U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN J. YOUNG and ENVIRONMENTAL PROTECTION AGENCY, PESTICIDES PROGRAM, Atlanta, GA

Docket No. 99-1678; Oral Argument Held November 14, 2001; Issued January 25, 2002

Appearances: *Martin J. Young, pro se*; *Miriam D. Ozur, Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has continuing employment-related residuals of his accepted condition of aggravation of allergens after July 14, 1990; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing.

On April 10, 1989 appellant, then a 51-year-old environmental scientist, filed a claim for compensation alleging that he developed a burning of the skin and chest tightness due to pesticide exposure and debris from his work environment where renovations were being made. The Office accepted appellant's claim for temporary aggravation of allergic reaction. Appellant did not stop work but retired on July 14, 1990.[1]

Accompanying appellant's claim were medical reports dated August 15, 1988 and September 19, 1988 from Dr. A.R. Jones, a Board-certified internist and employing establishment physician; two reports from Dr. Crawford Barnett, an internist, dated November 3, 1988 and March 4, 1989. The August 15, 1988 report from Dr. Jones indicated that appellant was complaining of burning of the skin and chest tightness associated with his work environment. Dr. Jones recommended that appellant be relocated to another area for four to six days to see if the symptoms returned. The September 19, 1988 report from Dr. Jones noted that appellant's serum immunolglobulin E antibodies were markedly elevated, which was a bodily response consistent with allergic reaction. Dr. Jones recommended appellant be relocated indefinitely to another location until the source of the irritation was removed.

[1] In a letter dated June 7, 1990, the employing establishment offered appellant a reassignment position in Athens, Georgia effective July 15, 1990. In a response dated June 12, 1990, appellant declined the reassignment offer and resigned from the employing establishment.

Dr. Barnett's report dated November 3, 1988 noted appellant continued to have an allergic reaction to his work environment experiencing symptoms of burning nose, throat, face, tightness in the chest and puckering of the mouth. He recommended moving appellant from his work environment for 30 days. Dr. Barnett's March 4, 1989 report indicated that appellant's immunolglobulin E antibody test was elevated. He indicated that appellant continued to experience allergic symptoms while in the work environment and that it was advised that appellant be moved from the area permanently.

In a note dated February 16, 1990, the employing establishment indicated that from April 1973 to 1980 appellant worked around many pesticides. Appellant's position involved traveling to the storage, distribution and manufacturing location for the pesticides. Appellant's duties included collecting container samples and opening containers to collect samples of the pesticides and transporting these samples to laboratories for analysis.

Appellant submitted a December 22, 1989 report from Dr. Samuel Figueroa, a Board-certified internist, and Dr. Barnett. Dr. Figueroa noted a history of appellant's condition beginning in July 1988 and stated that appellant was transferred from the first floor to the second floor in September 1988; in January 1989 appellant was moved to an adjacent building. Dr. Figueroa diagnosed upper airway irritation, possibly associated with work and multiple chemical sensitivities. Dr. Figueroa noted a correlation between appellant's symptoms and his work and recommended that appellant not be exposed to chemical substances. Dr. Barnett's note indicated that appellant's condition was a reaction to the employing establishment building. He recommended that appellant move from his present work location and discontinue any exposure to chemicals.

In a letter dated April 6, 1992, the Office notified appellant that he was entitled to compensation for wage loss due to a medically certified disability through one week beyond the date appellant was last exposed to factors of employment. The Office indicated that appellant would be referred to a second opinion physician to determine whether he sustained a permanent job-related disability.

In a letter dated May 12, 1992, the employing establishment indicated that appellant's last day of work was July 14, 1990. The employing establishment noted that appellant declined reassignment to another city in lieu of voluntary separation. Appellant's reassignment was not to alleviate appellant's work exposure but to serve the needs of the employing establishment.

On June 11, 1992 the Office referred appellant for a second opinion to Dr. Nathan, Segall, Board-certified in allergy and immunology. The Office provided Dr. Segall with appellant's medical records, a statement of accepted facts and a detailed description of appellant's employment duties.

In a medical report dated August 13, 1992, Dr. Segall indicated that he reviewed the records provided to him and performed a physical examination of appellant, which included pulmonary function tests (PFT) and skin tests. He indicated that appellant was skin tested and found to be sensitive to house dust, house dust mite, animal dander, trees and grasses, cock roach and molds. Dr. Segall noted that the PFT was normal, but the methacholine challenge study was positive indicating hyperreactivity of his airway. He noted that there was a temporal relationship

between his work exposure and the development of his symptoms; however, he could not correlate the itching skin to work exposure. Dr. Segall noted that it was "indeterminate" as to whether appellant's condition continued to be present.

In a decision dated February 7, 1997, the Office denied appellant's claim as there was no medical evidence that appellant's work-related aggravation continued after appellant's employment ceased.

