

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA MURPHY and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 03-1742; Submitted on the Record;
Issued October 17, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any disability causally related to her accepted pulmonary condition after October 18, 2000.

On May 30, 2000 appellant, then a 32-year-old postal clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that dust in her work environment aggravated her sinuses. In support of her claim, appellant submitted a May 8, 2000 report from Dr. Larry Walker, who stated that appellant presented with increased wheezing, coughing and chest tightness. Dr. Walker diagnosed asthmatic bronchitis and allergic rhinitis. In an August 2, 2000 letter, the employing establishment controverted appellant's claim, noting that there was no medical evidence supporting her allegation that the workplace caused or aggravated her condition. The record contains a May 27, 1999 report from Dr. Linda Payne, an environmental specialist, who noted the air quality in appellant's workstation met the standards of the Occupational Safety and Health Administration. In an August 11, 2000 letter, the Office of Workers' Compensation Programs requested more information from appellant. In an undated response, appellant again alleged that she was exposed to excessive dust at work. Appellant stated that she and other employees often would get a runny and bloody nose, coughing episodes and experiencing chest tightness. Appellant noted that she did not have any problems prior to starting work with the employing establishment.

Appellant submitted a September 8, 2000 report from Dr. George Treadwell, a specialist in allergy and asthmatic care, who stated that he first saw appellant in April 1999, with complaints of rhinitis symptoms that were worsening at work. He noted an allergy evaluation showed reactions to trees, grass, weeds, dust and pets but not to mold, suggesting allergic rhinitis. He noted that appellant had no personal history with asthma, but there was asthma in her family history. Dr. Treadwell added that appellant had occasional episodes of coughing and chest tightness related to flare ups of her nasal symptoms and slightly elevated eosinophil count of 387. He also noted that appellant associated the worsening of her symptoms to exposure at work and that, on occasions, he took off work and she did better. According to appellant, her symptoms would begin within minutes to hours of returning to work, which is quite dusty and

clear up again upon leaving work. Dr. Treadwell noted that appellant was not disabled in the sense that she is perfectly capable of working and has worked in other environments that were not high in concentration of irritants, dust and other allergens. He noted that it would be in appellant's and the employing establishment's best interest to find her a different work environment.

In a July 18, 2001 decision, the Office accepted appellant's claim for allergic rhinitis. Appellant subsequently submitted wage-loss compensation forms covering intermittent periods between March 28, 1997 to the present.

In a September 5, 2001 letter, the employing establishment offered appellant a modified job assignment that changed her work location within the same building.

In a September 13, 2001 decision, the Office informed appellant that it would only pay for medical treatment, as Dr. Treadwell indicated that appellant was not disabled from work; just that her work aggravated her condition. Medical coverage was to begin in April 1999, when Dr. Treadwell first saw appellant.

In a September 27, 2001 report, Dr. Treadwell noted that, although appellant's work site was changed, she continued to be symptomatic and that she did not work between October 20, 2000 and September 24, 2001. On her first day back to work, appellant reported to an emergency room due to her symptoms. He stated that appellant was not disabled from working but she was intolerant to certain work environments. In a September 30, 2001 form report, Dr. Treadwell indicated that appellant reported to work and felt dizzy and chest tightness and was to remain off work for two days. In a December 5, 2001 report, Dr. Treadwell stated:

“This is one of several letters I have written in reference to [appellant's] problems with her rhinitis and cough that she develops when she was at work. It seems to me that it was pretty clear that it was felt to be in her best interest not to be exposed to irritants, strong scents or fumes, dust etc. and it did not have to be mandated that she be removed from those environments.

“Clearly, [appellant] feels that exposures to work exacerbate her problems. She is well when she is at home and has troubles when she is at work. Our experience has been on the most recent two recent occasions, that she has returned to work and has gotten acutely ill and has had to go to the emergency room. Thus, it would appear to me that it would be in the best interest of the [employing establishment], [appellant] and all involved with her care that she not be exposed to the extremes of temperatures, fumes, irritants and dust. Thus, it is mandated on behalf of all of us that she not return to work until those conditions can be met.”

In a March 28, 2002 letter, appellant requested reconsideration arguing that the reason Dr. Treadwell wrote that she was not disabled was because the employing establishment was pushing her toward disability retirement appellant. Appellant noted that, while she could work in a dust-free environment, the employing establishment would not accommodate her needs. Appellant submitted Form CA-7s requesting wage-loss compensation for intermittent periods between October 18, 2000 through March 25, 2002, including periods of October 18 through

November 23, November 30 through December 3, December 5 through 21, 2001 and February 8 through 21, 2002.

