

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT ROBERTSON and U.S. POSTAL SERVICE,
POST OFFICE, Abilene, TX

*Docket No. 02-2002; Submitted on the Record;
Issued December 13, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established that his claimed respiratory condition is causally related to his federal employment; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On March 11, 2002 appellant, then a 52-year-old OCR operator, filed an occupational disease claim alleging that he developed chronic obstructive pulmonary disease (COPD) as a result of exposure to paper dust generated by mail processing machines at work. He asserted that he first realized that the disease was caused or aggravated by his employment on January 18, 2002.

Appellant submitted a March 1, 2002 report from Dr. T. James Wray, an osteopath, who stated:

“[Appellant's] main medical problem has been due to his cigarette smoking causing his chronic obstructive lung disease. My understanding is that [appellant] wanted to change jobs within the post office due to conditions where he was working in that he was exposed to dust, fumes, machinery and particular matter. It is my understanding that [appellant] has not alleged that the post office gave him his chronic lung disease. My request was to merely aid [appellant] in that he may continue to work. If we do not minimize [appellant's] environmental insults, he will not be able to work.”

In a letter dated April 25, 2002, the Office requested additional factual and medical evidence in support of his claim. Appellant resubmitted evidence previously considered by the Office and further, a May 14, 2002 statement with additional information regarding the claimed exposure. He indicated that his position required that he operate a delivery bar code sorter (DBCS), which generated dust where the mail is loaded on a daily basis. Appellant asserted that he first noticed the paper dust in 1996; that it was visible in the air and heavy at times. He

indicated that he directly inhaled the substance while performing his duties and did not wear a mask due to feelings of suffocation. Appellant further stated that, due to his exposure, he experienced shortness of breath, received breathing treatments and was assigned an outside job as an entry control guard. He also indicated that he smoked 2 to 3 packs of cigarettes per day for 40 years and that at that time he had decreased his use to 1 pack per day.

By decision dated June 3, 2002, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his condition was caused by the alleged employment factor as required by the Federal Employees' Compensation Act.

In a letter dated June 10, 2002, appellant requested reconsideration. In support appellant submitted a medical publication concerning COPD and a June 7, 2002 report from Dr. Wray. In the report, Dr. Wray stated:

"He has significant chronic obstructive pulmonary disease (COPD). It is my medical opinion that he needs to be away from the paper dust from the operating machines at the postal service where he works. He needs to be in a clean work environment. It is my medical recommendation that he not be around machines that cause small particle dust that affects his respiratory status."

By decision dated July 2, 2002, the Office determined that the evidence submitted on reconsideration was insufficient to warrant a merit review of the case.

The Board finds that appellant has not met his burden of proof in establishing that his diagnosed respiratory condition is causally related to his federal employment.

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

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.² Causal relationship must be established by rationalized medical opinion 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 physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

² *Id.*

reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.³

In this case, the working condition identified in appellant's claim is dust exposure. Appellant alleged that he had direct contact with paper dust generated by postal machinery on a daily basis, which he alleged caused his COPD. He submitted a report from Dr. Wray, an osteopath, dated March 1, 2002 in which he diagnosed the claimed COPD. However, Dr. Wray attributed appellant's condition to cigarette smoking, not to his dust exposure in the workplace on January 18, 2002. There is nothing in the record which indicates that appellant acknowledged that his respiratory condition resulted from cigarette smoking, established by the medical record and is merely alleging that his work conditions have aggravated a preexisting condition. In any case, appellant indicated in his claim that he had been transferred to an outside position with the employing establishment, which minimizes his exposure to dust, as recommended by Dr. Wray in the March 1, 2002 report.

Inasmuch as appellant failed to submit rationalized medical opinion evidence on the issue of whether there is a causal relationship between his diagnosed respiratory condition and the implicated employment factor, the Office properly denied appellant's claim for compensation.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for a merit review under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.⁷

In support of appellant's request for reconsideration, he submitted a June 7, 2002 report from Dr. Wray who noted again appellant's diagnosis of COPD and detailed his previous recommendation that appellant should not be exposed to dust in his work environment due to his respiratory condition. Evidence that repeats or duplicates evidence already in the case record has

³ *Id.*

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(1)-(2).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

no evidentiary value and does not constitute a basis for reopening the case.⁸ As the Office previously considered Dr. Wray's recommendation that appellant not work in a dust filled environment, it is repetitive in nature and thus insufficient to warrant reopening of appellant's claim on the merits.⁹ Appellant also did not submit any relevant and pertinent new evidence with his request for reconsideration. Although the medical publication submitted provided information regarding appellant's diagnosed COPD, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors.¹⁰ Such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a relevant argument not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated July 2 and June 3, 2002 are affirmed.

Dated, Washington, DC
December 13, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

⁸ *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁹ *James A. England*, 47 ECAB 115, 119 (1995).

¹⁰ *Gaetan F. Valenza*, 35 ECAB 763 (1984).