

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHERINE FERENTINOS and FEDERAL DEPOSIT  
INSURANCE CORPORATION, New York, NY

*Docket No. 02-63; Submitted on the Record;  
Issued August 26, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant's disability from March 15 through 17, 1995 and on and after March 27, 1995 is causally related to her exposure to chemicals in her employment.

On January 10, 1994 appellant, then a 58-year-old administrative clerk, filed a claim for an occupational disease for chemical sensitivity to her work environment. She stated that on September 27, 1993 the employing establishment moved its offices from New York City, to Jersey City, New Jersey, that on October 1, 1993 she was exposed to shelves in a storage closet that had recently been painted with polyurethane, causing "violent fits of coughing, choking, gagging, dizziness and headache, coupled with difficulty in breathing" and that she had experienced a prolonged illness since her exposure.

Appellant stopped work on October 7, 1993 and returned on October 9, 1993. She stated that, upon her return to work, she was exposed to cleaning agents, paints and solvents on a daily basis and that she again had to use sick leave. Appellant described her symptoms and stated that she had never before suffered with a similar condition. The employing establishment reported that the site it moved into on September 27, 1993 had all new carpeting and newly painted offices and that an air quality test in November 1993 "showed traces of elements far below the levels the industry deems to be troublesome, which shows the building to be clean." The employing establishment also stated that appellant "on many occasions came to work at our former location at 452 Fifth Avenue, New York, NY 10018 while suffering with coughing and upper respiratory congestion and back problem. She apparently had problems with allergies and other medical problems prior to our move."

In a report dated October 27, 1993, Dr. A. Berlin, the director of occupational health at Methodist Hospital in Brooklyn, stated that appellant's "symptoms and clinical course could certainly be the result of chemical sensitivity," as appellant "relates her cough, upper airway irritation and dizziness to exposure to a particular closet and cleaning/maintenance chemicals at work." In a report dated January 6, 1994, Dr. David H. Slavitt, a Board-certified

otolaryngologist, stated that appellant had allergic rhinitis and dysphasia<sup>1</sup> on examination that day and that it had “been decided that these conditions are directly related to her particular work environment and that she should not return to work until her job site has been relocated.”

On April 4, 1994 appellant, who had missed intermittent periods of work beginning October 7, 1993 and had not worked since December 17, 1993, returned to work as an office service clerk in the employing establishment’s New York City offices.

On May 5, 1994 the Office of Workers’ Compensation Programs advised appellant that it had accepted her claim for allergic rhinitis and dysphasia. The Office paid compensation for appellant’s absences from work through April 1, 1994.

On September 16, 1994 appellant filed two claims: one for an occupational disease and one for a recurrence of disability related to her October 1, 1993 employment injury. She stated that on August 29 and 30 and September 6, 1994 she again experienced symptoms due to exposure to chemicals at work, causing her to stop work. The employing establishment’s cleaning contractor stated that between August 26 and 31, 1994 it shampooed the elevator lobbies of the employing establishment’s building.

In a report dated September 8, 1994, Dr. Slavitt stated that appellant was seen that day with a “complaint of an upper respiratory reaction to chemicals” and that she “suffers from all over weakness, thick nasal congestion, pharyngitis and laryngitis.” In a report dated September 15, 1994, Dr. John Castronovo, an allergist, stated that appellant was seen on September 1 and 15, 1994 with hoarseness and congestion related to chemicals used at her workplace and that she should not return to work until her symptoms subsided.

The Office accepted that appellant sustained a recurrence of disability beginning August 30, 1994. She stopped work on August 30, 1994 returned to work on September 6, 1994, stopped work after 3.5 hours and returned to work on October 3, 1994. The employing establishment moved appellant to a different floor “to accommodate apparent allergy to 15<sup>th</sup> floor.”

On July 31, 1995 appellant filed a claim for a recurrence of disability from October 31 through November 8, 1994 related to her October 1, 1993 employment injury. In a report dated November 15, 1994, Dr. Slavitt stated: “[I]t is apparent that [appellant] is having an allergic reaction from something that remains airborne. Once she is exposed and she has breathed it in, she becomes too weak to function normally.” In a report dated November 17, 1994, Dr. Robert Della Badia, an internist, stated that appellant was treated on November 1 and 8, 1994 “for respiratory problems secondary to exposure to chemical fumes at her work environment.”

