

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUSSELL WALKER and U.S. POSTAL SERVICE,
VEHICLE MAINTENANCE FACILITY, Detroit, MI

*Docket No. 03-1426; Submitted on the Record;
Issued August 4, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established a dermatitis condition causally related to his federal employment.

The case was before the Board on a prior appeal. By decision dated May 23, 2001, the Board remanded the case for further development of the evidence.¹ The Board noted that appellant had alleged exposure to chemicals generally known as mercaptol mix, and directed the Office of Workers' Compensation Programs to obtain evidence from the employing establishment with respect to exposure to mercaptol mix, and further develop the medical evidence if necessary. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

In a letter dated September 10, 2001, the Office requested that the employing establishment provide evidence regarding appellant's exposure to tires and rubber gloves, and whether such items contained mercaptol mix.

By decision dated October 19, 2001, the Office denied appellant's claim on the ground that he had not established fact of injury. The Office acknowledged that the employing establishment had not responded to their request for information; appellant was advised that he had not submitted sufficient evidence to establish that he was exposed to mercaptol mix at work.

In a decision dated March 14, 2002, the Office denied modification of the October 19, 2001 decision.

By letter dated May 17, 2002, the employing establishment noted that appellant had requested an analysis of a product called Fast Cure Epoxy that he used in his federal

¹ Docket No. 00-1998 (issued May 23, 2001).

employment. The employing establishment indicated that local managers had been asked to provide appellant with a chemical analysis.

In a decision dated August 8, 2002, the Office denied modification of the October 19, 2001 decision. The Office stated that appellant had not established that he actually used Fast Cure Epoxy in his federal employment.

The record contains a letter dated August 30, 2002 from John H. Talick, district manager of customer service, to appellant's congressional representative. Mr. Talick stated that "investigation" had revealed that Fast Cure Epoxy was a product available at the main garage for use by mechanics; however, the product was used only infrequently to repair metal or automotive engine blocks and appellant's duties did not require major automotive repairs that would require use of the product.

In an affidavit dated October 3, 2002, appellant stated that from 1996 to July 1998 he performed job duties as a tire repairman at the employing establishment and used a product called Bowman/Loctite Five Minute Fast Cure Epoxy. Appellant stated that he frequently used this product, and described how the product was used in tire repair. He submitted a material safety data sheet for the product, which indicated that one of the chemicals used was polymercaptan.

By decision dated February 4, 2003, the Office again denied modification of its prior decisions. The Office determined that appellant had not established that he was exposed to Fast Cure Epoxy.

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

On the prior appeal, the Board directed the Office to further develop the record with respect to appellant's chemical exposure in his federal employment. The record indicates that the employing establishment failed to respond to a request for information. The available evidence of record, submitted by appellant, indicates that mercaptol mix is found in a wide variety of products, including tires, gloves and antifreeze. The employing establishment did not provide the requested evidence.

With respect to appellant's exposure to mercaptans through the use of Fast Cure Epoxy, the Board notes that the record contains widely divergent evidence on this issue. According to a customer services supervisor, appellant would not have used the product because it was only used for major automotive repairs that were outside appellant's job duties. The supervisor referred to an investigation as his source for information, without providing more detail. On the other hand, appellant has provided a detailed description of the regular use of the product for tire repair from 1996 to 1998. The Board notes that an employee's statement regarding the occurrence of employment incidents is of great probative value and will stand unless refuted by strong or persuasive evidence.² The probative value of the customer services supervisor is diminished by the lack of detail regarding the investigation that was undertaken. Unless the Office secures specific evidence, such as from individuals who actually worked with appellant,

² *Thelma Rogers*, 42 ECAB 866 (1991).

that refutes appellant's affidavit on his use of the product, the Office should accept that appellant was exposed to mercaptans through the regular use of the product.

On remand the Office should prepare a detailed statement of accepted facts with respect to exposure to mercaptans during federal employment. The case should then be referred to an appropriate specialist for a second opinion on the medical issues presented. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated February 4, 2003 and August 8, 2002 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
August 4, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member