United States Department of Labor
Employees' Compensation Appeals Board

DUET BRINSON, Appellant	)	
and	)	**Docket No. 04-1298**
	)	**Issued: September 27, 2004**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

Appearances:
Duet Brinson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 19, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 22, 2004 which denied modification of a November 21, 2001 decision, finding that she failed to establish that his skin condition was causally related to factors of his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that his skin condition is causally related to factors of his federal employment.

FACTUAL HISTORY

On August 21, 1997 appellant, then a 55-year-old shipfitter, filed an occupational disease claim for compensation (Form CA-2), alleging that he developed arthritis and a skin condition caused or aggravated by his exposure to polychlorinated biphenyl (PCB) while "burning out" a

missile compartment of a submarine. On the reverse side of the form the employing establishment indicated that exposure was ongoing.

In a decision dated January 2, 2002, the Board determined that the Office had improperly denied appellant's claim as untimely and remanded the case for further consideration.[1] The law and the facts of the case as set forth in the Board's prior decision are hereby incorporated by reference. On remand the Office proceeded to review the medical evidence of record.

In a report dated September 30, 1993, Dr. Frank J. Baron, a Board-certified dermatologist, indicated that appellant had extensive hypertrophy scarring and keloid formation. He stated:

> "I would like to help [appellant] with his troublesome problem, but I don't know where to proceed from here. I am really not aware of data suggesting that PCBs cause hypertrophy scarring or keloid formation, but I am not an authority in this area and would not want to deny the possibility."

Appellant saw Dr. Rayburn S. Lewis, a Board-certified internist, between January 4, 1993 and May 23, 1994. In a report dated September 27, 1993, the physician noted that appellant had keloids and that he encouraged him to investigate whether he should file a claim. Dr. Lewis stated: "I thought that his keloids were most likely due to intrinsic healing problems."

In a medical report dated March 8, 1994, Dr. Joel McCullough, a Board-certified internist, noted that a dermatology referral was obtained and that it did not indicate that appellant's skin lesions were due to his PCB exposure.

In a medical report dated March 7, 1995, Dr. Patricia J. Sparks, appellant's treating Board-certified internist, stated:

> "At this point, [appellant] does have evidence of inflammation of his skin. The original lesions are obscured by his abundant keloid formation. It is hard to tell at this point what the original lesions looked like on his upper chest and back. He has two small acneiform-type lesions on his anterior chest. I would be interested to obtain records from his treating dermatologist and other physicians who have evaluated him and perhaps have had the opportunity to observe his skin lesions as well.
>
> "The most common manifestation of both dioxin exposure and PCB exposure is, of course, chloracne. This has an appearance very similar to other types of acne and is hard to distinguish except for the history of exposure to chlorophenols. At this point, I cannot tell for sure whether [appellant] actually has chloracne, but [t]his is a possibility. His abundant keloid formation obscures the underlying cause of his lesions.

[1] Docket No. 00-94 (issued December 13, 2000).

In a report dated March 7, 1995, Dr. Sparks concluded:

> "[Appellant] clearly has had some inflammatory condition of his skin resulting in excessive hypertrophy scarring and keloid formation. From the information available, it is hard to tell what the initial skin lesions were, but some information does suggest that he has cystic acne. The distribution of the keloid scarring on his upper chest, shoulders and back is consistent with acne. Both Agent Orange (contaminated with dioxins) and PCB exposure are capable of producing a condition called chloracne. The acne produced from this exposure is not much different clinically from other more common types of acne seen in individuals without such exposure. [Appellant's] body burden of chlorophenols is probably higher than that of the general population, both because of his skin and respiratory tract exposure to Agent Orange in Vietnam, as well as his exposure to PCBs during the activities in the shipyard described in my previous occupational history taken from [appellant].
>
> "Therefore, I cannot rule out the possibility that the hypertrophy scarring is a reaction to underlying cystic acne which may be due, at least in part, to his previous exposure to chlorophenols; specifically dioxins contaminating Agent Orange in Vietnam as well as subsequent exposure to PCBs via the skin and perhaps respiratory route in the course of his work as a burner or cutter for the [employing establishment] in 1985. I must admit that the cause and effect relationship is somewhat equivocal, although it does seem plausible with regard to his skin lesions."

In a report dated September 1, 1995, Dr. Gregory J. Raugi, a Board-certified dermatologist, indicated that appellant had approximately 20 keloids in the chest, shoulder and back areas, which could be caused by acne. He stated:

> "Exposure to chlorinated hydrocarbons, which [appellant] claims, is associated with the development of chloracne; therefore, it is possible that some of his present skin lesions are etrologically related to the claimed exposure."

In a medical note dated May 10, 1999, Dr. Robert Miller-Cassman, a Board-certified internist, noted that appellant had extensive hypertrophy scar/keloid formation on his chest, back and arms.

