

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN S. BANTNER and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Omaha, NE

*Docket No. 01-2234; Submitted on the Record;
Issued May 13, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that his claimed respiratory condition is causally related to his federal employment.

On November 8, 2000 appellant, then a 40-year-old automation clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from chronic obstructive pulmonary disease (emphysema), chronic asthmatic bronchitis, sinusitis and allergies. He attributed his respiratory condition to exposure to "high levels of dust" in the workplace. Appellant indicated that he first became aware of his employment-related condition on October 12, 1999.

After further development of the record, the Office of Workers' Compensation Programs issued a June 14, 2001 decision denying appellant's claim. The Office denied the claim based on appellant's failure to establish that the claimed respiratory condition was causally related to his employment.

The Board finds that appellant has not met his burden of proof in establishing that his claimed respiratory condition is causally related to his federal employment.

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the appellant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹

¹ Victor J. Woodhams, 41 ECAB 345 (1989).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.² Causal relationship must be established by rationalized medical opinion 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 implicated employment factors. The physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.³

One of the working conditions identified in appellant's position description is dust exposure. The employing establishment submitted a 1998 health hazard evaluation report prepared by the National Institute for Occupational Safety and Health (NIOSH) that revealed, *inter alia*, that "no exposure limits ... were exceeded for paper dust concentrations in air." Although the noted exposure levels did not exceed recommended or enforced standards, the report's summary included recommendations to "control the accumulation of paper dust, improve the operation and cleaning of [heating, ventilating and air conditioning] systems and provide respiratory protection from paper and nonspecific dusts if exposures irritate or aggravate respiratory conditions." Additionally, the report concluded that the investigation's findings "[do] not mean that there is no basis for respiratory health effects experienced by those workers exposed to nonspecific dusts or paper dust...."

While the record establishes that appellant was exposed to dust in the workplace, the medical evidence fails to establish that appellant's occupational dust exposure either caused or aggravated his claimed respiratory condition.

Appellant's May 21, 1997 preemployment physical examination revealed a prior history of environmental allergies and upper respiratory infection. Additionally, appellant noted that he had started smoking at age 20 and that he smoked "about a pack a day."

Dr. Kevin R. Murphy⁴ examined appellant on November 14, 2000 and reported a history of recurring upper and lower respiratory tract symptoms, particularly chronic recurring cough, wheezing, nasal congestion and rhinorrhea. Dr. Murphy also noted a 20-year history of smoking two packs a day, but that appellant had not smoked over the last year. Additionally, he noted that appellant was diagnosed with emphysema over a year ago. Dr. Murphy diagnosed chronic nonallergic rhinitis and chronic obstructive pulmonary disease. His report did not include appellant's employment history nor did Dr. Murphy specifically address the etiology of appellant's condition.

² *Id.*

³ *Id.*

⁴ Dr. Murphy is a Board-certified pediatrician with a subspecialty in pediatric pulmonology.

Appellant again saw Dr. Murphy on December 4, 2000 and in a similarly dated report, noted a significant improvement of appellant's chest symptoms with the use of prescribed medication. Dr. Murphy also stated that appellant "is still working in the downtown [employing establishment] processing mail and this continues to result in increased nasal and chest symptoms." He further stated that "[t]hese symptoms were not present to the same degree while working in the West Center Post Office station, where he was not processing mail to the same degree." Dr. Murphy "suggested that strong consideration be given to a change in [appellant's] work environment."

Dr. Thomas C. Nilsson,⁵ a colleague of Dr. Murphy, treated appellant on December 13, 2000 and diagnosed presumptive acute maxillary sinusitis, acute bronchitis and chronic obstructive pulmonary disease. Dr. Nilsson's report did not include an employment history nor did he otherwise comment on the etiology of appellant's condition.

On January 3, 2001 Dr. Antonio B. Saqueton, Jr., a Board-certified family practitioner, submitted an employing establishment form request for light-duty assignment. In explaining why appellant was unable to perform his regular duties, Dr. Saqueton stated: "[d]ust particles and debris are aggravating to lungs -- machinery produces such." He further noted that appellant should not work around power driven machinery because the "mail in machines produces high amounts of dust." At the bottom of the form Dr. Saqueton wrote: "It would be in [appellant's] best interest to remain in as much (sic) dust free environment as possible and returned to a station environment where there are *no* machines producing dust." Dr. Saqueton did not provide a diagnosis, findings on physical examination or specific medical and social histories.

Neither Dr. Murphy's December 4, 2000 report nor Dr. Saqueton's January 3, 2001 request for light duty is sufficient to meet appellant's burden of establishing a causal relationship between his employment and his claimed respiratory condition. Dr. Murphy did not explain the basis for his opinion that "processing mail ... continues to result in increased nasal and chest symptoms." Moreover, other than noting that appellant processed mail, Dr. Murphy did not identify any specific employment factors that either caused or contributed to appellant's "increased nasal and chest symptoms."

Dr. Saqueton explained that mail in the machines produced high amounts of dust and that appellant should avoid such dust because it is aggravating his lungs. However, lung aggravation is not an appropriate clinical diagnosis. And it is not at all clear from the record what information Dr. Saqueton relied upon. As previously noted, he did not provide any physical findings, did not reference any objective evidence or identify any relevant medical or social histories.

Inasmuch as appellant failed to submit rationalized medical opinion evidence on the issue of whether there is a causal relationship between his claimed respiratory condition and the implicated employment factors, the Office properly denied appellant's claim for compensation.

⁵ Dr. Nilsson is a Board-certified internist as well as being Board-certified in allergy and immunology.

The June 14, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 13, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member