



## **FACTUAL HISTORY**

On April 11, 2003 appellant, a 31-year-old health technician, filed a traumatic injury claim for exposure to Steris 20, a sterilant concentrate that includes the active ingredient, peracetic acid. Appellant alleged that on March 26, 2003 she inhaled Steris 20 fumes due to an equipment malfunction. She indicated that the peracetic acid did not properly drain from the tray underneath the Steris machine and when she opened the lid she inhaled the fumes.

In an April 11, 2003 statement, Dr. Hector Trevino indicated that appellant called him to the Steris room on March 26, 2003 where she was having problems breathing. He stated that evidently the Steris machine would not drain properly and peracetic acid was pooling in the tray beneath. When appellant opened the lid the fumes from the acid filled the room causing appellant to become short of breath. Dr. Trevino reported that appellant immediately left the room. Because she continued to have problems breathing, she was sent to triage for assistance.

Appellant submitted treatment records from the employee health service covering the period March 26 to September 18, 2003. She was treated for chemical exposure with complaints of shortness of breath, runny nose, a burning sensation in the chest and upper back, and a constant nagging cough. She received a differential diagnosis of reactive airways disease versus asthma.

In a report dated June 3, 2003, Dr. Mary Beth Harr advised that appellant had been under her care since May 2000 and she had never been treated or diagnosed with asthma. She also indicated that appellant did not have a prior history of asthma and there was no family history of asthma.

In treatment notes dated September 18, 2003, Dr. Pablo Molina found no evidence of occupational asthma. He reported that five pulmonary function studies yielded normal results and that appellant's symptoms were probably related to allergic rhinitis. Dr. Molina referred appellant to the allergy clinic.

On July 23, 2004 the Office requested that appellant submit additional factual and medical evidence. The Office noted that the evidence received thus far was insufficient to establish either fact of injury, performance of duty or causal relationship. Appellant was afforded approximately 30 days to submit the requested information.

On September 1, 2004 the Office received appellant's undated factual statement in response to the July 23, 2004 request. She reiterated that she inhaled Steris 20 fumes on March 26, 2003 because of a faulty sterilization machine. Appellant also stated that, while she wore gloves and eye protection at the time, she was not wearing a mask because there were no prior indications that a mask was necessary. She explained that she continued to have a hard time breathing and she developed sensitivity to a number of things such as sprays, perfumes, bleach, smoke, ammonia and paint. Appellant further stated that she was a nonsmoker and she had not previously suffered from asthma, bronchitis or any other pulmonary condition.

The Office also received duplicate copies of appellant's employee health records along with a copy of her position description. Additionally, she submitted treatment records dated

August 19, 2004, which included results of a recent pulmonary function study and noted diagnoses of allergic and nonallergic rhinitis with no evidence of asthma.

In a decision dated September 3, 2004, the Office denied appellant's claim on the basis that she failed to establish fact of injury. The Office indicated that the evidence initially submitted with the claim did not establish that the event occurred as alleged and also the medical evidence did not provide a diagnosis that could be linked to the claimed event. Additionally, the Office stated that appellant had been afforded the opportunity to submit additional evidence on July 23, 2004, but "[n]o further evidence was received."

### **LEGAL PRECEDENT**

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>2</sup> The second component is whether the employment incident caused a personal injury.<sup>3</sup> Causal relationship is a medical question that generally can be resolved only by rationalized medical opinion evidence.<sup>4</sup>

### **ANALYSIS**

On July 23, 2004 the Office requested additional factual and medical evidence in support of appellant's claimed March 26, 2003 traumatic injury. Appellant submitted treatment records dated August 19, 2004 and an undated statement, both of which the Office received on September 1, 2004. The Office erroneously stated in its September 3, 2004 decision that "No further evidence was received." The Board's jurisdiction over a case is limited to reviewing the evidence that was before the Office at the time of its final decision.<sup>5</sup> As the Board's decisions are final with regard to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>6</sup> Whether the Office receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.<sup>7</sup> As the Office failed to

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

<sup>5</sup> 20 C.F.R. § 501.2(c).

<sup>6</sup> 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>7</sup> *Willard McKennon*, 51 ECAB 145 (1999).

address all the relevant evidenced before it at the time of its September 3, 2004 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 3, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further consideration consistent with this decision.

Issued: April 19, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member