

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY K. HOHENBERGER and U.S. POSTAL SERVICE,
SPRINGFIELD BULK MAIL CENTER, Springfield, MA

*Docket No. 02-1044; Submitted on the Record;
Issued August 27, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained an injury in the performance of duty.

On December 26, 2000 appellant, then a 54-year-old power equipment operator, filed a traumatic injury claim assigned number 01-0380138 alleging that on December 18, 2000 he suffered from anxiety, a chemical taste in his mouth, sinus irritation, shakiness and weakness, subsequent muscle/joint pain, fatigue spaciness/lack of focus, depression and insomnia due to chemical vapors from more than 50 skids of citrus fruit packages.¹

By letters dated January 27, 2001, the Office advised appellant that the evidence submitted with his claim was insufficient to establish his claim. The Office requested that appellant submit additional factual and medical evidence supportive of his claim.

¹ Prior to the instant claim, appellant filed a traumatic injury claim on October 29, 1994 assigned number 01-0325145 alleging that on October 27, 1994 he experienced several symptoms when very strong chemical vapors were emitted. By decision dated December 20, 1994, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty. In a January 15, 1995 letter, appellant requested an oral hearing before an Office representative. Appellant requested cancellation of his scheduled hearing by letter dated July 6, 1995. On April 21, 1994 appellant, filed a traumatic injury claim assigned number 01-0319218 alleging that on April 7, 1994 he experienced several symptoms due to a chemical spill. On April 8, 1998 appellant filed a traumatic injury claim assigned number A1-0355997 for an injury alleging that on April 1, 1998 he experienced several symptoms due to chemical exposure. By decision dated June 4, 1998, the Office found the evidence of record insufficient to establish that appellant sustained an injury causally related to his federal employment. In a January 27, 1999 decision, the hearing representative reversed the Office's June 4, 1998 decision.

Appellant filed another traumatic injury claim that was received by the Office on January 31, 2001 alleging that on December 12, 2000 he suffered from anxiety, a chemical taste in his mouth, heavier breathing and fatigue when he smelled some kind of chemical upon returning to his work area after his break and again after lunch. Appellant also indicated that his nervous system, tongue and lungs were affected by the chemical exposure. Appellant's claim was accompanied by factual and medical evidence.

By decision dated February 28, 2001, the Office found the evidence of record insufficient to establish that appellant sustained an injury causally related to factors of his federal employment. On March 3, 2001 appellant requested an oral hearing before an Office representative.

By decision dated December 19, 2001, the hearing representative affirmed the Office's February 28, 2001 decision.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁴

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁶

² 5 U.S.C. §§ 8101-8193.

³ *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Victor J. Woodhams*, *supra* note 3; *William E. Enright*, 31 ECAB 426, 430 (1980).

⁶ *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

In this case, the Office denied appellant's claim on the grounds that he failed to submit rationalized medical evidence explaining what caused his injury.⁷ In support of his claim, appellant submitted the December 22, 2000 letter of Dr. Gary Kaskey, a Board-certified psychiatrist, indicating that he had been treating appellant since 1999 for symptoms of depression in the context of fibromyalgia and that appellant had consistently reported sensitivity to chemicals, which exacerbated his condition. Dr. Kasky provided a history reported by appellant that he was exposed to chemicals on December 10 and 18, 2000, which caused a recurrence of symptoms and a relapse of appellant's condition. Dr. Kasky opined that this was directly related to the exposure. He noted that appellant had been missing work as a result of the combination of physical and mental deterioration. He stated that the deterioration was "most probably" due to the reexposure to chemicals that negatively react to appellant's system.

Appellant also submitted a January 11, 2001 letter from Dr. Barry D. Elson, an allergist, revealing that he suffered from reactions to chemical exposures while he was at work on December 10 and 18, 2000. Dr. Elson stated that, due to continuing difficulties with these reactions, appellant had been unable to work full time since then. He concluded that, due to appellant's sensitivities to chemicals, he must avoid chemical fumes while at work in the future.

Dr. Elson's February 9, 2001 report provided a description of appellant's chemical exposure on December 10 and 18, 2000 and his findings on physical examination. Dr. Elson opined that appellant had multiple chemical sensitivities and myofascial pain syndrome with chemical exposures as a triggering stimulus. He noted that, by definition, multiple chemical sensitivities can affect virtually any organ system of the body and that it was not unusual for such patients to experience symptoms similar to those appellant sustained following a chemical exposure. Based on the chronicity of appellant's exposures and subsequent symptoms, he

