

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES A. NERAD and DEPARTMENT OF THE NAVY,
NAVAL OCEAN SYSTEMS CENTER, San Diego, CA

*Docket No. 02-1605; Submitted on the Record;
Issued December 4, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has established that he sustained an allergic reaction to dust and dirt in his work environment.

This is appellant's second appeal before the Board. The prior appeal was dismissed by order dated December 20, 1999 upon appellant's request.¹

On June 9, 1997 appellant, then a 55-year-old computer systems analyst working as a tools and parts attendant, filed an occupational disease claim alleging that he developed "allergies to dust, dirt, fungi that affect my eyes, skin, sinus, throat, ears [and] lungs." He stopped work on June 12, 1996 and was terminated from employment on September 12, 1996.

The employing establishment controverted appellant's claim, noting that he had submitted a similar claim on April 2, 1996 and submitted the results of a dust monitoring survey in which it noted that air monitoring of the tool and antenna rooms of building two conducted on January 25, 1996 showed "exposure levels for respirable and total dust well below the federal permissible exposure limits." It was noted that appellant's "prior medical history indicates that he does have an allergy to house dust."² Though the exposure levels are well below the permissible exposure limits, it is recommended that a schedule be developed and implemented for periodic dusting, vacuuming of the tool room and antenna room. This will reduce the dust build up on the storage shelves and in other areas."

By memorandum dated January 31, 1996, the employing establishment indicated that appellant was offered safety glasses and a mask respirator but indicated that he would not wear a mask.

¹ Docket No. 99-1632 (issued December 20, 1999).

² Allergy testing revealed positive reactions to house dust, cat and horse dander, dust mites and eight categories of fungi.

By report dated February 14, 1996, Dr. Harold K. Harver, a chiropractor, concluded that appellant sustained several musculoskeletal conditions related to his activities as a tool room attendant and was “very susceptible to strain/sprains, environmental problems (dust, allergies, glare, etc.)” He opined that appellant’s conditions were entirely caused by the activities as a tool room attendant.³

In a February 15, 1996 medical progress note from Dr. Brian P. First, a Board-certified internist and endocrinologist, it was noted that appellant “has been subjected to very adverse working conditions which are causing an exacerbation of his allergy symptoms as well as his orthopedic problems....”

A March 11, 1996 medical progress note with an illegible signature stated that appellant was seen for “problems at work causing dust problems, pain, unable to sleep.” The note indicated that appellant had a cough and rhinitis which caused problems with fatigue due to sleep loss and diagnosed “allergic rhinitis [and] bronchitis by history.”

An April 1, 1996 report from the occupational health unit at the Naval Medical Center from Dr. Roy S. Kennon, a Board-certified occupational medicine specialist, indicated that appellant complained of frequent coughing at work, that he was positive for multiple allergies upon controlled testing, that he manifested with intermittent repetitive dry cough and a left basilar expiratory wheeze, and that he experienced an increase in symptomatology secondary to duty exposures. Dr. Kennon recommended an air-purifying respirator. Respirator qualification paperwork indicated that appellant could not breathe in dusty, dirty areas due to dust and dirt.

On a Form CA-20 attending physician’s report dated May 29, 1997 Dr. David F. Polster, a Board-certified pulmonary specialist, noted as history of “dust, dirt, fungi allergic reaction,” indicated that findings included air flow restriction, an abnormal spiogram and positive controlled allergy testing and diagnosed allergic rhinosinusitis. He checked “yes” to the question of whether the condition found was caused or aggravated by an employment activity, but he did not indicate any disability for work.

On June 11, 1996 appellant was treated for eye irritation due to allergic conjunctivitis. He completed an occupational disease form on June 20, 1996 alleging that he looked up at the lights and dirt fell into his eye, and claiming bilateral allergic conjunctivitis. For this incident appellant was treated by Dr. F. Stephen Kohl, an ophthalmologist.

By decision dated August 1, 1996, in a separate claim for an allergic reaction to environmental dust and dirt exposure,⁴ the Office of Workers’ Compensation Programs of rejected appellant’s claim finding that the factual evidence of record failed to demonstrate that appellant was exposed to hazardous dust and dirt or that a medical condition resulted from that exposure.

