

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN WEAVER and U.S. POSTAL SERVICE,
CHICAGO CENTRAL FACILITY, Chicago, IL

*Docket No. 01-1857; Submitted on the Record;
Issued April 22, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she developed a recurrence of disability on or after October 30, 1998 causally related to her January 20, 1998 employment injuries.

Appellant, a 55-year-old mailhandler, filed a notice of occupational disease on January 20, 1998, alleging that on December 6, 1997 she first realized that her stomach and throat condition was due to inhaling fumes in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for pneumonitis, gastritis and vertigo on October 7, 1998.

On October 31, 1998 appellant filed a notice of recurrence of disability alleging on October 30, 1998 that she developed a recurrence of disability causally related to her accepted employment injuries. By decision dated February 8, 1999, the Office denied appellant's claim for recurrence of disability. She requested an oral hearing. By decision dated October 5, 1999, the hearing representative affirmed the Office's February 8, 1999 decision. Appellant requested reconsideration on September 12 and September 28, 2000. By decision dated April 16, 2001, the Office accepted that appellant sustained generalized anxiety disorder as a result of her employment injuries, but denied appellant's claim for recurrence of disability on October 29, 1998.

The Board finds that the case is not in posture for decision.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing October 29, 1998 and her January 20, 1998 employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

The Office's second opinion physician, Dr. Shirley A. Conibear, a physician Board-certified in preventative medicine, examined appellant on November 2, 1998. She noted that appellant did not demonstrate a diagnosis of pneumonitis nor true vertigo. Dr. Conibear stated that the diagnosis of gastritis was based on symptoms alone. She stated that appellant likely suffered from chronic low level carbon monoxide poisoning in the winters 1996 to 1997 and 1997 to 1998. Dr. Conibear diagnosed post carbon monoxide poisoning, anxiety reaction and possible aortic stenosis. She indicated that appellant needed to work in an area with no pungent smells or irritating fumes. This report does not support any period of disability due to appellant's accepted employment conditions either emotional or physical.

In this case, appellant submitted several reports from Dr. Migdonia M. Delossantos, a physician. She completed a note on October 16, 1998 and stated that appellant had a history of hypersensitive nasal mucosa and that she was not able to tolerate chemical or fumes in her environment. Dr. Delossantos completed a note on October 30, 1998 and stated that appellant was under her care for pneumonitis, gastritis and vertigo as well as recurrent acute exacerbation of reactive airway disease secondary to exposure to gas. She stated that appellant was unable to work for at least 30 days. Dr. Delossantos made similar findings on November 30, 1998. On December 29, 1998 she stated that appellant continued to experience symptoms of pneumonitis, gastritis and vertigo as well as recurrent acute exacerbation of reactive airway disease. Dr. Delossantos stated that appellant was unable to work for at least 30 days. In a report dated January 19, 1999, Dr. Delossantos found that appellant demonstrated mild respiratory distress with scattered rhonchi on both lung fields. She stated that appellant continued to be debilitated by her panic attack-like symptoms including her fear or anxiety of another dangerous exposure to toxic fumes in her job. Dr. Delossantos continued to support appellant's disability due to physical conditions on January 29, February 26, March 26, April 26, May 1, June 1 and 15 and August 23, 1999 and August 9, 2000.

In response to a request for a supplemental report from the Office, Dr. Conibear stated on January 29, 1999 that appellant's current symptoms were not due to physical injury from carbon monoxide poisoning but were due to a post-traumatic stress disorder, a psychological condition similar to panic attacks. She stated: "Specifically, she does not currently suffer any residual physical damage from the previous diagnosis of 'pneumonitis, gastritis and vertigo.' I do not believe that she has respiratory disease as a result of her exposure."

Section 8123(a) of the Federal Employees' Compensation Act,³ 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." In this case, appellant's attending physician, Dr. Delossantos, provided reports supporting that she was disabled due to her accepted physical conditions on and after October 28, 1998. The Office referred appellant to Dr. Conibear for a second opinion. She

² See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ 5 U.S.C. §§ 8101-8193, 8123(a).

found that appellant did not have any continuing physical condition related to her accepted employment injuries.⁴ As there is a disagreement between physicians regarding appellant's employment-related condition and any related disability, the Board finds that there is an unresolved conflict of medical opinion evidence necessitating referral to an appropriate Board-certified physician.

On remand the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician, to determine whether appellant has any continuing employment-related physical condition and whether appellant had any disability due to her accepted conditions on or after October 28, 1998. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The April 16, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside in regard to the issue of recurrence and remanded for additional development consistent with this opinion of the Board.

Dated, Washington, DC
April 22, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁴ The Board notes that Dr. Conibear did not address the issue of disability due to appellant's emotional condition.