

first realized that her conditions were caused by factors of her employment.¹ She stated that she was exposed to chemicals and realized that her conditions were work related after seeing a chemical occupational specialist. Appellant stopped work on February 4, 1999.

In support of her claim, appellant submitted factual evidence including a narrative statement describing her exposure to chemicals while working for the employing establishment. She also submitted medical reports from Dr. Grace E. Ziem, an attending physician who specializes in occupational and environmental medicine. Dr. Ziem indicated that appellant's medical conditions were caused by exposure to products at work and that she was totally disabled commencing February 3, 1999.

By letter dated March 2, 1999, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised appellant about the type of factual and medical information she needed to submit to establish her claim. By letter of the same date, the Office requested that the employing establishment submit factual information regarding appellant's claim.

On March 2, 1999 the employing establishment submitted numerous medical reports regarding appellant's medical conditions and statements from her supervisors denying her allegation that she was exposed to harmful chemicals in the workplace. Appellant submitted narrative statements addressing a history of her chemical exposure at the employing establishment and the development of her medical conditions. She also submitted medical reports regarding her conditions and an environmental report finding no evidence to substantiate allegations of poor air quality in her work environment.

By letter dated May 14, 1999, the Office referred appellant, together with the medical records, a statement of accepted facts and a list of specific questions, to Dr. Prasad Nataraj, an internist, for a second opinion medical examination to determine whether her exposure to chemicals at the employing establishment caused her medical conditions.

The employing establishment submitted two reports finding no evidence of poor air quality in its work environment and providing recommendations for environmental and medical measures. The Office received medical evidence and correspondence from the employing establishment regarding an employee who alleged, as appellant, that her medical conditions were caused by chemical exposure in the workplace. The Office also received a supplemental report regarding environmental testing at the employing establishment.

Dr. Nataraj submitted a July 28, 1999 report noting appellant's allegation that she was exposed to chemicals and allergens at work that caused recurrent chronic sinusitis, fibromyalgia, arthritis, migraine headaches and chronic fatigue syndrome. He reviewed appellant's medical background, laboratory and allergy test results and set forth his findings on physical examination. Dr. Nataraj diagnosed allergic rhinitis by history and old skin test results. He stated that he was unable to perform any further workup because appellant was taking Toprol, a beta blocker medication. He suggested that appellant discuss this with her primary care

¹ The record reveals that, although appellant worked as a poultry inspector for the employing establishment, she physically worked at Wampler Longacre in Moorefield, West Virginia.

physician and schedule a follow-up visit after the substitution of her medication for an allergy workup. He concluded that he had no direct evidence to relate appellant's chronic conditions with any past work exposure.

By decision dated August 24, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty. The Office stated that the medical evidence failed to establish a causal relationship between appellant's medical conditions and factors of her federal employment.

Subsequent to the Office's decision, the employing establishment submitted medical reports concerning appellant's digestive and balance problems and dietary plan. By letter dated August 21, 1999, appellant submitted reports concerning her physical therapy evaluation and an x-ray of her left knee. She also submitted a traumatic injury claim alleging that on December 7, 1998 her lungs tightened and she had trouble breathing due to an ammonia leak at work.

The Office received a September 9, 1999 report from Dr. Ziem, who stated that appellant did not have a history of migraines or other frequent severe or disabling health problems until she began working for Wampler. She noted that when appellant went to work in the new Wampler plant she had a significant increase in migraines which improved away from work. Dr. Ziem obtained a history of the onset of other symptoms such as fatigue, widespread musculoskeletal aching, impaired balance, memory and concentration and episodes of a rapid pulse which typically occurred at work. She described appellant's work environment, including exposure to certain chemicals, and stated that appellant was one of five of her patients who developed a syndrome due to exposure to chlorine products that were utilized in a bath containing chicken debris. She noted that there were several factors indicating her patients had a work-related illness. Dr. Ziem stated that all five of her affected patients' symptoms became significantly worse when they moved from an older and better ventilated building to a new, tighter building. She stated that the symptoms typically cleared or improved away from work and returned with a return to work. Dr. Ziem stated that the compounds in appellant's workplace had been documented as causing her type of syndrome. She cited specific resource material in support of her contention and noted a review of the medical records of other individuals and two of her own patients who developed the same syndrome as appellant. Dr. Ziem further noted her findings on physical and objective examination. She diagnosed chronic fatigue syndrome and fibromyalgia, which were common in patients with this syndrome and noted that appellant was previously diagnosed with adrenal insufficiency. Dr. Ziem concluded that there was substantial evidence establishing that appellant, as well as another employing establishment employee and employees at Wampler developed a substantially similar toxic illness involving the brain, immune system, impaired detoxification and adrenal function and other forms of chemical injury. Her report was accompanied by an appendix regarding adrenal stress testing.