On August 23, 1995 appellant filed a claim for a recurrence of disability from January 25 through February 3, 1995 that she attributed to exposure “to various chemicals that were used to treat new bookcases that were delivered on January 23 1995.” In a report dated January 25, 1995, Dr. Slavitt stated that she was seen that date for an allergic reaction to formaldehyde used

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<sup>1</sup> Dysphonia: Any impairment of voice; a difficulty of speaking. *Dorland’s Illustrated Medical Dictionary*, (27<sup>th</sup> ed. 1988).

to treat new furniture at her job site. Dr. Slavik also noted that on October 31, 1994 appellant had a reaction to a smell or odor from solvents.

On August 23, 1995 appellant filed two claims for recurrences of disability related to her October 1, 1993 employment injury, one for March 15 through 17, 1995 and the other beginning March 28, 1995. Regarding the March 15 to 17, 1995 recurrence, appellant stated that management requested that she gradually increase the time a day she spent on the 15<sup>th</sup> floor, as the nature of her work required her to be on that floor, but that each time she returned she became affected and felt ill. Appellant stated that on March 24, 1995 her eyes, nose and throat were irritated and burning after working on the 15<sup>th</sup> floor and that on Monday, March 27, 1995 she felt weak but was able to perform her duties, was exposed that day to fumes from a carpet on the 20<sup>th</sup> floor when she knelt down to pick up litter near her desk and to chemicals in the lobby to the 15<sup>th</sup> floor when the glass door that separated the lobby from the main office was held open. Appellant stated that the first episode made her dizzy and that the second episode caused immediate burning of her nose and throat and loss of her voice. Appellant did not return to work after March 27, 1995.

In a report dated May 17, 1995, Dr. Joseph J. Tricarico, a Board-certified anesthesiologist, stated that appellant had multiple chemical sensitivity from exposure to job-related chemicals and that she could not perform her usual duties. In a report dated May 30, 1995, Dr. Tricarico noted appellant's history of symptoms after her exposure to polyurethane upon her transfer to Jersey City and diagnosed multiple chemical sensitivity to her work environment, stating that she "developed allergic reactions which lead to nasal congestion and irritation of nasal oral mucous membranes and post nasal drip. Pharyngitis, cough and eventually laryngitis."

In a report dated June 2, 1995, Dr. Gwen S. Korovin, a Board-certified otolaryngologist, stated that she first saw appellant on March 15, 1995 with complaints of gradually worsening voice problems that started when she was moved to an office in Jersey City. Examination that date revealed a large amount of thick mucus in her nose, a normal throat and mild bilateral edema of her vocal cords with a large amount of mucus present. Dr. Korovin stated that when appellant was next seen on March 24, 1995, she stated that her symptoms recurred within 10 to 15 minutes of returning to a floor where she previously had a problem, that she subsequently developed laryngitis and that she tried to go back to work a few days later but felt "out of it. Examination that day revealed dry irritated nasal mucosa of the nose, an inflamed nasopharynx and mild edema of the vocal cords. On April 27, 1995 appellant, who had not returned to work since March 27, 1995, when she felt increased pressure building up in her head, complained of feeling very fatigued and of having pressure in her head, soreness of the throat and numbness of the face and fingers. Dr. Korovin stated that appellant's "recovery relates to avoidance of the chemicals and irritants for which she appears to be allergic or sensitive" and that she was "not able to return to the workplace at this time and seems to have developed some chronic nasal, pharyngeal and laryngeal problems due to the exposure."

On January 16, 1996 the Office referred appellant, a statement of accepted facts and prior medical records to Dr. Norman Klein, a Board-certified allergist and immunologist, for a second opinion evaluation of her condition and its relationship to her employment. In a report dated January 30, 1996, Dr. Klein stated that examination revealed no throat or nasal pathology and a

hoarse vocal quality with an obvious vocal strain pattern. In answer to the Office's questions, Dr. Klein stated:

"[Appellant] suffers from allergic rhinitis, functional dysphonia and various systemic complaints. I do not see how these symptoms could have persisted since her October 1993 exposure.

