

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY L. BARLOW and DEPARTMENT OF THE AIR FORCE,
ELMENDORF AIR FORCE BASE, AK

*Docket No. 01-1306; Submitted on the Record;
Issued January 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition while in the performance of his duties.

On August 31, 2000 appellant, then a 50-year-old drill rig operator, filed an occupational disease claim asserting that he experienced stress after being exposed to mustard gas on June 27, 2000. Appellant stated, "I have been worrying about the effects on my body. I feel that I will have been kept in the dark about these effects both long and short term."

To support his claim, appellant submitted an August 18, 2000 attending physician's form report from Dr. Paul J. Zeltzer, a psychiatrist, who reported the following history: "Involved in a recent industrial accident. Subsequent emotional symptoms related to accident and the aftermath." He noted that appellant had been treated for one year for irritability with good and therapeutic results. On examination Dr. Zeltzer found appellant to be anxious, irritable and depressed. He diagnosed adjustment reaction with mixed emotional features. With an affirmative mark Dr. Zeltzer indicated that the condition found was caused or aggravated by employment activity. He explained: "Accident took place on the job. Symptoms resulted from the accident as well as the aftermath." Dr. Zeltzer indicated that he provided counseling and medication.

On August 25, 2000 Dr. Zeltzer added: "In my opinion, [appellant's] current emotional symptoms are related to the industrial accident and the aftermath. This is based upon his current degree of emotional distress and the apparent deterioration since the industrial accident."

In a decision dated January 31, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not demonstrate that his emotional

condition was a result of factors of employment within the performance of duty. The Office accepted that the incident of June 27, 2000 occurred as alleged:

“On June 27[, 2000] [appellant] was engaged in a clean-up effort at Tin City, a remote radar site. The crew discovered a pipe which contained a metal canister. They opened the pipe and slid the canister into the claimant’s right hand. Upon reading the label ‘HD Gas’, they returned the canister to the pipe and closed the pipe. [Appellant] held the canister in his hand for 10 to 15 seconds. No liquid was noted, nor was there any obvious odor.

“Seven hours after handling the can, [appellant] noted redness on his right hand. Blister[s] developed the following day.”

The Office addressed appellant’s allegations of error or abuse by the employing establishment in the aftermath of the June 27, 2000 incident and found that his allegations were not substantiated. With respect to appellant’s alleged stress from the “day-to-day wondering of what’s in my system,” the Office found that his self-induced angst was not a factor of employment within the performance of duty. Further, the Office found that appellant’s speculations were not substantiated by the evidence of record.

The Board finds that this case is not in posture for a determination of whether appellant sustained an emotional condition while in the performance of his duties. Further development of the medical evidence is warranted.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

The Office does not dispute that the incident of June 27, 2000 occurred substantially as alleged. Discussing the facts of the case in its January 31, 2001 decision, the Office accepted that appellant came into physical contact with a canister labeled “HD Gas” while engaged in a clean-up effort at a remote radar site. The record indicates that this container contained mustard agent.³ The Board therefore finds that appellant has established that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.⁴ The question

¹ 5 U.S.C. §§ 8101-8193.

² See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) (“traumatic injury” and “occupational disease or illness” defined).

³ A team of specialists examined the artifact and reported: “We are 99.9 percent certain that this container contains mustard.”

⁴ The Office properly determined that the record failed to substantiate appellant’s allegations of error or abuse by the employing establishment.

for determination is whether this specific event, incident or exposure caused the emotional condition for which appellant seeks compensation benefits.

Causal relationship is a medical issue⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

To support his claim appellant submitted reports from his attending psychiatrist, Dr. Zeltzer, who reported that appellant's diagnosed adjustment reaction with mixed emotional features was causally related to the "recent industrial accident" and "the aftermath." He reported that appellant was anxious, irritable and depressed on examination and he based his opinion on causal relationship on the observed current degree of emotional distress and the apparent deterioration since "the industrial accident."

The history provided is vague; Dr. Zelter gave no indication that he understood what occurred on June 27, 2000. As noted above, the opinion of the physician must be based on a complete factual background. Nonetheless, there is no medical opinion evidence to the contrary in the record and Dr. Zeltzer's opinion is sufficiently supportive of appellant's claim that further development of the medical opinion evidence is warranted.⁹ The Office shall provide Dr. Zeltzer with a proper statement of accepted facts and request a well-reasoned opinion on whether and how the incident of June 27, 2000 caused or aggravated appellant's diagnosed psychiatric condition and whether appellant was disabled for work as a result. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to compensation benefits.

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *John J. Carlone*, *supra* note 2 (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

The January 31, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
January 11, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member