

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEFFREY R. SANDER and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Miami, FL

*Docket No. 00-316; Submitted on the Record;  
Issued October 19, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant's cardiomyopathy is causally related to his occupational exposure to viruses, chemicals or biohazards.

On December 29, 1997 appellant, then a 39-year-old administrative assistant to the associate director and acting chief of environmental management service, filed an occupational disease claim asserting that his cardiomyopathy was a result of his exposure to a virus he probably contracted at work. He explained that he had total responsibility for the management, monitoring and inspection of housekeeping, sanitation, infection control, waste management, pest control, bed and soiled linen collection services at the medical center. The medical center was a large, diversified facility comprising a million square feet and additional satellite outpatient facilities. He was required to enter and monitor all areas within the medical center on a daily basis. He had direct contact with patients. Appellant described the diverse healthcare programs that could have exposed him to viruses, bacteria, hazardous chemicals, airborne organisms and other toxins. He listed the tasks or duties that could have caused his condition. He concluded:

“My exposure to a variety of chemicals, viruses, bacteria, toxins and airborne organisms is greater than most workers, therefore, I feel my condition has been caused by some contamination or cross-infection that I received at my place of employment.”

The employing establishment provided position descriptions, incident reports and appellant's health records. A hospital discharge summary from October 17, 1997 showed that appellant was recently diagnosed with dilated cardiomyopathy and congestive heart failure. He was discharged with the same, together with chest pain, rule out myocardial infarction.

The employing establishment provided safety information, as well as minutes of the Hospital Environmental and Infection Control Committee from January 9, 1996 to October 14, 1997.

On October 28, 1997 Dr. Joseph V. Cerami, a Board-certified specialist in cardiovascular diseases, reported that appellant's position at the medical center required him to be in the hospital on a daily basis and to spend time in areas where he could have possibly been exposed to airborne organisms (viruses) or toxins or chemicals. "Overall," Dr. Cerami reported, "it is possible that [appellant's] heart condition could have resulted from a viral infection contracted while at work."

Dr. Juan C. Garcia, a consulting cardiologist, reported that appellant had a cardiomyopathy, the "etiology of which will remain to be determined."

On January 5, 1998 Dr. Thomas Sutton, a Board-certified specialist in preventive and occupational medicine at the employing establishment, reported the following:

"I have reviewed the two medical reports from Dr[s]. Cerami and Garcia.

"There is no medical evidence that working in a hospital environment is associated with or related to the development of cardiomyopathy. Any viruses or toxins that could cause cardiomyopathy are no more likely to be present in the hospital than in the community at large. In fact, the common viruses that can cause cardiomyopathy are the same ones that usually cause mild respiratory or gastrointestinal infections that would rarely require hospitalization.

"While it is possible to acquire a viral infection while working in a hospital, it is no more likely than if you acquired the infection in the community. Certainly without a documented acute infection or an acute chemical exposure, it would be very difficult to make a causal relationship of cardiomyopathy to a job factor."

On February 20, 1998 the Office of Workers' Compensation Programs advised appellant that his physician's opinion was speculative. The Office requested a reasoned medical opinion based on definite exposures.

Appellant submitted letters from staff members who were present to support his exposure to two chemotherapy spills in February 1997 "as well as various other spills and air borne diseases I could have been exposed to." He explained that he had been exposed to too many viruses for any physician to identify exactly which virus caused his condition.

In a decision dated May 20, 1998, the Office denied compensation. The Office found that appellant failed to submit reliable, unequivocal and rationalized medical reports relating his condition to specific exposures at work.

On April 26, 1999 Dr. Cerami stated, as follows:

"In [appellant's] position, as AA/Associate Director and Acting Chief of Environmental Management Service, at the employing establishment, he was exposed to pathogenic microorganisms including numerous viruses on a daily basis, which very obviously would be among the most virulent, the result [appellant's] illness.

“Within the arena of professional healthcare researchers and providers, it is recognized and accepted that inpatient facilities become breeding grounds for microorganisms that mutate so rapidly that state of the art research cannot find solutions, *i.e.*, methods to eradicate or prevent their reproduction.

“As you are aware, exposure to any virus presents very serious problems due to our inability to render them impotent. Inpatient facilities filled with patients who have diseases (many of which are viral-based) as well as ineffective immune systems become lethal vessels of dangerous even lethal contaminants.

“[Appellant’s] successful performance of his duties demanded his physical presence in numerous toxic and infectious areas throughout the hospital on a daily basis.

