

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL E. McWILLIAMS and DEPARTMENT OF THE ARMY,  
ANNISTON ARMY DEPOT, Anniston, AL

*Docket No. 99-1488; Submitted on the Record;  
Issued January 2, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a recurrence of disability on March 1, 1998 causally related to his March 17, 1988 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying his request for reconsideration.

The Board has duly reviewed the case record in this appeal and finds that appellant failed to establish that his recurrence of disability was causally related to his March 17, 1988 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>1</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

On March 17, 1988 appellant, then a 39-year-old painter, sustained contact dermatitis due to chemical sensitivity in the performance of duty. On November 5, 1996 he began working for a private company which specialized in the disposal of industrial waste. Appellant was terminated on March 24, 1998. On May 19, 1998 he filed a claim alleging that he sustained a

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<sup>1</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>2</sup> *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

recurrence of disability on March 1, 1998 which he attributed to his March 17, 1988 employment injury.

By decision dated July 24, 1998, the Office denied appellant's claim for a recurrence of disability. By decisions dated October 6 and November 2, 1998, the Office denied modification of its July 24, 1998 decision. By letter dated November 19, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated January 21, 1999, the Office denied appellant's request for reconsideration.

In a statement dated July 21, 1998, appellant related that his job at the private company involved teaching safety classes to employees and inspecting job sites. He stated that in his job he was exposed to chemicals, including grease, oil, degreasers, detergents, solvents and other industrial waste byproducts.

In a report dated May 12, 1998, Dr. Andrew M. Brown, a Board-certified otolaryngologist, related that appellant had "diffuse breaking out" on his body in March 1998. Dr. Brown stated that appellant's private employment involved checking safety equipment and that he was exposed to grease, oil, acids and degreasers. Appellant had lesions which would blister, burst, become infected and later heal. Dr. Brown indicated that appellant's condition was due to exposure to chemicals in his nonfederal employment.

In a report dated July 16, 1998, Dr. Brown related that testing showed that appellant had a high degree of sensitivity to formaldehyde and phenol. He added that, "there does seem to be a causal relationship between his present problem and his exposure to chemicals at work." In a report dated August 3, 1998, Dr. Brown stated:

"As an inspector ... [at his nonfederal job] [appellant] worked around varnishes, which were used to coat pipes, which had ketone, toluene and xylene as industrial solvents to be used with the varnishes. The extra varnish would spill out into a pan when these pipes were loaded.... This meant that he was exposed to the volatile compound, even after [the pipes] had been painted with the varnish."

In a report dated October 22, 1998, Dr. Brown related that appellant had dermatitis on his hands due to contact with paints, solvents and numerous chemicals while he was a painter at the employing establishment. He stated that he first saw appellant on March 21, 1988. Dr. Brown added:

"[Appellant] was desensitized to aliphatic and aromatic compounds with moderate success, but he is still, however, sensitive to these compounds and the dermatitis can be activated upon contact with any of these aromatic or aliphatic compounds. He recently had a study for aromatic volatile solvents after his last exposure, which was in March of this year. At that time he showed high toluene levels.

"I do not believe that he can tolerate being in a work environment [where] volatile organic chemicals are involved. His dermatitis has repeatedly shown to be related to reexposure to volatile organic chemicals."

Although Dr. Brown has treated appellant since his initial injury in 1988, none of his reports in 1998 explains how appellant's current dermatitis condition was causally related to the 1988 work exposure. At the time, appellant was desensitized to aliphatic and aromatic compounds. Dr. Brown relates that appellant is still sensitive to these substances, but does not specifically connect his "diffuse breaking out in March 1998 with the causative factors of his 1988 injury." Nor do Dr. Brown's reports distinguish between the effects of appellant's current exposure in his nonfederal job and the residuals of his 1988 dermatitis. Therefore, Dr. Brown's reports are insufficient to establish the requisite causal relationship.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

In a report dated November 17, 1998, Dr. Brown stated:

"Dermatitis, such as [appellant] experiences, can be a fixed dermatitis which can be under control for some time, but then it can flare up with reexposure to offending agents. This apparently was the case when this started back in the 80s. It is still a fixed problem, and will from time to time flare up whenever he has an exposure to these aromatic or aliphatic compounds."

However, the information in this report is substantially the same as in Dr. Brown's previous reports in which he noted that appellant experienced dermatitis when exposed to certain chemicals. Appellant's claim was denied because he failed to submit a rationalized medical opinion explaining how his alleged recurrence of disability was causally related to his federal employment injury on March 17, 1988, rather than to new exposure to chemicals in his private employment in 1998. The November 17, 1998 report from Dr. Brown does not contain a rationalized medical opinion on the issue of causal relationship and thus does not constitute relevant and pertinent evidence not previously considered by the Office.

As appellant failed to show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office, and did not submit relevant and pertinent evidence not previously considered by the Office, the Office acted within its discretion in denying appellant's request for reconsideration.

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<sup>4</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>5</sup> 20 C.F.R. § 10.608(b) (1999).

The decisions of the Office of Workers' Compensation Programs dated January 21, 1999 and November 2, October 6 and July 24, 1998 are affirmed.

Dated, Washington, DC  
January 2, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member