In an undated letter received by the Office on September 7, 1999, appellant requested an oral hearing before an Office hearing representative concerning the Office's August 24, 1999 decision. In an August 19, 1999 medical report, Dr. Nataraj listed findings on physical examination and on allergy skin testing, which demonstrated negative results to numerous aeroallergens such as, tree pollen, grass pollen, ragweed, cat, house dust mites, feathers and numerous mold allergens. He opined that there was no evidence either by history or allergy skin testing of any allergic etiology for appellant's chronic problems.

By decision dated November 19, 1999, the hearing representative set aside the August 24, 1999 decision and remanded the case for further development of the medical evidence. He found that a conflict existed in the medical opinion evidence as to whether appellant's conditions were caused by factors of her employment between Dr. Ziem and Dr. Nataraj.

In a December 8, 1999 report, Dr. Ziem noted appellant's daily headaches, neurological and gastrointestinal symptoms, upper and lower respiratory congestion, musculoskeletal aching and sleep disturbance. On physical examination Dr. Ziem noted appellant's height, weight, blood pressure, pulse, respirations and temperature readings. She further noted that appellant used a cane for walking, rising and sitting. She stated that appellant had 18 of 18 fibromyalgia points that were still tender and that fatty acid testing had been performed but the results were not available. Dr. Ziem reported that appellant had a normal attention span since her hyperbaric oxygen treatment while her short-term memory remained unchanged.

The Office received additional medical reports from Dr. Ziem and articles regarding peripheral neuropathy and chemical injury to the eye, a fibromyalgia questionnaire and mental residual functional capacity evaluation test results.

The Office referred appellant, together with a statement of accepted facts, medical records and a list of specific questions, to Dr. Henry L. Abrons, Board-certified in internal, critical care, pulmonary disease and occupational medicine, selected as the impartial medical specialist. The Office's statement of accepted facts provided that appellant was occasionally exposed to ammonia leaks and high levels of carbon dioxide. The Office noted that this exposure involved isolated incidents and did not occur every day and that except for these isolated incidents, air quality at the employing establishment met the standards of the Occupational Safety and Health Administration. The Office requested that Dr. Abrons provide a diagnosis for any medical conditions and state whether or not appellant sustained any disabling condition that was causally related to her federal employment.

Dr. Abrons submitted a May 23, 2000 report indicating that he reviewed the medical records sent to him. His examination focused on the question of impairment of the respiratory system and "he noted using the statement of accepted facts as the factual framework for his opinion." Dr. Abrons reviewed appellant's occupational and environmental history in detail and he stated that salient exposures included possible chlorine, carbon dioxide and ammonia during an approximate five-year interval between 1994 and 1999. He noted appellant's respiratory complaints, and her medical, family and social background. Dr. Abrons provided findings on physical and cardiovascular examination. He reviewed x-ray test results and stated that pulmonary function studies were not scheduled in advance and they could not be scheduled on the day of appellant's office visit because she was taking a beta blocker. Based on the available data, Dr. Abrons opined that there was no evidence of a respiratory impairment or chronic respiratory disorder. He stated that reports of appellant's several episodes of respiratory infection, cough and sputum and intermittent chest tightness suggested the possibility that she might have asthma or airways hyper responsiveness, but this had not been adequately documented. Dr. Abrons further stated that it was difficult if not impossible for him to attribute any of these conditions to appellant's exposures at work. He concluded that the exertional dyspnea that appellant experienced was consistent with her weight and could also reflect deconditioning resulting from reduced activity due to her musculoskeletal complaints.