In an April 1, 2002 report, Dr. Tammy Hudson, an allergist, diagnosed reactive airways and indicated that appellant could not work between March 26 and April 21, 2002. Appellant also submitted CA-7 forms covering intermittent periods between March 1997 through May 2000.

In a May 29, 2002 letter, the employing establishment wrote to appellant that it could not accommodate her medical restrictions. In a Form CA-7 dated June 3, 2002, appellant requested compensation for the period of April 24 to June 3, 2002.

In a June 20, 2002 letter, the Office referred appellant, together with a statement of accepted facts to Dr. Howard Loveless, a specialist in allergies, for a second opinion. On October 2, 2002 Dr. Loveless wrote that appellant presented with enlarged tonsils and nasal turbinates. He noted that she also had an eosinophil count of 387 which that suggested a significant allergic exposure. He diagnosed allergic rhinitis exacerbated by her work and opined that appellant was totally disabled unless she was placed in a new work environment. In an October 21, 2002 letter, the Office requested elaboration from Dr. Loveless. In a May 21, 2003 response, Dr. Loveless indicated that appellant's flare ups following her exposures at work would not result in more than a few days of disability and that his findings did not support extended periods of disability. If appellant were removed from the particular work environment she could return to work.

In a June 4, 2003 decision, the Office modified its September 13, 2001 decision, finding that appellant's intermittent absences from work, between March 28, 1997 through September 24, 2000, were compensable finding the medical evidence on the whole supported total temporary and intermittent disability. The decision also affirmed the denial of wage-loss compensation for the periods after October 18, 2000, including the periods between October 18, 2000 and November 24, 2001 and April 24, 2002 to the present. The Office found that the medical evidence did not support long periods of absence, noting that both Drs. Treadwell and Loveless opined that appellant's condition was only temporarily aggravated and the medical evidence did not support long stretches of disability.

The Board finds this case is not in posture for decision as to periods of disability claimed after October 18, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her 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.² These are the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

As appellant sought compensation benefits for intermittent periods of temporary disability by the use of CA-7 forms, she has the burden of establishing that her disability for work for specific periods is causally related to the employment injury.⁴

In the present case, the Office accepted that appellant had a preexisting condition that was aggravated by exposure to irritants in her workplace prior to October 18, 2000. The Office based this determination on the medical reports of Drs. Treadwell and Loveless who opined that appellant's working conditions resulted in temporary aggravations. Both physicians found that appellant's symptoms subsided when she was removed from her work environment. The Office denied acceptance of appellant's periods of disability after October 18, 2000 because they were longer periods of disability including periods of 35 days between October 18 through November 23, 2001, 16 days between December 5 through 21, 2001 and 13 days between February 8 through 21, 2002. The Office properly noted that the medical evidence supported short periods of disability, but not longer periods. After the brief period of disability, the reports from Drs. Treadwell and Loveless supported appellant not returning to her previous work environment, not because she continued to be disabled, but because she was likely to reaggravate her condition at a future time if she returned to the same working conditions.

The Board has consistently held that fear of a future injury is not sufficient basis to establish disability.⁵ As such the Office properly denied appellant compensation for periods of disability that occurred after October 18, 2001.

While the Office correctly determined that the medical evidence does not support aggravations lasting 35, 16 and 13 days, the evidence does support that appellant experience intermittent temporary aggravations when exposed to her work environment after October 18, 2001. Dr. Loveless the Office referral physician noted in his October 2, 2002 report, that appellant suffers from significant allergic rhinitis with flare ups related to her work environment that are and will continue to be, disabling unless she is moved to a different environment or the air quality is improved. On May 21, 2003 Dr. Loveless wrote that these periods of aggravation were temporary and did not support extended periods of disability. Neither Drs. Loveless nor Treadwell explained how long the temporary aggravations lasted. As each period of claimed extended disability was preceded by exposure to work, appellant presumably would have a short period of work-related disability after the exposure. In denying all periods of extended disability, the Office has ignored these short periods of disability that are supported by the medical evidence.

³ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Donald Leroy Ballard*, 43 ECAB 876 (1992).

⁵ *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

The Board finds that the record should be returned to the Office for further development; in particular, to determine the length of disability related to appellant's extended absences from after October 18, 2000.

The June 4, 2003 decision by the Office of Workers' Compensation Programs is hereby affirmed, in part, and set aside, in part, and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC
October 17, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member