³ No subluxation was diagnosed and no x-rays were obtained.

⁴ Claim No. 13-1107829. Appellant originally filed this separate claim on April 2, 1996 alleging injury on March 7, 1996; it was denied on July 1, 1996 and reconsideration was denied on August 1, 1996.

By decision dated December 16, 1997 on the instant claim,⁵ the Office rejected appellant's claim finding that the factual evidence of record failed to demonstrate that appellant was exposed to "hazardous levels of irritants."

Appellant disagreed with that decision and requested an oral hearing before an Office hearing representative.

A hearing was held on January 28, 2002 at which appellant testified. Appellant testified that he was working in an appropriate office environment for a "disabled schedule A employee" but was transferred to the tool attendant job in a dusty warehouse as part of a management conspiracy to give his computer duties to government contractors for illegal personal gain. He claimed that he worked in a dusty, dirty warehouse with no windows and no ventilation which led to severely restricted breathing and that when the air survey was accomplished the employing establishment brought in huge fans and tested with open doors.

By decision dated April 8, 2002, the hearing representative affirmed the Office's December 16, 1997 decision finding that appellant had failed to submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concluded that appellant sustained employment dust-related allergies, and supported this conclusion with sound medical reasoning.

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

An employee seeking benefits under the Federal Employees' Compensation Act⁶ has the burden of establishing the essential elements of his claim, including the fact that he is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time-limitation period of the Act, 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 is causally related to the employment injury.⁷

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁸ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁹ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

⁵ Claim No. 13-1139424.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁹ *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹⁰ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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,¹¹ must be one of reasonable medical certainty,¹² 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.¹³

In the instant case, appellant alleged that he was exposed to dust, dirt and fungi that affected his eyes, skin, sinuses, throat, ears and lungs. Although the employing establishment determined by environmental survey that the dust exposure levels in and around appellant's duty station were well below permissible levels, it did not determine that no dust contamination existed at all, and in fact, it scheduled periodic dusting and vacuuming to attempt to control the dust that existed on shelves and in other areas. Therefore, the record supports that some amount of dust exposure occurred.

Appellant also submitted several medical reports which documented that something caused the allergic manifestations with which he was diagnosed. Dr. First noted that appellant had been subjected to adverse working conditions which were causing an exacerbation of his allergy symptoms. Dr. Kennon noted that appellant complained of frequent coughing at work, that he was positive for multiple allergies upon controlled testing, that he manifested with intermittent repetitive dry cough and a left basilar expiratory wheeze, and that he experienced an increase in symptomatology secondary to duty exposures. Dr. Polster noted appellant's history of dust and dirt exposures, noted that findings included air-flow restriction, an abnormal spirogram and positive allergy testing, and he diagnosed allergic rhinosinusitis. He checked "yes" to the question of whether the condition found was caused or aggravated by an employment activity.

Therefore, the medical evidence supports that appellant sustained, among other conditions, allergic rhinosinusitis; the factual evidence supports that he worked in an area that had some levels of dust/dirt exposure which could be dusted and vacuumed; and the medical evidence supports that appellant's allergic reactions were, to some extent, caused and/or aggravated by an employment exposure.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office

¹⁰ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

¹¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹² See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹³ See *William E. Enright*, 31 ECAB 426, 430 (1980).

shares responsibility in the development of the evidence to see that justice is done.¹⁴ This holds true in occupational illness claims as well as in initial traumatic injury claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained an allergy-related illness or allergic conditions, causally related to his employment, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship, that is sufficient to require further development of the case record by the Office.¹⁵ Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to the Office for the development of a statement of accepted facts and specific questions to be addressed, to be followed by the referral of appellant, together with the relevant case record, to an allergy specialist, for a rationalized opinion as to whether appellant sustained some allergic reactions or allergy-related conditions, causally related to the contaminants in his work environment. If it is so determined, any periods of disability must be ascertained.

Consequently, the decision of the Office of Workers' Compensation Programs dated April 8, 2002 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
December 4, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).