

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA THOMPSON and DEPARTMENT OF DEFENSE,
DEFENSE SUPPLY CENTER, Columbus, OH

*Docket No. 01-1124; Submitted on the Record;
Issued January 2, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established entitlement to compensation after May 18, 1996.

On February 22, 1999 appellant filed an occupational disease claim alleging that she sustained a respiratory condition causally related to her federal employment. The record indicates that appellant had stopped working in her federal employment as of May 16, 1996.¹

In a decision dated December 2, 1999, the Office of Workers' Compensation Programs denied the claim. By decision dated July 6, 2000, an Office hearing representative accepted the claim for aggravation of asthma resulting from exposure to dust, dirt and mold. The Office was directed to determine whether appellant had any employment-related disability as of May 16, 1996 and whether a cardiac condition was causally related to the employment injury.

By decision dated January 10, 2001, the Office accepted a ventricular tachycardia in November 1995 as causally related to employment. The Office also determined that appellant did not have any employment-related condition or disability after May 18, 1996.

The Board finds that the Office properly determined that appellant was not entitled to compensation after May 18, 1996.

¹ Appellant was off work from November 17, 1995 to April 14, 1996. On May 22, 1996 a traumatic injury claim was filed for a pulmonary injury on May 16, 1996 causally related to exposure to solvent fumes.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including that any disability condition for which compensation is claimed is causally related to the employment injury.³

The evidence of record establishes that in June 1995 appellant was placed in a new position as a management assistant. The Office has accepted that she was exposed to some cigarette smoke, dust, mold and dirt. In November 1995, appellant had a tachycardia episode, and she stopped working until April 14, 1996. On her return to work, she indicated that she was exposed to solvent and other fumes in a new building. On May 16, 1996 appellant indicated that she suffered respiratory failure and required emergency treatment.

It is appellant's burden to establish a period of disability resulting from her employment injury. The Office referred the case for a second opinion from Dr. Roy St. John, a pulmonary specialist. In a report dated September 19, 2000, Dr. St. John provided a history and results on examination. He opined that any aggravation of appellant's asthma was temporary.

In a supplemental report dated December 8, 2000, Dr. St. John stated that the May 16, 1996 event was a temporary aggravation and there was no residual alteration of the underlying condition. He noted that appellant had received emergency treatment on May 16, 1996, fully recovered, and was released by the emergency department. Dr. St. John opined that any influence from a work exposure would have ceased by May 18, 1996 and appellant would have been able to return to work on that date.

Appellant's attending physicians have not provided a reasoned medical opinion supporting a continuing employment-related aggravation after May 18, 1996. In a note dated May 20, 1996, Dr. W. Curtis Small, a family practitioner, stated that measures should be taken to keep appellant from being exposed to fumes at work. In a report dated February 24, 1997, Dr. Small noted that he had seen appellant on May 20, 1996, and "I sent her back to work, indicating that I felt she was capable of doing her job if her cubicle did not become filled with the noxious fumes that she had been forced to breathe."

The medical evidence therefore contains an opinion from Dr. St. John that the employment-related aggravation had resolved by May 18, 1996, with no probative contrary evidence. Dr. Small's statements indicate his concern with a further aggravation if appellant were exposed to fumes, but do not establish a continuing employment-related condition. It is well established that a claimant is entitled to continuing compensation after the initial effects of the injury have resolved only if the employment exposure itself caused a permanent condition, such as a heightened sensitivity to a wider field of allergens and such heightened sensitivity adversely affected appellant's wage-earning capacity.⁴ Dr. Small does not opine that the employment exposure caused a permanent heightened sensitivity. The Board accordingly finds

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *James C. Ross*, 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980); *James L. Hearn*, 29 ECAB 278 (1978).

that the weight of the probative evidence indicates that appellant's accepted aggravation of asthma had resolved by May 18, 1996.

The Office referred appellant to Dr. Charles Bush, a cardiologist. In a report dated October 3, 2000, Dr. Bush provided a history and results on examination. In a supplemental report dated December 20, 2000, Dr. Bush stated that appellant's episode of ventricular tachycardia was a closed event that she recovered from as soon as the event ended. He noted that appellant was at risk for future episodes, and would be unable to use certain medicines for her asthma treatment. The possibility of a future injury does not constitute an injury under the Act and therefore no compensation can be paid for such a possibility.⁵ The Board accordingly finds that the evidence established that a ventricular tachycardia had resolved by May 18, 1996.

The decision of the Office of Workers' Compensation Programs dated January 10, 2001 is affirmed.

Dated, Washington, DC
January 2, 2002

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).