

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of PATRICIA A. ERVIN and FEDERAL DEPOSIT INSURANCE  
CORPORATION, Washington, DC

*Docket No. 01-544; Submitted on the Record;  
Issued January 7, 2002*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant is entitled to total disability compensation for the period December 20, 1999 through June 11, 2000 due to hypersensitivity to chemical agents exposure at the employing establishment.

On February 3, 2000 appellant, then a 53-year-old security systems administrator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from hypersensitivity to chemical agents due to the poor air quality ventilation and circulation in her office area due to building and office renovations. By letter dated March 3, 2000, the Office accepted appellant's claim for hypersensitivity to chemical agents. Appellant also filed numerous claims for compensation (Forms CA-7), requesting to buy back leave between December 21, 1999 and March 23, 2000 and seeking compensation for leave without pay from March 24 through June 11, 2000.

In support of her claim, appellant has submitted numerous medical reports, dated November 18, 1999 to June 5, 2000 by Dr. George H. Mitchell, a specialist in environmental medicine. Dr. Mitchell opined that appellant suffered from chemical hypersensitivities secondary to occupational exposure due to "heavy concentrations of diesel fumes from the parking garage, which was being renovated and fumes from fresh tar on the roof, which was coming in through the intake system while in a workplace with no air return in the ceiling, no vents in the closed doors and no circulation of fresh air in a highly polluted atmosphere." He noted that appellant fainted on September 29, 1999 at work, that she experienced light-headedness on at least four occasions while waiting for elevators between September 29 and November 18, 1999 and that she has a heightened sensitivity to smaller exposure of chemicals because she had endured repeated "low-level" ambient exposures, thereby rendering her susceptible to bodily injury. Dr. Mitchell strongly advised against appellant returning to work at either of the offices of the employing establishment at 1700 or 1730 Pennsylvania Avenue. He noted that appellant had fainted there and that any exposure to the environment at this location would place appellant in increased danger of fainting again, thereby possibly injuring her head or other body parts. Dr. Mitchell was not impressed by the environmental studies conducted by the

employing establishment, noting that appellant was one of about three percent of the population for whom air quality standards were not applicable. In an undated Certificate of Health Care Provider he stated that since appellant had avoided the workplace following her several fainting spells, she had not experienced similar episodes of fainting. Dr. Mitchell recommended that she continue to avoid her workplace environment so as to avoid any episodes. In his medical report of May 23, 2000, Dr. Mitchell stated:

“One of the unfortunate characteristics of hypersensitivity is that the effects are cumulative -- in other words, each reaction upon exposure is more severe than the last. Thus, the goal is to permit [appellant’s] immune system to restore itself by isolating her from these agents.”

He continued:

“Regarding [appellant’s] ‘release to unrestricted employment activity,’ the only current restriction on [appellant’s] employment activity is her inability to work at any facility containing agents to which she reacts. We know for a fact that the buildings to which [appellant] is assigned, 1700 and 1730 Pennsylvania Avenue, are facilities containing such agents.

“Accordingly, she cannot now work in those buildings and I do n[o]t for[e]see any change in that evaluation in the for[e]seeable future.”

In a decision dated September 11, 2000, the Office denied appellant’s claim for the reason that the evidence established that appellant was no longer disabled for work due to the effects of the accepted conditions.

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

It is a well-settled principle of worker’s compensation law that if the medical evidence establishes that the residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in employment, she is entitled to compensation for wage loss resulting from such incapacity.<sup>1</sup> The issue in the present case is whether appellant had any residuals from her employment injury and, if so, whether such residuals disabled her. This determination is primarily medical in nature and is in the realm of medical evidence.<sup>2</sup>

Dr. Mitchell noted that appellant had one episode of fainting and four episodes of near fainting at her employment and that after avoiding that workplace, she had not experienced similar episodes of fainting. He stated that appellant should avoid exposure to unspecified chemical agents at 1700 and 1730 Pennsylvania Avenue in that an exposure to these buildings would put appellant in an increased danger of fainting again. Dr. Mitchell also indicated that persons with multiple chemical sensitivities become more sensitive as they are further exposed to

---

<sup>1</sup> *Bobby W. Hornbuckle*, 38 ECAB 626, 630 (1987); *George D. Alpaugh*, 31 ECAB 589 (1980).

<sup>2</sup> *Id.*

the offending chemicals. Dr. Mitchell's reports suggest that appellant had a heightened sensitivity to chemical agents at her place of employment thus preventing her from working at the employing establishment during the period December 20, 1999 to June 11, 2000. This record does not document whether an alternate place of employment was offered to appellant during this period as was offered commencing June 12, 2000.

The Office should refer appellant, together with a statement of accepted facts and the case record, to a physician in the appropriate field of medicine with a request that he/she evaluate appellant and the evidence of record and provide a rationalized opinion on the issue of whether appellant was prevented from working at the employing establishment from December 20, 1999 to June 11, 2000, due to sensitivity to chemical agents. If the specialist concludes that appellant acquired the condition or heightened sensitivity due to exposure, the Office should determine whether appellant was precluded from working during this period, was indeed totally disabled and thus entitled to wage loss from December 20, 1999 through June 11, 2000.

The September 11, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board, to be followed by a *de novo* decision.

Dated, Washington, DC  
January 7, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member