"These exposures caused no discernable or permanent physical injury but may have aggravated her functional problems.

"[Appellant's] condition has not returned to the status quo ante. Her symptoms recur from such trivial exposures as entering a building. Because I do not believe [appellant's] problem to be primarily a physical medical one, I have no expectation for imminent recovery with medical therapy.

"I recommend a comprehensive psychiatric examination to determine diagnosis and etiology of [appellant's] complaints, to be followed by necessary counseling care. I also suggest extensive voice therapy in conjunction, which should result in fairly rapid improvement in phonation. [Appellant's] allergy-immunology should be continued.

"[Appellant] is currently employable in a limited fashion, in a nonthreatening odor-free environment. I suspect, however, that eventually she would detect odors causing symptoms nearly anywhere.

"Summary, [appellant] has an unusual symptoms complex. Her symptoms are most inconsistent. They are immediate, sometimes transient and at other times persistent. Whereas Drs. Slavit, Berlin and Tricarico mention possible chemical sensitivities, they provide no objective findings on physical exam[ination] or diagnostic tests. All diagnostic tests [magnetic resonance imaging] (MRI), blood, etc. have been consistent with normal parameters. False cord hypertrophy noted by Dr. Slavit could be purely functional. Dr. Korovin's ENT exam[ination] notes some mild vocal cord edema and mucous in her throat. These findings could merely be from allergic rhinitis. [Appellant's] other multiple symptoms fatigue, pains, tingling, etc. have not been reflected in any objective findings. The report and exam[ination] by Dr. Alvin Katz, a Board-certified otolaryngologist, now reveals essentially normal findings except for the vocal strain pattern. The [i]ndoor [a]ir [q]uality [s]urvey of the 525 Washington Boulevard workplace showed acceptable levels at the most conservative guidelines. These exposures should not cause virtually instantaneous symptoms.

"I do not feel [that appellant] is in any way dishonest, but rather that she firmly believes in the linkage of her symptoms to odors. In that sense, she has a functional disability that needs psychiatric rather than medical therapy."

In a report dated February 22, 1996, Dr. Katz set forth an impression of history of irritant or noxious exposure and noted that appellant was “separated from this exposure and did well for four months, but then had recurrent symptoms.” Dr. Katz concluded:

“Unless there are deleterious air quality studies that would show that [appellant] had excessive, or unusual, exposure to irritants or noxious agents, causal relationship to her present complaints and the exposure in October 1993 cannot be established. Once an individual is separated from an irritating source, or environment, the reactive effects should abate and disappear and, unless [appellant] is continually exposed, as [she] may be to other allergens, the original exposure should not cause any residual, permanent disability, dysfunction or disturbances. Therefore, it would appear that, since [appellant] had a clearing period when she was not working and even felt somewhat better when she returned to work at a different site and now is no longer exposed to the work environment, but still complains of her symptoms, that there are etiologies other than the exposure in the work environment that is responsible for her continued complaints. There is also evidence of strain and tension, which causes [appellant] to manifest hoarseness and voice changes, but this is not due to any noxious chemical, or fume, exposure.”

In a separate report dated February 22, 1996, Dr. Katz stated:

“[Appellant], while in my office, indicated that one of my nurses, who was wearing cologne, could not come into the examining room, however, the same medical assistant set up my endoscopy procedure, assisted me with my endoscopy and [appellant] did not have any additional, or further, symptoms. Further, [she] asked me if I had cologne or deodorant on and, when I answered positively, she said that would make her react even more. However, during the entire history and physical examination that took me well over an hour personally, there was no evidence of [appellant] showing any increased reaction or compromise.”

In a report dated March 4, 1996, Dr. Leonard J. Newton, a Board-certified otolaryngologist, stated that appellant was “disabled related to chronic chemical exposure syndrome” and that “any time she goes out of her house she seems to have reactions to chemicals and she has probably become a universal reactor.” Dr. Newton stated that appellant “has multi-system problems associated with chemical exposure, including being run down and the laboratory data consistent with thyroiditis, but from my point of view her major problem is rhinitis and chronic laryngitis secondary to the throat clearing.”