In a decision dated January 22, 2001, the Office found that the medical evidence was not sufficient to establish a causal relationship between appellant's employment exposure to PCB and the claimed arthritis and keloids conditions.

By letter dated February 6, 2001, appellant requested an oral hearing.

At a hearing, held on August 28, 2001 appellant testified that he began working for the employing establishment on November 12, 1982 and that he had no prior skin condition other than minor scarring caused by being exposed to Agent Orange in Vietnam. He further noted that he had been exposed to PCBs in late 1984 and early 1985. Appellant discussed his medical

history and noted that his existing keloids have been getting larger. His former firewatch also testified with regard to appellant's exposure to PCBs.

In a decision dated November 21, 2001, the hearing representative noted that it was accepted that appellant was exposed to PCBs while using an acetylene torch to cut up or "burn" submarine missile compartments and was exposed to "light" levels of PCB while shipboard or in the "cut ups" until 1994. The hearing representative found that appellant did not provide sufficient medical evidence to establish that he sustained a medical condition or personal injury causally related to such exposure.

By letter dated April 10, 2002, appellant requested reconsideration and submitted four statements from acquaintances contending that he never had keloids prior to his work with PCBs at the employing establishment. He further submitted material safety data regarding PCBs.

Appellant also submitted a January 9, 2002 report cosigned by Dr. Raugi, which indicated that appellant had "Keloid, likely 2/2 genetic predisposition, worsened by chloracne which could have been induced by Agent Orange and PCB exposure." In a February 3, 2002 report, Dr. Raugi indicated that there was no question that appellant had keloids and noted that appellant claimed that his chemical exposure at work adversely affected his condition. In an April 10, 2002 medical report cosigned by Dr. Raugi, it was noted that appellant continued to have keloidal scarring. In a medical report dated June 10, 2002, the physician stated:

> "The history begins with the appearance of some 'scars' on appellant's chest. These scars appeared after your service in Vietnam, during which you were exposed to Agent Orange. The scars became more numerous and larger during the 1980's while you were working for the [employing establishment] in a facility for destroying submarine hardware. You reported that you were exposed to various chemicals during this work, including PCBs.
>
> "Examination of your skin reveals many large keloids across the chest, including several that cross the breastbone or sternum and on the shoulders. In addition there is a keloid resulting from a surgical procedure on your knee.
>
> "As we discussed in detail during several visits, keloids tend to occur in genetically disposed individuals, including many of African-American ancestry, although they are certainly not limited to this group. The question is whether any inflammatory injury to your skin caused by exposure to Agent Orange during your Vietnam service or to PCBs during your employment by the [employing establishment could have caused the keloids to form (in a genetically disposed individual). The answer is yes, it could have happened that way.
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> "Although you have a few comedones (blackheads) on your skin, the presence of these lesions is not sufficient evidence to diagnose chloracne retrospectively. A fairly specific set of criteria needs to be made for me to be able to make that diagnosis and your skin findings are not sufficient to meet those criteria."

By decision dated January 22, 2004, the Office denied modification of the November 21, 2001 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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 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.[5]

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof to establish that his skin condition was causally related to his employment. The Office accepted that he was exposed to PCBs as part of his federal employment and that appellant has a skin condition. However, there is no medical opinion evidence definitively linking diagnosed skin condition to his employment exposure. Dr. Baron indicated that he was not aware of data suggesting that PCBs cause hypertrophic scarring or keloid formation, although he did not deny the possibility. Dr. Miller-Cassman noted that appellant had extensive scar/keloid formation on his chest, back and arms, but made no comment with regard to causation. Dr. Lewis also did not link appellant's skin condition to his employment, stating that it was most likely due to intrinsic

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[5] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

healing problems. Dr. McCullough noted that a dermatology referral did not indicate that appellant's skin lesions were due to his PCB exposure. Accordingly, none of these physicians linked his skin condition to his employment.

Both Dr. Sparks and Dr. Raugi did specifically address the issue of whether appellant's skin lesions were linked to his federal employment. Dr. Sparks noted that she could not rule out the possibility that appellant's hypertrophy scarring and cystic acne may be due, at least in part, to his previous exposures to chlorophenols, specifically Agent Orange in Vietnam and PCBs in his federal employment. However, she admitted that the cause and effect relationship was somewhat equivocal. Finally, Dr. Raugi stated that it was possible that appellant's skin lesions were caused by his claimed PCP exposure. Neither the opinion of Dr. Sparks nor Dr. Raugi definitively links appellant's skin condition to his federal employment. The Board has held that opinions which are speculative or equivocal in character have little probative value.[6]

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that his skin condition was causally related to factors of his federal employment. Accordingly, the Office properly denied his claim for benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 22, 2004 is hereby affirmed.

Issued: September 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[6] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).