

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN E. OLNEY and DEPARTMENT OF VETERANS AFFAIRS,
BANDON COMMUNITY-BASED CLINIC, Bandon, OR

*Docket No. 00-193; Submitted on the Record;
Issued July 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has any continuing disability causally related to his accepted employment-related exposures on or after November 30, 1996.

Appellant, a 55-year-old physician and clinic director, filed a notice of occupational disease on March 26, 1996 alleging that he developed chemical hypersensitivity, rhinitis and sinusitis due to a contaminated indoor environment. The Office of Workers' Compensation Programs denied appellant's claim by decision dated August 12, 1996, finding that he had not submitted sufficient medical evidence to establish chemical sensitivity and a resulting back injury. Appellant requested an oral hearing and by decision dated January 13, 1997, the hearing representative remanded the case for further development.

The Office referred appellant for a second opinion evaluation. By decision dated February 19, 1998, the Office accepted appellant's claim for upper respiratory tract infection secondary to indoor air exposure but found that appellant's disability from this condition ceased no later than November 30, 1996. The Office also noted that there was a continuing conflict of medical opinion regarding additional conditions and further disability. The Office referred appellant to an impartial medical examiner and by decision dated February 2, 1999, again denied appellant's claim for continuing disability after November 30, 1996. Appellant requested a review of the written record and by decision dated June 14, 1999, the hearing representative affirmed the Office's February 2, 1999 decision.

The Board finds that the medical evidence does not establish continuing disability after November 30, 1996 causally related to appellant's accepted employment exposures.

In this case, appellant submitted reports from his attending physician, Dr. Joseph T. Morgan, a Board-certified pediatrician, opining that appellant's conditions of chronic rhinitis, severe chronic cough and severe sensitivity to indoor air contaminants, were causally related to poor air quality at the employing establishment. Dr. Morgan supported appellant's continuing total disability due to these conditions.

The Office referral physician, Dr. Scott Barnhart, a physician Board-certified in preventative medicine, diagnosed upper airway irritation resolved which he opined was related to appellant's employment exposures. He stated, "This temporary aggravation should not persist more than several months following cessation of exposure." Dr. Barnhart concluded that appellant's employment-related condition ceased three months after appellant's last employment exposure in August 1996.

Dr. Morgan reviewed Dr. Barnhart's report and stated that appellant had current and continuing disability. On October 30, 1997 Dr. Morgan diagnosed multiple chemical sensitivity and chronic porphyriopathy.

Appellant also submitted medical reports from Dr. William E. Morton, a physician Board-certified in preventative medicine, diagnosing porphyria activation due to employment exposures and opining that appellant was totally disabled.

Section 8123(a) of the Federal Employees' Compensation Act,¹ provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." Due the existing conflict between appellant's attending physicians, Drs. Morgan and Morton, who diagnosed additional conditions and supported continuing disability and the Office referral physician, Dr. Barnhart, who found that appellant sustained only a temporary upper respiratory infection due to his employment exposures, the Office referred appellant for an impartial medical examination by Dr. Philip Harber, a physician Board-certified in preventative medicine.

In a report dated August 10, 1998, Dr. Harber noted appellant's history of injury, his current living conditions and current symptoms. He performed a physical examination and reviewed diagnostic tests. Dr. Harber diagnosed nonemployment-related hypertension, puffy eyes, obesity, possible early emphysema, sleep apnea by history and ulnar neuropathy. He noted appellant's employment exposures and expanding sensitivities. Dr. Harber found that appellant did not have a form of porphyria as he had neither the appropriate skin nor nerve symptoms. He also noted that appellant did not exhibit the severe psychiatric disorders that could be associated with this diagnosis. Dr. Harber stated that appellant did not clearly have an abnormal porphyrin test results and reviewed the medical literature in concluding that this diagnosis was not responsible for appellant's symptoms.

Dr. Harber agreed that appellant was subjected to a poorly ventilated work environment and that he experienced mild symptoms due to this. However, he concluded that appellant did not have a permanent problem as a result of his employment exposures. Dr. Harbor stated that appellant could meet the physical requirements typical of clinic physician work.

¹ 5 U.S.C. §§ 8101-8193, 8123(a).

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.² In this case, Dr. Harber provided a detailed report based on a proper history of injury. He provided the reasoning for concluding that appellant did not have a form of porphyria and for concluding that appellant could not continue to smoke if he had multiple chemical sensitivities. Dr. Harber concluded that appellant's employment exposures resulted in a temporary condition.

Following Dr. Harber's report, appellant submitted additional medical evidence. Appellant submitted a report dated October 8, 1998 from Dr. Gunnar Heuser, a Board-certified internist. Dr. Heuser noted that he referred appellant for multiple evaluations to diagnose his condition. He found that appellant's brain scan was abnormal with a perfusion deficit commonly seen after toxic chemical exposure. Dr. Heuser noted that appellant's chronic rhinosinusitis and laryngitis were not related to allergies. He concluded that appellant's findings could only be explained by toxic chemical exposures. In a report dated February 26, 1999, Dr. Heuser noted appellant's history of injury and that he was exposed to carbon dioxide in excess of acceptable limits. He diagnosed toxic encephalopathy, dry eye syndrome, lymphangioneurotic edema, rhinosinusitis and laryngitis, autoimmune process and porphyrinopathy related to chemical or toxic exposures. Dr. Heuser stated, "[Appellant] was exposed to multiple chemicals in a poorly ventilated work environment which eventually effected his health." He concluded that appellant's diagnosed conditions were work related and that he was totally disabled.

The Board finds that these reports are not sufficient to create a conflict with the report of Dr. Harber because Dr. Heuser did not provide a sufficient history of exposure to support his diagnoses. He noted that appellant was exposed to multiple chemicals, but failed to refer to a specific finding regarding chemicals at the employing establishment. Dr. Heuser did not explain how or why exposure to excessive levels of carbon dioxide would result in the diagnosed conditions. Without the necessary factual background and medical reasoning explaining how he reached his conclusions that appellant's various diagnoses were related to his employment, Dr. Heuser's reports are not sufficient to establish continuing disability or to create a conflict with Dr. Harber's detailed report.

² *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

The June 14, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 12, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member