U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY B. BENNETT and U.S POSTAL SERVICE,
POST OFFICE, Moneta, VA

Docket No. 02-196; Submitted on the Record;
Issued May 23, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish a multiple chemical sensitivity causally related to chemical exposure in her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On November 2, 1999 appellant filed a claim alleging that she sustained a multiple chemical sensitivity condition as a result of exposure to vapors from lacquer thinner and paint on June 25, 1998 and several days thereafter.

In a decision dated June 13, 2000, the Office denied the claim. By decision dated December 14, 2000, an Office hearing representative remanded the case. The hearing representative noted that the Office had issued a May 15, 2000 letter requesting additional evidence and did not provide a full 30 days to submit the requested evidence. Additional evidence was submitted to the Office by appellant on June 14, 2000.

By decision dated May 2, 2001, the Office again denied the claim on the grounds that the medical evidence was insufficient to establish an employment-related condition. Appellant requested a hearing by letter dated June 27, 2001. In a decision dated August 1, 2001, the Office's Branch of Hearings and Review found that appellant's request for a hearing was untimely and, therefore, she was not entitled to a hearing as a matter of right. The Branch indicated that the issues could be equally well addressed pursuant to a reconsideration request and denied the hearing request.

The Board finds that appellant has not met her burden of proof to establish an injury causally related to her federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, 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 claimant 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] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and her federal employment.[2] Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by her federal employment, is sufficient to establish causal relation.[3]

Under the Federal Employees' Compensation Act, if an employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the claimant may be entitled to continuing compensation;[4] a medical restriction that is based on a fear of future aggravation due to employment exposure is not employment related.[5]

The diagnosis provided by several physicians of record is multiple chemical sensitivity.[6] With respect to the factual background, appellant has alleged that, on June 25, 1998, she was exposed to fumes from lacquer thinner and for several days thereafter, exposed to thinner and paint fumes. According to the employing establishment, on June 25, 1998 beginning at approximately 12:00 p.m., a contractor cleaned equipment in preparation for spray painting. The contractor was unsure whether lacquer thinner was actually used; he told the employing establishment supervisor that he usually cleaned cases with a degreaser. In any case, appellant left work that day at 1:00 p.m. and did not return, noting she was exposed to the cleaning fumes for approximately one hour. Spray painting began at approximately 2:00 p.m. and appellant has alleged that over the following several days she was exposed to paint fumes.

In assessing the probative value of the medical evidence in a complex causal relationship situation, it is particularly important that the physician have an accurate factual background. The medical evidence submitted by appellant does not provide a reasoned medical opinion based on a complete and accurate background. In the June 7, 1999 report from Dr. Darcey, he indicates that appellant was exposed to lacquer thinner for close to four hours on June 25, 1998; assuming that lacquer thinner was used, the record indicates that the exposure was approximately one hour. Moreover, Dr. Darcey does not provide a reasoned medical opinion on causal relationship

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

[2] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[3] *Manuel Garcia*, 37 ECAB 767 (1986).

[4] *James C. Ross*, 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980).

[5] *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

[6] In a report dated June 7, 1999, an attending physician, Dr. Dennis Darcey, an occupational medicine specialist, noted that the diagnosis of multiple chemical sensitivity was not widely accepted in conventional internal or occupational medicine disciplines.

between employment exposure and a multiple chemical sensitivity. In a report dated September 22, 1999, Dr. Wayne Koch, an otolaryngologist, provides a brief history of exposure to lacquer thinner on June 25, 1998, without providing further detail on the extent of the exposure. Dr. Koch stated that there is often an index exposure that precipitates a later intolerance, but he does not provide a reasoned medical opinion on causal relationship based on an accurate background in this case.

The physicians of record that do appear to have an accurate background on the employment exposure have not supported causal relationship. In a report dated April 3, 2001, Dr. Glenn Giessel, a pulmonary specialist selected as a second opinion referral physician, provided results on examination and indicated he reviewed the evidence provided by the Office. Dr. Giessel diagnosed a possible Sjogren's like syndrome, with no evidence of significant underlying lung disease. He found "no objective evidence of employment-related conditions.… Based on my review of the medical evidence and examination of the claimant, I do not feel that she has developed a medical condition due to her exposure to lacquer thinner."

In a report dated September 27, 1999, Dr. Louis Castern, an occupational medicine specialist, provided a history and results of a fitness for duty examination. He noted the lack of scientific evidence that these agents can cause the variety and intensity of the symptoms and the lack of diagnostic criteria. Dr. Castern did not find a causal relationship between a diagnosed condition and the employment exposure; he concluded that "given the absence of any identifiable or demonstrable causation and given the very limited exposure, I believe the relationship is only temporal."

The Board finds that the probative medical evidence, based on an accurate exposure history, does not support causal relationship in this case. The evidence submitted by appellant does not include a reasoned opinion, based on an accurate background, supporting causal relationship between a multiple chemical sensitivity or other diagnosed condition and the employment exposure. Accordingly, the Board finds that the Office properly denied the claim.

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides in pertinent part:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[7]

As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[8] In this case appellant's request for a hearing was dated

[7] 5 U.S.C. § 8124(b)(1).

[8] *See William F. Osborne*, 46 ECAB 198 (1994).

June 27, 2001. This is more than 30 days after the May 2, 2001 Office decision and, therefore, the request was untimely.[9]

The Board has held that the Office, in its broad discretionary authority to administer the Act, has power to hold hearings in circumstances where no legal provision is made for such hearings and the Office must exercise its discretion in such circumstances.[10] In this case the Office advised appellant that she could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.[11] The Board finds no evidence that the Office abused its discretion in denying the hearing request.

The decisions of the Office of Workers' Compensation Programs dated August 1 and May 2, 2001 are affirmed.

Dated, Washington, DC
May 23, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[9] Regarding appellant as contention that she did not receive the May 2, 2001 decision in a timely manner, under the mailbox rule, it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual and copies of the decision show appellant's correct address of record. *See Clara T. Norga*, 46 ECAB 473 (1995).

[10] *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann,* 26 ECAB 354 (1975).

[11] *See Mary E. Hite*, 42 ECAB 641, 647 (1991).