“There are medical facilities, which the department head can rely upon his/her supervisors to assure that the department duties are carried out. [Appellant’s] physical presence was required in these areas (supporting documents in file) in order to direct his supervisors. Documentation in support of this is clearly supported and shows [appellant] was required by his supervisor, etc. to physically enter these areas. In his endeavor to manage an effective department, he was, therefore, directly exposed on a daily basis to pathogenic microorganisms including viruses.

“In addition to his daily exposure to a multitude of viruses, etc., he was also directly (physically) exposed to a ‘chemo’ (therapeutic) spill, which as you are aware could certainly suppress his immune system.

“Constant exposures to these very lethal viruses and his exposure to a chemo immune suppressing spill certainly presents more than sufficient evidence to support my opinion that his viral cardiac infection is directly related to and caused by the performance of his duties.”

On June 8, 1999 Dr. Sutton reported that he had reviewed Dr. Cerami’s April 26, 1999 report and strongly disagreed with many of his statements. It is the more common respiratory and gastrointestinal viruses, he explained, that will, rarely, cause a cardiomyopathy and not the more virulent virus. Such common viruses are no more prevalent in a hospital setting than in the community at large. Dr. Sutton asserted that none of the chemicals used by the employing establishment had been shown to cause cardiomyopathy. Further, he reported that any chemotherapeutic spill sufficient to cause reduced immunity would certainly be symptomatic and would have required treatment close to the time of the spill.

In a decision dated August 11, 1999, an Office hearing representative affirmed the May 20, 1998 decision. The hearing representative found that the medical evidence was insufficient to establish that appellant sustained an injury causally related to his federal employment.

The Board finds that the evidence is insufficient to establish that appellant's cardiomyopathy is causally related to his occupational exposure to viruses, chemicals or biohazards.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

The record indicates that appellant was generally exposed to viral, chemical and biological hazards during his tenure at the employing establishment. The specific viruses, pathogens or chemicals are not discernable from the evidence submitted. The identification of specific viral exposures is not defined. The nature and duration of exposure to chemotherapy spills is not well defined. Appellant has submitted no blood test or other laboratory finding to establish that he is seropositive for any pathogenic microorganism or chemical at work. Neither he nor his physician has implicated a specific microorganism or chemical in the etiology of his diagnosed cardiomyopathy. Without evidence of a specific exposure to a specific biological or chemical agent, the general exposure to many viral, chemical and biological hazards is too speculative to establish a factual basis for appellant's claim.

In addition to establishing a factual basis for his claim, appellant must establish that the established event, incident or exposure caused an injury. Causal relationship is a medical issue,<sup>3</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

To support his claim, appellant has submitted the opinion of Dr. Cerami, a Board-certified specialist in cardiovascular diseases. In his October 28, 1997 report, he speculated that appellant's position at the medical center required him to spend time in areas where he could

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> See *Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>6</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

have possibly been exposed to airborne organisms (viruses) or toxins or chemicals. Dr. Cerami further speculated that it was possible that appellant's heart condition could have resulted from a viral infection contracted while at work. The Board finds that the opinion expressed by Dr. Cerami to be speculative and equivocal.<sup>7</sup>

In his April 26, 1999 report, Dr. Cerami concluded that exposures to viruses and a chemo-immune suppressing spill was more than sufficient evidence to support that appellant's viral cardiac infection was directly related to and caused by the performance of his duties.<sup>8</sup> Dr. Cerami offered no clinical findings, however, to demonstrate the viral or "chemo" etiology for appellant's cardiomyopathy. His report is not well reasoned in this respect. Further, he suggested that because inpatient facilities are breeding grounds for mutating microorganisms, appellant's viral cardiomyopathy was likely a work-related condition rather than one contracted outside the workplace. The record, however, contains two reports from Dr. Sutton, a Board-certified specialist in preventive and occupational medicine, who opined that viruses that could cause cardiomyopathy were no more likely to be present in a hospital setting than in the community at large.

Because appellant has failed to establish a factual basis for his claim and because the medical opinion evidence supporting his claim is of limited probative value, the Board finds that he has not met his burden of proof.

The August 16, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 19, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Philip J. Deroo*, 39 ECAB 1294 (1988).

<sup>8</sup> Dr. Cerami's statement that appellant's direct physical exposure to a chemotherapy spill "could certainly suppress his immune system" is, without additional explanation, speculative.