By decision dated June 13, 2000, the Office denied appellant's occupational disease claim on the grounds that the evidence of record failed to establish a causal relationship between her medical conditions and factors of her employment. In a July 24, 2000 letter, appellant, through her attorney, requested an oral hearing before an Office hearing representative.²

Prior to the September 30, 2002 hearing, the Office received a December 14, 1999 report from John M. Smothers, a clinical psychologist, finding that appellant's trouble with retention, recall, memory and task execution were either caused by or augmented by her exposure to toxins that she reportedly encountered in the workplace. Subsequent to the hearing, appellant submitted treatment notes from Dr. Linford K. Gehman, a Board-certified family practitioner, concerning her fibromyalgia and chronic fatigue.

By decision dated January 27, 2003, the hearing representative found that appellant failed to establish that her medical conditions were caused by factors of her employment based on Dr. Abrons' May 23, 2000 report.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical 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 opinion of the physician must be based on a complete factual and medical background of the claimant, must be

² In his July 3, 2000 letter, appellant's attorney indicated that as of that date, he no longer represented appellant.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

The Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁷ The Board has held that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence, the opinion of the specialist, if sufficiently well rationalized and based on a proper medical background, must be given special weight.⁸

ANALYSIS

In this case, the Office properly determined that a conflict existed in the medical opinion evidence between Dr. Ziem, appellant's treating physician, who opined that appellant's medical conditions were caused by exposure to chemicals at the employing establishment, and Dr. Nataraj, an Office referral physician, who opined that appellant did not have a medical condition causally related to factors of her employment. To resolve the conflict, the Office referred appellant to Dr. Abrons for a complete impartial medical examination.

In his May 23, 2000 report, Dr. Abrons opined that there was no evidence that appellant had a respiratory impairment or chronic respiratory disorder. On appeal, appellant's attorney contends that Dr. Abrons' opinion was not premised on the Office's statement of accepted facts because he stated that appellant's salient exposures included "possible" chlorine, carbon dioxide and ammonia during an approximate five-year interval between 1994 and 1999. Notwithstanding his statement, Dr. Abrons stated that he "used the 'statement of accepted facts' as a factual framework for my assessment."

Counsel further contends that Dr. Abrons' opinion only relates to appellant's respiratory condition and fails to address all of appellant's conditions. Dr. Ziem noted in her September 9, 1999 report that when appellant went to work in the new Wampler plant she had a significant increase in migraines which improved away from work and the onset of other symptoms such as fatigue, widespread musculoskeletal aching, impaired balance, memory and concentration and episodes of a rapid pulse which typically occurred at work. She found that appellant's chronic fatigue syndrome and fibromyalgia were work related and provided rationale in support of her opinion. Dr. Nataraj found that appellant did not have an allergic reaction to certain allergens. The Board finds that Dr. Abrons' opinion cannot be accorded the special weight given to an impartial medical specialist. Although on referral, the Office generally asked Dr. Abrons to provide a diagnosis for any medical conditions that appellant might have and state whether or not appellant suffered from any disabling condition that was causally related to her federal employment, Dr. Abrons only focused on appellant's respiratory condition despite being

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *Mary A. Moultry*, 48 ECAB 566 (1997).

qualified as a physician who is Board-certified in internal, critical care and occupational medicine to address the other conditions diagnosed by Dr. Ziem. Thus, the Board finds that an unresolved conflict exists in the medical opinion evidence as to whether appellant's conditions were caused by factors of her federal employment.

Consequently, this case must be remanded for further medical development. On remand, the Office should prepare an updated statement of accepted facts⁹ and refer this and appellant, together with the complete medical record, back to Dr. Abrons or other specialists for a rationalized report addressing the issue of whether appellant sustained a medical condition causally related to factors of her federal employment.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2003 decision of the Office of Workers' Compensation Programs' hearing representative is set aside and the case is remanded for further consideration consistent with this decision.

Issued: August 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *William C. Bush*, 40 ECAB 1064, 1075 (1989).