By decision dated April 30, 1996, the Office found that the evidence failed to demonstrate a causal relationship between appellant’s injury and her clinical condition or disability. The Office further found that appellant had not established that her claimed recurrences of disability beginning October 31, 1994, January 23, March 15 and 27, 1995 were causally related to her employment.

By letter dated May 21, 1996, appellant requested a hearing. She submitted a report dated March 26, 1996 from Dr. Grace Ziem, a specialist in occupational medicine, who stated

that appellant met the criteria for fibromyalgia and for chronic fatigue syndrome. After describing appellant's history and her findings on examination, Dr. Ziem's impression was: "Headaches, allergic rhinitis, dysphonia secondary to laryngitis (chronic), cognitive difficulties, memory deficits due to probable toxic encephalopathy, balance disturbance, hyposmia, chronic sinusitis, fibromyalgia, chronic fatigue syndrome and multiple chemical sensitivities. These are a likely consequence of her occupational exposures."

By decision dated October 2, 1996, an Office hearing representative found that there was a conflict of medical opinion between appellant's attending physicians and the Office's referral physicians that needed to be resolved by referral to an impartial medical specialist. Before such referral, the Office was directed to obtain from appellant, medical records of treatment she received prior to October 1, 1993 for upper respiratory complaints.

On remand, appellant submitted medical records prior to October 1, 1993. These showed greenish phlegm on August 13, 1990 with no improvement one week later, acute sinusitis on September 27, 1990, weakness and exhaustion on March 5, 1991, nasal congestion and allergic rhinitis on September 12, 1991, cough and acute sinusitis on January 14, 1991 and weakness and improved sinuses on January 21, 1991. Appellant also submitted a May 20, 1996 report from Dr. Ziem stating that an organic acid analysis showed abnormalities "similar to those seen in other patients with chemical sensitivity and in patients with chronic fatigue syndrome. They are largely a consequence of chemical injury." In a report dated March 4, 1997, Dr. Adrienne Buffaloe, a specialist in emergency medicine, stated that appellant was in her usual state of health until October 1993 and that Dr. Ziem's immunological study showed diffuse immunologic dysfunction. Dr. Buffaloe concluded: "The combination of organophosphate and volatile solvent most likely had a synergistic toxic effect. The absence of her symptoms before October 1, 1993 and the repeated recurrence of her symptoms upon reentry into her workspace in New Jersey and later in the New York building and her multi-system dysfunction is characteristic of environmental exposures."

On November 21, 2000 the Office referred appellant, the case record and a statement of accepted facts to Dr. Charles Urso, who is Board-certified in preventive medicine and occupational medicine, to resolve the conflict of medical opinion as to whether appellant's exposure to irritants in her employment caused the claimed recurrences of disability and whether appellant had multiple chemical sensitivity related to her employment.

Appellant submitted a report dated November 30, 2000 from Dr. Steven D. Meed, a Board-certified rheumatologist, who stated that appellant had been under his care "since 1995 for chronic immune hyperactivity syndrome, also known as multiple chemical sensitivity syndrome" that dated from her "exposure to formaldehyde and other chemicals used on her job site in 1993." Dr. Meed stated that one of the few laboratory findings associated with this condition was an abnormality of T-cells, which was demonstrated in August 1997 and that she continued to have symptoms such as shortness of breath, cognitive impairment and fibromyalgia despite treatment. Dr. Meed stated that appellant could be "exposed to environmental triggers in just about any situation" that would leave her "disabled and unable to leave her house. In between times it is not unusual that her physical findings or examination of all blood tests are completely normal. Nevertheless, this does not negate her diagnosis."

