

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY J. CHAMPION and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Tuskegee, AL

*Docket No. 01-76; Submitted on the Record;
Issued July 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that his chronic obstructive pulmonary disease is causally related to factors of his federal employment.

On July 30, 1996 appellant, then a 50-year-old painter, filed a notice of occupational disease and claim for compensation, alleging that his chronic obstructive pulmonary disease was caused by his work environment. The employing establishment noted that appellant's last exposure to the alleged conditions was July 23, 1996. He was removed from federal service effective December 6, 1996.

In a report dated July 29, 1996 and received by the Office of Workers' Compensation Programs on August 6, 1996, Dr. James M. Parks, appellant's treating physician and Board-certified in internal medicine, stated that he examined appellant on July 25, 1996 and found that he had chronic obstructive pulmonary disease. He further noted that appellant "should not work in a contaminated environment."

By letter dated September 9, 1996, the Office advised appellant that the information he had submitted was insufficient to establish that his condition was caused or aggravated by his work environment. The Office requested appellant to describe the employment factors which contributed to his condition including to what kinds of conditions he was exposed, how long he was exposed and how often. The Office also asked him whether he smoked cigarettes, cigars or a pipe and if so, for how long and how often. It also requested appellant to submit medical records pertaining to his condition and a comprehensive medical report from his treating physician which describes his symptoms and the doctor's opinion, with medical reasons, on the cause of his condition including an explanation if the doctor feels that environmental factors contributed to his condition.

In a narrative dated October 10, 1996, appellant stated that he "smoked between 1 and 2 packages of cigarettes daily [for] approximately 30 years. I quit smoking cigarettes the spring of 1996; however, I still smoke small cigars five to eight per day. I do not inhale the smoke."

By decision dated November 13, 1996, the Office denied appellant's claim for compensation for failure to establish fact of injury. The Office found that the initial evidence supported appellant's allegation that he was exposed to "the activities or employment factors to which [appellant] attributes the claimed medical condition," but that he had not established a medical condition by such exposure.

By letter dated December 6, 1996, appellant, through counsel, requested an oral hearing.¹ In a report dated August 7, 1996 and received by the Office on December 9, 1996, Dr. Robert H. Walkup, Board-certified in internal medicine, noted appellant's lead exposure at work but also noted that he was not aware that appellant was exposed "to anything known to be hazardous as far as the pulmonary system is concerned." He added that appellant's smoking history of one and a half packages a day for 28 years "is more likely responsible for the diminution in pulmonary function [test]."

On April 22, 1998 a hearing was held. In a decision dated and finalized on June 25, 1998, the hearing representative affirmed the Office's November 13, 1996 decision denying benefits.

By letter dated June 22, 1999, appellant requested reconsideration. In support of his request, appellant submitted a December 9, 1996 report from Dr. Cliff Robinson, an employing establishment physician and Board-certified in family practice, who stated that appellant should be separated on the grounds of disability. He stated that appellant "has chronic obstructive pulmonary disease and is unable to work around dust, fumes, vapors or smoke. Moreover, he cannot tolerate wearing a respirator."

By decision dated September 30, 1999, the Office denied modification on the grounds that appellant failed to submit a rationalized medical opinion explaining how his condition was causally related to his employment. The Office noted that appellant's medical evidence failed to establish a causal relationship between his current medical condition and employment factors.

The Board finds that appellant failed to meet his burden of proof in establishing that his chronic obstructive pulmonary disease was causally related to factors of his federal employment.

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.² The evidence required to establish causal relationship is rationalized medical opinion evidence,

¹ Appellant's legal representative withdrew from the claim on November 18, 1997. By letter dated November 21, 1997, he again requested an oral hearing.

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.³

In the present case, appellant has submitted medical evidence diagnosing his medical condition and his exposure to environmental hazardous materials. Drs. Parks and Walkup stated that appellant had chronic obstructive pulmonary disease; however, neither doctor supported appellant's allegation that his condition was caused or contributed to by factors of federal employment. Dr. Walkup opined that appellant's condition was more likely caused by his 28-year history of smoking one and a half packages of cigarettes a day.

Appellant submitted a report from Dr. Robinson, Board-certified in family practice, who stated that appellant had chronic obstructive pulmonary disease and was unable to work around dust, fumes, vapors or smoke. This evidence, however, is not pertinent to the issue of whether appellant's chronic obstructive pulmonary disease was caused or aggravated by factors of his federal employment.

The medical evidence of record therefore is not sufficient to establish a causal relationship between the claimed conditions and his federal employment. As noted above, the medical evidence must be based on a complete background and must contain an opinion with supporting rationale. It is appellant's burden to submit medical evidence causally relating the diagnosed condition and factors of his employment. Neither Drs. Parks nor Dr. Walkup provided a history of appellant's exposure to hazardous materials that may have caused appellant's chronic pulmonary disease.

The decisions of the Office of Workers' Compensation Programs dated September 30, 1999 and June 25, 1998 are hereby affirmed.

Dated, Washington, DC
July 23, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ *Walter D. Morehead*, 31 ECAB 188 (1979).