not shampooed as per appellant's request, that appellant's office and the neighboring office did not share a common air conditioning system and that the only carpeted area appellant was exposed to was a narrow strip of carpet leading to the women's restroom. The Office accepted, in its November 25, 1997 decision, that appellant was exposed, in a limited manner, to the narrow strip of carpet leading to the women's restroom.

The issue, thus, is whether appellant submitted sufficiently rationalized medical opinion evidence relating her chemical sensitivity condition to her limited July 8, 1997 exposure to shampooed carpet at work.

The only medical evidence of record dated after July 8, 1997, that addresses appellant's exposure to the shampooed carpet are the July 28 and September 15, 1997 reports from Dr. Ewing. In his July 28, 1997 report, Dr. Ewing stated:

> "This patient, known since 1992, has had progressive symptoms related to recurrent chemical exposures in her work area related to, most recently, chemicals emanating from rug shampooing in the office, which resulted in symptoms relating to respiratory tract with laryngitis, sore throat, some visual disturbance and an exacerbation of chronic fatigue."

He continued:

> "July 10, 1997, she had flare of her laryngitis after the rug shampoo in her office, which is the present episode of problem which required her to be off work."

Dr. Ewing further noted that no specific diagnostic tests were performed since he felt that he had already identified her problem. Dr. Ewing diagnosed appellant with "multiple chemical sensitivity," "recurrent fibromyalgia," "relapsing vertigo" and "chronic fatigue."

In his September 15, 1997 report, he stated:

> "This patient was seen in our office on July 10, 1997. She had a severe flareup with headache, weakness, eye irritation, laryngitis and severe fatigue. This was following an exposure to a rug shampoo chemical that was used in her office prior to her coming to work on July 8, 1997. She was seen on July 10, 1997 with a bad flare of laryngitis. She had lost her voice. She was hoarse. She had some blurring of vision and profound fatigue. She had some swelling of her ankles and tenderness in her chest, migratory shoulder and neck pains. She also had a

[4] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

transient rash of her neck and upper torso, also significant flare up of her fibromyalgia."

Dr. Ewing, in his July 28, 1997 report, stated that appellant has had recurrent chemical exposures in her work area, most recently the rug shampooing. Dr. Ewing did not, however, provide any information pertaining to the specific events on July 8, 1997 the date in question. He also mentions "chemicals emanating from rug shampooing in the office" and states that appellant's exposure to these chemicals resulted in her various symptoms, but does not provide a rationalized medical opinion as to what exactly these chemicals were and how they physiologically caused appellant's symptoms. Dr. Ewing also noted that no specific diagnostic tests were performed. He at best diagnosed appellant with "multiple chemical sensitivity," but did not specifically relate appellant's July 8, 1997 limited exposure to the carpet to any diagnosed condition.

In his September 15, 1997 report, Dr. Ewing again stated that appellant had a severe flare up of her symptoms after her July 8, 1997 exposure to the rug shampoo, but did not provide a rationalized medical opinion explaining how the carpet shampoo physically caused appellant's symptoms. As stated in *Marilyn D. Polk*, a conclusory statement without supporting rationale is of little probative value.[6]

The Board finds that Dr. Ewing's reports are merely an extension of previous reports in support of appellant's prior claim for chemical sensitivity and do not adequately address the specific July 8, 1997 exposure.

Since the medical evidence submitted does not establish a clear, causal relationship between appellant's chemical sensitivity and her specific July 8, 1997 exposure to the shampooed carpet, appellant has not met her burden of proof in establishing her claim.

The Board also finds that the Office acted within its discretion in refusing to reopen appellant's case for further reconsideration of the merits.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that a claimant must (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[7]

In support of her June 25, 1999 request for reconsideration, appellant did not identify the grounds upon which she was requesting reconsideration. She also did not submit any evidence previously not considered by the Office nor did she present any legal arguments previously not considered by the Office. Appellant only submitted a short statement stating that she disagreed with the previous decision. Her own opinion was irrelevant to the medical issue at hand and is insufficient to require the Office to reopen appellant's case for review.

[6] *Marilyn D. Polk*, 44 ECAB 673 (1993).

[7] 20 C.F.R. § 10.606(b)(2).

Appellant has not established that the Office abused its discretion in its July 12, 1999 decision by denying her request for a review of the merits of her claim under section 8128(a) of the Act, because she failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

The July 12, 1999 and October 28, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member