

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY A. HARBAUGH and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MI

*Docket No. 00-2101; Oral Argument Held November 6, 2001;
Issued March 22, 2002*

Appearances: *Stuart H. Deming, Esq.*, for appellant; *Jim C. Gordon, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL E. GROOM, PETER A. KANJORSKI
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he had employment-related disability on or after February 18, 1994.

On February 28, 1995 appellant, then a 44-year-old postal clerk, filed a claim alleging that he sustained an aggravation of his preexisting allergic condition due to exposure to asbestos and other allergens at work, especially during extended periods when remodeling of his workplace occurred. He indicated that he first became aware that this condition was caused or aggravated by his employment in December 1994.¹ Appellant claimed that he was exposed to various substances while he worked at the employing establishment from 1992 to 1993, including painted walls, gasoline and diesel engine fumes, tobacco smoke, cleaning chemicals, asbestos removal and waxed floors.² He indicated that he first developed a chemical sensitivity condition when he worked as a painter and camper trailer assembler for private employers between 1979 and 1982.³

By decision dated December 7, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of his preexisting multiple chemical

¹ Appellant indicated that he suffered from headaches, concentration difficulties and neurochemical problems.

² Appellant indicated that an asbestos removal project occurred in early 1993 and that a major remodeling project occurred over the course of several weeks in October 1993. He stopped work in October 1993.

³ Appellant indicated that he was exposed to paint, solvents, wood stain and other substances.

sensitivity condition which ceased February 18, 1994.⁴ By decision dated February 29, 2000, the Office affirmed its December 7, 1998 decision.⁵

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he had employment-related disability on or after February 18, 1994.

Under the Federal Employees' Compensation Act,⁶ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁷ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸ In the present case, the Office accepted appellant's claim for temporary aggravation of his preexisting multiple chemical sensitivity condition, which ceased February 18, 1994.⁹ Therefore, the Office must present evidence showing that appellant was not prevented from working after February 18, 1994 due to an employment-related condition. In reports dated February 18 and March 2, 1994, Dr. Terrill Haws, an attending osteopath, determined that appellant was capable of returning to his regular work February 18, 1994.¹⁰ The record does not contain any medical evidence showing that appellant could not work after February 18, 1994 due to an employment-related condition. For these reasons, the Office properly terminated appellant's compensation after February 18, 1994.

Appellant claimed that he had employment-related disability after February 18, 1994, contending that the employment-related aggravation of his underlying multiple chemical sensitivity condition was a permanent condition. Given that the Office properly terminated appellant's compensation, effective February 18, 1994, it is appellant's burden to establish entitlement to compensation thereafter.¹¹ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized

⁴ The Office had previously denied appellant's claim in decisions dated September 1, 1995, March 12, 1996 and June 3, 1997.

⁵ In its February 29, 2000 decision, the Office indicated that it was modifying its February 29, 2000 decision. However, the content of the February 29, 2000 decision does not in fact modify the December 7, 1998 decision.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁸ *Id.*

⁹ The Office accepted that appellant was exposed to various substances in his workplace in 1992 and 1993 as alleged. The record contains numerous documents supporting the factual aspects of appellant's claim, including coworker statements and lists of chemicals used by contractors who performed asbestos removal and remodeling.

¹⁰ Dr. Haws indicated that appellant could not work near substances, which might trigger symptoms, but he noted that this was a preventative measure.

¹¹ An employee seeking benefits under the Act has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

medical opinion evidence. Rationalized medical opinion evidence is medical 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 compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹³

In a report dated March 19, 1995, Dr. Alfred R. Johnson, an attending osteopath, stated that appellant developed a chemical hypersensitivity condition due to his exposure to chemicals while working for a private employer in 1982.¹⁴ He indicated that appellant had a "recurrence and exacerbation of his initial symptoms" when he was exposed to paint fumes and solvents when he worked for the employing establishment in October 1993. Dr. Johnson noted that diagnostic testing, such as electroencephalogram, computerized tomography and double blind booth challenge testing, showed appellant's hypersensitivity to chemicals.¹⁵ He stated, "Based on my medical experience, the sequence of events by the patient's history and past medical records, physical examination and symptoms compatible with the toxic substances to which he was exposed, it is my medical opinion beyond a reasonable doubt that he is totally disabled at this point and unable to work in the common workplace."

In a report dated March 12, 1997, Dr. Johnson described the substances, which were used during the remodeling of appellant's workplace in 1993, including paints and adhesives, which had a high percentage of volatile hydrocarbons. He noted that appellant was totally disabled and stated:

"In summary, it is my medical opinion based upon the above facts as my previous correspondence and [appellant's] past medical records that his hypersensitivity to petrochemical fumes and odors was severely aggravated by his exposure in October 1993 to remodeling products ... described above. He worked around these substances for two to three weeks with poor ventilation which is a sufficient exposure to cause a significant exacerbation of his underlying disease."

In a report dated July 2, 1998, Dr. Johnson further discussed the composition of the chemicals to which appellant was exposed while working at the employing establishment. He indicated that several of the substances to which appellant was exposed were the same

¹² See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹³ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

¹⁴ Dr. Johnson began treating appellant in October 1994.

¹⁵ Dr. Johnson indicated that diagnostic testing revealed appellant had various chemicals in his blood system, including forms of methylpentane and hexane, which are found in solvents, gasoline, paints and other products.

substances for which he tested positive in October 1993 and December 1994. Dr. Johnson noted that appellant's dysfunction was consistent with exposure to these chemicals. He indicated that appellant was permanently disabled due to his employment-related chemical sensitivity condition.

The Board notes that, while none of the reports of Dr. Johnson are completely rationalized,¹⁶ they are consistent in indicating that appellant had employment-related disability after February 18, 1994 and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between appellant's employment-related condition and his disability after February 18, 1994 and are sufficient to require the Office to further develop the medical evidence and the case record.¹⁷

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant had employment-related disability after February 18, 1994. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter from an appropriate specialist or specialists. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The February 29, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.¹⁸

Dated, Washington, DC
March 22, 2002

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁶ For example, Dr. Johnson did not adequately explain why the employment-related aggravation of appellant's preexisting multiple chemical sensitivity condition would not be temporary, rather than permanent as he suggested.

¹⁷ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

¹⁸ The Board notes that Priscilla Anne Schwab, who participated in the oral argument held on November 6, 2001 was not an Alternate Board member after January 25, 2002 and she did not participate in the preparation of this decision.