

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA D. MORGAN and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 01-2221; Submitted on the Record;
Issued August 12, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits.

On November 1, 1996 appellant, then a 48-year-old letter carrier, filed an occupational disease claim, alleging that her malignant basal cell carcinoma on her nose, lips and eyelid were due to the sun exposure she endures as part of her federal duties. On January 14, 1998 the Office accepted appellant's claim for the conditions of basal cell carcinoma on the left side of her nose, basal cell carcinoma of left canthus, actinic Keratosis and actinic elastosis of the left upper lip. All appropriate benefits were authorized and paid, including surgery.

During the Office's development of the evidence for appellant's schedule award claim as a result of scarring after basal cell surgery, she was informed in a letter dated June 7, 2000 that a second opinion evaluation by an Office referral physician was necessary. In a September 22, 2000 report, Dr. Michael C. Malczewski, a Board-certified plastic surgeon, noted appellant's history and presented his findings on examination. He opined that appellant's basal cell carcinoma related to her sun exposure was not work related. Dr. Malczewski stated that the latency period for ultraviolet-induced carcinoma was 20 to 30 years plus and basal cell carcinomas result from a lifetime of sun exposure. He further stated that he did not agree with the assessment of this being a workers' compensation case. Additionally, Dr. Malczewski opined that the result from appellant's surgical procedure was very nice and he did not think it has contributed to any asymmetry with her nostrils, nor any periocular asymmetry, nor did he think that anything needed to be done in the way of scar revision. In a subsequent report dated November 7, 2000, Dr. Malczewski stated that, after a complete review of appellant's medical records and examination findings, he still disagreed with any assignment of her case as a workers' compensation issue. Dr. Malczewski stated that, despite appellant's sun exposure as a postal worker, her personal experience was reflective of the vast majority of the population, which obviously, is not employed in the postal service. He stated that currently, approximately 97 percent of Caucasians that live to the age 80 will have basal cell carcinoma. The latency

period is a minimum of 30 to 40 years and is based on sun exposure as a child with cases occasionally diagnosed as early as in the 20s, but the majority cases occur starting in the fourth and fifth decade and increasing with frequency thereafter. Dr. Malczewski advised that this was common knowledge to anyone who deals with any significant volume of skin cancer. He further noted that the susceptibility to basal cell skin cancer was directly related to skin pigmentation and the darker one is, the more resistant they are to skin cancer.

The Office determined that a conflict existed between Dr. Malczewski's reports and that of appellant's treating physician regarding the issue of whether appellant's basal cell carcinoma was causally related to her postal work. The Office, therefore, referred appellant, along with a statement of accepted facts and a copy of the medical records, to Dr. Geoffrey Osgood, a Board-certified plastic surgeon, for an impartial evaluation.

In a report dated March 9, 2001, Dr. Osgood stated that the issue was how appellant developed basal cell carcinoma of the nose and lower eyelid and actinic keratosis/elastosis of her facial skin and to what extent her employment contributed to those conditions. Dr. Osgood provided the following report:

"It is known that sun exposure/ultraviolet radiation is a major risk factor in the development of actinic damage and basal cell carcinoma. However, what ultimately induces the skin cancer and dictates its behavior is unknown. Just as sunlight plays a major role in the development of basal cell cancer, it also influences squamous cell carcinoma and melanoma. Sun exposure actually correlates better with squamous cell carcinoma since one-third of basal cell cancers arise in areas of relatively insignificant sun exposure.

"Nonetheless, the literature supports that a typical basal cell carcinoma develops after a minimum of 20 to 30 years of chronic sun exposure. There are several other contributing risk factors: skin pigmentation, inheritance, radiation, chemical exposure, traumatic wounds and immunosuppression.

"In examining the employment descriptions and logs from 1973 to 1996 of [appellant], I believe her total sun exposure was not extensive. Her duties of walking or driving involved frequent direction changes, changes in head position, looking downward, not facing the sun, nor receiving reflected rays off of water. Nor did her duties prevent her from wearing protective clothing, glasses, or sun block. Furthermore, I would opine that her off-work sun exposure, combined with her sun exposure of 26 years before her 1973 employment, would be at least equal to, if not greater than her exposure at work.

"[Appellant's] history and life style also contributed risk factors. Tobacco plays a significant role in causing skin damage as well as impeding skin's ability to repair itself. Also, the facial skin of a smoker is directly bathed by the carcinogenic agents in cigarette smoke.

“The body’s ability to repair itself is not only decreased by smoking, but also by the detrimental effects of alcoholism: malnutrition, bone marrow suppression, anemia, etc.

“Exposure to insecticides can also cause basal cell carcinoma. Golf courses are notorious for their chemical use. Certainly the environmental restrictions were not as strict, known, or enforced when [appellant] worked at a golf course in the early ‘60s. Even working indoors does not necessarily protect from airborne or trafficked chemicals. It was common to fog large areas for mosquitoes in the early evening, even using DDT.

“In summary, [appellant] has several risk factors. None of these can be said to have caused her skin cancer/disease. However, given her life style and time away from work, her job would approach having a protective effect in comparison. Her job did not cause, aggravate, accelerate or precipitate her disease.”

The Office issued a notice of proposed termination of benefits on August 1, 2001 and advised appellant of her right to submit additional evidence. The Office determined, based on the opinion of the impartial medical examiner, that appellant’s work as a letter carrier did not cause, aggravate, accelerate or precipitate her skin cancer.

In a letter dated August 30, 2001, appellant requested an extension on the 30-day time limit in which to offer a response. No new evidence was submitted.

In a decision dated September 4, 2001, the Office denied appellant’s request for an extension and finalized its determination to terminate appellant’s compensation benefits on the basis of its impartial medical examiner.

The Board finds that the Office has met its burden to terminate appellant’s compensation benefits on September 4, 2001.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹ The Office’s procedure manual provides that, having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration, by the weight of evidence, that entitlement to benefits has ceased.²

In this case, the Office referred appellant to Dr. Michael Malczewski, a Board-certified plastic surgeon, to determine whether she was entitled to a schedule award. Following receipt of Dr. Malczewski’s September 22 and November 7, 2000 reports, the Office found that a conflict

¹ *Patricia A. Keller*, 45 ECAB 278 (1993); *Regina C. Burke*, 43 ECAB 399 (1992); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

² Federal (FECA) Procedure Manual, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

existed under 5 U.S.C. § 8123(a) and appellant was referred to Dr. Osgood, a Board-certified plastic surgeon, as the independent medical examiner. In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an independent medical examiner 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.³

The Board finds that Dr. Osgood's opinion is complete and well rationalized in establishing that appellant's skin cancer/disease is not causally related to her federal employment. Dr. Osgood reviewed appellant's medical history, lifestyle and employment descriptions as possible risk factors in the development of actinic damage and basal cell carcinoma. He advised that although appellant has several risk factors, which could cause basal cell carcinoma, none of these could be said to have caused her skin cancer/disease. However, given appellant's lifestyle and time away from work, he opined that appellant's federal job would approach a protective effect in comparison and, therefore, did not cause, aggravate, accelerate or precipitate her disease. As the independent medical examiner, Dr. Osgood's opinion constitutes the weight of the medical evidence. The Office, therefore, properly relied on Dr. Osgood's opinion in terminating compensation benefits.

The decision of the Office of Workers' Compensation Programs dated September 4, 2001 is hereby affirmed.

Dated, Washington, DC
August 12, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

³ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).