⁷ The Board notes that, in controverting appellant's claim, the employing establishment contended that appellant was not exposed to harmful chemicals. Dr. Richard Stevens, an internist and employing establishment physician, noted appellant's description of his chemical exposure on December 18, 2000. Dr. Stevens stated that the manager of distribution operations immediately investigated appellant's work area and only found the aroma of citrus fruit and no other odors or leaking/damaged boxes. Dr. Stevens further stated that the citrus fruit sent through the mail was processed in the identical manner as citrus fruit sold in supermarkets and that appellant would be expected to have a similar reaction to the produce brought into his home. In a February 26, 2001 letter, Dr. Stevens noted that the citrus fruit had been treated with chemicals that were used as preservatives. Dr. Stevens stated that he reviewed each of the ingredients and noted that all of the preservatives were approved by the Food and Drug Administration for use on fruits and vegetables intended for human consumption. He further noted that the chemicals had low vapor pressures, which meant that they did not have any tendency to "off-gas" or to be released into the air. In addition, Dr. Stevens noted that the dry preservatives were encased in a food-grade wax or shellac, which prevented the preservatives from leaving the surface of the food. Dr. Stevens again noted that the work area was inspected after appellant's complaint and the finding of a mild aroma of citrus fruit. In response to appellant's hearing testimony, Dr. Stevens stated in an October 16, 2001 letter that the fumes described by appellant were not described by any other employee, that an investigation of the area produced negative findings and that only a faint aroma of citrus fruit was detected in close proximity to the boxes containing the fruit. Contrary to appellant's allegation that the fruit was located directly under the heating/ventilation/air condition (HVAC) system and the route of exit for the heat and air was in his work area, Dr. Stevens stated that the HVAC system where the fruit was stored was on a separate system than the one in appellant's work area. He noted that the system in appellant's work area was originally the location of the welding shop, which required a segregated high flow system and that it had not been altered. He further noted that this area continued to have high flow rates and a considerably higher percentage of fresh air that was constantly being introduced. He stated that this might explain why the citrus aroma was not detected in appellant's work area. Dr. Stevens reiterated that the preservatives used on the fruit were nontoxic.

concluded that there was a causal relationship between those two events. In a letter of the same date, Dr. Elson stated that appellant was only able to perform sedentary work 10 to 30 hours per week as a result of chemical exposures at work.

The letters of Drs. Kasky and Elson, and Dr. Elson's report failed to provide any medical rationale explaining the causal relationship between appellant's chemical exposures and his diagnosed conditions and disability for work. In addition, Dr. Elson's opinion that appellant's physical and mental deterioration was "most probably" due to his reexposure to chemicals is speculative as to causation, and thus, is of limited probative value.⁸

In his September 18, 2001 letter, Dr. Elson stated that, as a result of chemical exposures at the employing establishment on April 7, 1994, April 1, 1998 and December 10 and 18, 2000, appellant had symptoms consistent with fibromyalgia and myofascial pain syndrome. He further stated that, as a result of these symptoms, appellant suffered from depression, pain, fatigue, anxiety, insomnia and an inability to concentrate. Dr. Elson noted the specific chemical vapors that appellant was exposed to at the employing establishment on December 18, 2000 and concluded that this exposure was causally related to appellant's current medical problems. Dr. Elson did not provide any medical rationale explaining how or why appellant's conditions were caused by the chemical exposure on December 18, 2000.

A September 16, 2001 fitness-for-duty report of Dr. Michael Erdil, a Board-certified internist, revealed a review of appellant's medical records, and a history of chemical exposure at the employing establishment including appellant's December 10 and 18, 2000 exposures, previous medical treatment, social and family background and employment. Dr. Erdil provided his findings on physical examination. He stated that a diagnosis of multiple chemical sensitivity was uncertain in appellant's case because certain criteria of the disorder were not met. He further stated that appellant appeared to have fibromyalgia. Dr. Erdil explained that this diagnosis was a clinical one in the absence of other confirmatory test results. He opined that appellant's condition was not due to work factors, either physical or chemical for several reasons:

"a. Fibromyalgia is common. This condition is estimated to exist in 3 [to] 6 million or 2 percent of Americans (Baumstark 1993; Wolfe 1995)

"b. Psychological abnormalities often confound the onset and manifestation of disease. [Appellant] has been treated for depression, and this can often manifest similar symptoms.

"c. There are deficiencies in methods of evaluation, the absence of confirmatory tests to diagnose the condition or deduce causative factors.

"d. There is a lack of universal acceptance of the diagnosis or contribution of work factors. I have conducted a literature review and I have not found any cases in peer reviewed literature where fibromyalgia has clearly been associated with chemical exposures. In addition, the majority of practicing occupational

⁸ See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

physicians do not feel that fibromyalgia is often a work-related condition. The Occupational Medicine Forum Committee (1992) presented an opinion on the issue of work-relatedness of fibromyalgia based upon the following conclusions. Fibromyalgia is a common clinical condition seen by primary and specialty physicians. It is a syndrome rather than a specific disease, and at present, there is no scientifically accepted hypothesis regarding the etiology of this condition. Several citations have suggested the relationship of stress with fibromyalgia. This is, in part, because of the associations noted between fibromyalgia and irritable bowel, stress-related headaches, chronic fatigue, etc. There are a few citations suggesting the association with trauma, infection or surgery.... Clearly, it is difficult to associate a syndrome with primarily subjective, but some objective, findings to a workplace environment. A work association would be most likely in those individuals with a documented work-related trauma or surgery preceding the development of fibromyalgia.”

In a November 23, 2001 letter, Dr. Elson discussed the possibility of chemical dispersion from sources considered nonvolatile when it comes into contact with extremely volatile agents. He stated that the musculoskeletal system could be affected by chemical exposure. He opined that it was conceivable that the stress of appellant’s chemical exposure “may” have triggered his fibromyalgia symptoms as discussed by Dr. Erdil in his report. Dr. Elson’s opinion regarding the causal relationship between appellant’s fibromyalgia symptoms and chemical exposure is speculative, and thus, of limited probative value.⁹

Inasmuch as appellant has failed to submit any rationalized medical evidence establishing that he sustained an injury causally related to chemical exposures at the employing establishment on December 10 and 18, 2000, the Board finds that appellant has failed to discharge his burden of proof in this case.

⁹ *Id.*

The December 19, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 27, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member