By letter dated February 18, 1997, appellant requested a hearing before an Office hearing representative.

By decision dated May 27, 1997, the Office hearing representative vacated the decision dated February 7, 1997 and remanded the case to the Office for further development of the medical evidence. The hearing representative directed that Dr. Segall submit a supplemental report which provided supporting medical reasoning for his opinion.

In a supplemental medical report dated October 22, 1997, Dr. Segall noted that appellant was found to be allergic to house dust mite which was present in appellant's work environment. He concluded that there was an association between these two elements. Dr. Segall noted that he did not follow up with appellant, and therefore could not make a determination as to whether appellant continued to have airway reactivity.

In a decision dated November 14, 1997, the Office denied appellant's claim as the medical evidence was not sufficient to establish a work-related disability after July 14, 1990.

By letter dated November 21, 1997, appellant requested a hearing before an Office hearing representative.

By decision dated May 28, 1998, the Office hearing representative vacated the decision dated November 14, 1997 and remanded the case to the Office for further development of the medical evidence. The hearing representative directed that Dr. Segall reexamine appellant and submit a supplemental report which provided supporting medical reasoning for his opinion.

In a report dated July 7, 1998, Dr. Segall noted that appellant continued to have tightness and soreness in his chest when he was on the road; however, there was no evidence of significant dyspnea or bronchospasm. He noted that physical examination revealed no abnormalities. Dr. Segall indicated that PFT test was normal; however, the immunolglobulin E antibody test was elevated at 510. He noted that, although there may have been a relationship between appellant's work environment and the airway reactivity, appellant experienced no progression or worsening of the circumstances and no subsequent requirement for ongoing therapy for this condition.

By decision dated August 19, 1998, the Office denied appellant's claim as the medical evidence was not sufficient to establish a continued work-related disability after July 14, 1990.

By letter dated August 27, 1998, appellant requested a hearing before an Office hearing representative.

By notice dated January 15, 1999, the Office advised appellant that a hearing had been scheduled in his case for February 22, 1999.

By letter decision dated March 16, 1999, the Branch of Hearings and Review found that appellant abandoned his request for a hearing as he failed to appear for his oral hearing.

By letter dated March 22, 1999, appellant indicated that he did not receive written notification of the oral hearing scheduled on February 22, 1999. He noted that had he received notification of the hearing he would have attended. Appellant further requested that the hearing be rescheduled.

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

The only medical evidence indicating that the aggravation of appellant's allergic reaction may have ended was Dr. Segall's report's of August 13, 1992, October 22, 1997 and July 7, 1998. In his August 13, 1992 report, Dr. Segall indicated that appellant tested positive for the methacholine challenge study indicating hyperreactivity of his airway. He noted that there was a temporal relationship between his work exposure and the development of his symptoms. Dr. Segall's report of October 22, 1997, noted appellant was found to be allergic to house dust mite which was present in appellant's work environment. He concluded that there was an association between these two elements.

In his report dated July 7, 1998, nearly seven years from the time appellant left the employing establishment, Dr. Segall noted that appellant continued to have tightness and soreness in his chest when he was on the road; however, there was no evidence of significant dyspnea or bronchospasm. He noted that the immunolglobulin E antibody test was elevated at 510, which was consistent with allergic reaction. Dr. Segall noted that, although there may have been a relationship between appellant's work environment and the airway reactivity, appellant experienced no progression or worsening of the circumstances and no subsequent requirement for ongoing therapy for this condition. However, these opinions were inconclusive on the ultimate issue involved and the date the work-related aggravation ended.[2]

Dr. Barnett, in his reports dated November 3, 1988, March 4, 1989 and April 11, 1990, stated that appellant experienced allergic reactions to his work environment, but he retired in 1990. Dr. Figueroa in his report dated December 22, 1989 stated that appellant continued to have an allergic reaction to his work environment and diagnosed airway irritation, possibly associated with work and multiple chemical sensitivities. However, neither of these doctors rendered an opinion on whether appellant's condition was permanent or temporary; and if temporary, when the work-related condition ended.

The case is remanded to the Office to obtain a reasoned medical opinion from an appropriate medical specialist, based on a statement of accepted facts and the case record, whether the work-related aggravation of appellant's allergic reaction was permanent or

[2] *See Betty May Little*, 32 ECAB 716 (1981).

temporary, and, if temporary, when such aggravation ended. After such further development of the evidence as the Office deems necessary, it shall issue a *de novo* decision.[3]

The decision of the Office of Workers' Compensation Programs dated August 19, 1998 is set aside and the case remanded to the Office for further proceedings in accordance with this decision of the Board.

Dated, Washington, DC
January 25, 2002

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[3] In view of the Board's disposition of the merit issue in the claim, it is not necessary to address whether the Office properly determined that appellant abandoned his request for an oral hearing.