

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT CHAROWSKY and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 01-2063; Submitted on the Record;
Issued May 14, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's condition of acute episode of bronchial asthma ceased on November 21, 1999.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the September 18, 2000 decision of the Office is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹

By letter dated October 31, 2000, appellant requested reconsideration of the Office's decision. He contended that the Office hearing representative erred in finding that his disability ceased on November 21, 1999. Appellant submitted reports from his treating physician, Dr. Kozel. In a September 14, 2000 report, he described the history of his treatment of appellant since 1992. Dr. Kozel stated that he saw appellant weekly after the dust exposure incident on October 14, 1999 but after November 30, 1999, appellant sought medical attention from another pulmonary physician and "further details should be available from him." He opined that "[b]ecause of the severity of his bronchospasm and the possibility of rapid onset of breathlessness[, appellant's] work environment should be as 'dust-free' as possible" and that the "period of time that [appellant] would be in this "hyperirritable" state would be indefinite."

In an October 24, 2000 report, Dr. Kozel stated that appellant was under his care for bronchial asthma. He stated that appellant was examined on November 11, 1999 at which time he was given an estimated date to return to partial work duties on approximately November 21, 1999. Dr. Kozel stated that appellant was unable to return to work because of

¹ The progress note dated November 11, 1999 from appellant's treating physician, Dr. Joseph M. Kozel, a Board-certified internist with a specialty in pulmonary diseases, in which Dr. Kozel returned appellant to work in a "clean environment" on November 21, 1999 and to full duty on December 19, 1999 supports the Office hearing representative's decision that appellant's work-related disability ceased on November 21, 1999.

lack of adequate improvement and that appellant's return date at that time was estimated in anticipation of recovery which he did not achieve.

Other evidence appellant submitted included a claim for compensation, Form CA-7, for the period from October 16 to 27, 2000, results of the July 27 and September 11, 2000 pulmonary function studies, chest x-rays results, a narrative report dated September 8, 2000 and an attending physician's report dated October 18, 2000 from Dr. Albert Carilli, a Board-certified internist with a specialty in pulmonary diseases. Appellant submitted progress notes of his treatment from December 10, 1992 through July 20, 2000 and miscellaneous hospital reports dated December 10, 1985 and June 24, 1992. He submitted a medical report from Dr. Donald B. Perlman, a Board-certified allergist and immunologist, dated July 27, 2000. He described appellant's history of allergies and illness and stated that appellant received injections and had been on a variety of medications.

In a September 8, 2000 report, Dr. Carilli considered appellant's history of injury, reviewed pulmonary function studies, chest x-rays and a cardiopulmonary stress test. He performed a physical examination and diagnosed, in part, severe hyperreactive airways or bronchial asthma and opined that appellant could not perform any activity without developing shortness of breath.

The Office referred appellant to a second opinion physician, Dr. John Penek, a Board-certified internist with a specialty in pulmonary diseases. In his report dated December 21, 2000, Dr. Penek considered appellant's history of injury, reviewed pulmonary function studies performed in 1990, 1998 and a July 27, 2000, chest x-rays performed in September and October 1999 and performed a physical examination. He noted that appellant had a long history of chronic asthmatic bronchitis and rhinosinusitis which appeared to be allergy related. Dr. Penek stated:

“Although the exposure in 1999 may have precipitated a brief exacerbation of [appellant's] symptoms, I can find no direct causative relationship between his status and that isolated exposure. Clearly [he] has rather significant chronic bronchitis and rhinosinus-disorder over the years. It is unlikely that [appellant's] exposure in October 1999 has changed the natural history of this disease.”

He opined that appellant's current medical state was unrelated to the exposure that occurred in October 1999, but was a reflection of his underlying allergic rhinosinusitis and asthmatic bronchitis which had been present for many years.

By decision dated June 4, 2001, the Office denied modification of its prior decision.

The Board finds that the Office properly determined that appellant's condition of acute episode of bronchial asthma ceased on November 21, 1999.

To establish disability due to a work-related injury, appellant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.²

In his September 14, 2000 report, Dr. Kozel opined that appellant hyperirritability for an indefinite period and required an environment as dust-free as possible but stated that appellant was treated by another doctor after November 30, 1999. In his October 24, 2000 report, Dr. Kozel stated that on November 11, 1999, he thought appellant would be able to return to work on November 21, 1999 but appellant did not actually improve at that time and was unable to return to work. Since, however, Dr. Kozel did not treat appellant after November 11, 1999, his opinion is not probative on appellant's condition after that date.

In his July 27, 2000 report, Dr. Perlman did not address appellant's disability or causation and, therefore, his report is not probative.³ In his September 8, 2000 report, Dr. Carilli diagnosed hyperreactive airways or bronchial asthma and opined that appellant had shortness of breath performing any activity but did not provide an opinion on causation. His opinion is therefore, also not probative. The other medical evidence appellant submitted consisting of the results of diagnostic tests, progress notes and Dr. Carilli's attending physician's report provided no rationalized medical opinion on the cause of appellant's condition and is not probative.

In his December 21, 2000 report, based on the history of appellant's injury, diagnostic tests of record and a physical examination, the second opinion physician, Dr. Penek, opined that appellant's current medical state was unrelated to this exposure in October 1999 but reflected his underlying allergic rhinosinusitis and asthmatic bronchitis which had been present for many years. He stated that appellant's exposure in October 1999 might have precipitated a brief exacerbation of his symptoms but it was unlikely that the exposure changed the history of appellant's disease. Dr. Penek's opinion is sufficiently well rationalized to constitute the weight of the evidence. Appellant has therefore, failed to establish that he was disabled due to the accepted condition after November 21, 1999.

² See *Donald Leroy Ballard*, 43 ECAB 876, 881 (1992).

³ See *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999); *Annie L. Billingsley*, 50 ECAB 210, 213 n.20 (1998).

The June 4, 2001 and September 18, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 14, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member