In a report dated December 1, 2000, Dr. Urso set forth appellant's history, her symptoms and her findings on examination, which included thickening of the left mucous membranes, no wheezes, a normal electrocardiogram and normal pulmonary function testing with no signs of airway disease. Dr. Urso diagnosed allergies to buckwheat, corn gluten and chocolate; chemical sensitivities causing multiple subjective symptoms (by history) probably neurobiology in nature; panic/anxiety disorder with fear and avoidance patterns; and irritable bowel syndrome exacerbated by episodes of panic or anxiety. Dr. Urso concluded:

“After review of the medical records provided and the history and physical examination performed, I feel that [appellant] suffers from a myriad of complaints which are related to panic/anxiety disorders associated with fear and avoidance. Her complaints of multiple chemical sensitivity are subjective and the symptoms are reminiscent of panic attacks accompanied by hypocarbia and an irritable bowel.

“At the interview [appellant] was pleasant and cooperative. She was not a good historian and responded to most questions regarding her symptoms as having begun October 1, 1993. However review of the medical record reveals that she did have some of the symptoms prior to that date and that she had several traumatic psychological events which predated October 1, 1993. These were: [T]he death of her brother, the death of her cat, her son leaving for the military and ultimately a change of her job location, *i.e.*, from Manhattan to New Jersey. These are all significant life events.

Answers to Questions:

“1. [Appellant's] medical records reveal that she suffered from similar symptoms of dysphonia, hearing loss, headaches, rhinitis and lightheadedness prior to the alleged exposure on October 1, 1993. In addition, physical examinations conducted since the alleged exposure has been within normal limits, including the examination performed December 1, 2000. The symptoms can be classified as a temporary aggravation of a preexisting condition. The causal relationship with the exposures is obscure but can be explained by panic/anxiety attacks triggered by the odors and resultant hypocarbia. I do not find any evidence in the medical history, nor physical examination that the above mentioned episode was a cause of a disabling medical condition.

“2. [Appellant] has had multiple episodes of disability absence since the October 1, 1993 episode which were protracted and despite a paucity of objective physical findings the absences were concluded without any significant change in these findings.”

By decision dated August 6, 2001, the Office found that appellant's “original exposure should have been classified as an aggravation of a preexisting medical condition,” since the “record supports that [appellant] had prior episodes of symptoms of dysphonia, hearing loss, rhinitis and lightheadedness prior to the alleged exposure on October 1, 1993.” The Office further found that there was sufficient evidence to support exposures to odors on October 31,

1994 and on January 25, 1995 resulting in disability from October 31 to November 8, 1994 and from January 25 to February 6, 1995, but that there was no evidence of exposure on March 14 or 27, 1995. The Office denied appellant's claims for recurrences of disability from March 15 through 17, 1995 and on and after March 27, 1995.

The Board finds that the Office properly found that appellant's disability from March 15 through 17, 1995 and on and after March 27, 1995 is not causally related to her exposure to chemicals in her employment.

There was a conflict of medical opinion between appellant's attending physicians and the physicians examining her on behalf of the Office, as to whether she sustained multiple chemical sensitivity as a result of exposure to chemicals in her employment. To resolve this conflict, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,<sup>2</sup> referred appellant, the case record and a statement of accepted facts to Dr. Urso, who is Board-certified in preventive medicine and occupational medicine. In a December 1, 2000 report, Dr. Urso concluded that appellant's "complaints of multiple chemical sensitivity are subjective," that her symptoms could be explained by panic/anxiety disorders and that her exposure to chemicals on October 1, 1993 was not the cause of a disabling medical condition. Dr. Urso provided rationale for this opinion, explaining that appellant "suffered from similar symptoms of dysphonia, hearing loss, headaches, rhinitis and lightheadedness prior to the alleged exposure on October 1, 1993," that there was a paucity of objective physical findings for her multiple episodes of disability since October 1, 1993 and that these episodes ended without any significant changes in her findings.

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.<sup>3</sup> The report of Dr. Urso meets these criteria and, therefore, constitutes the weight of the medical evidence. The reports from appellant's attending physicians do not appear to be based on an accurate history, as none of the reports from these physicians reflect an awareness that appellant had similar symptoms prior to the October 1, 1993 exposure that she implicated as the cause of her subsequent problems.

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<sup>2</sup> 5 U.S.C. § 8123(a) states in pertinent part: "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."

<sup>3</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs dated August 6, 2001 is affirmed.

Dated, Washington, DC  
August 26, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member