United States Department of Labor
Employees' Compensation Appeals Board

RILEY STOWERS, Appellant	)	
and	)	**Docket No. 05-1575**
	)	**Issued: November 4, 2005**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Columbia, MO, Employer	)	

Appearances:
Riley Stowers, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 13, 2005 appellant filed a timely appeal of a July 14, 2004 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant was exposed to chemotherapy agents in his employment and, if so, whether such exposure caused a medical condition.

FACTUAL HISTORY

On March 7, 2003 appellant, then a 55-year-old pharmacist, filed a claim for compensation for an occupational disease, stating that he provided chemotherapy agents to patients and that the chemotherapy hood was found to be deficient in limiting exposure to these agents, resulting in chemical exposure and possible health damaging effects.

By letters dated April 25, 2003, the Office requested further details from appellant and the employing establishment on his exposure. By decision dated May 27, 2003, the Office found the evidence insufficient to establish that the claimed exposure occurred as alleged and noted the absence of medical evidence of a diagnosis that could be connected to exposure to chemicals.

By letter dated May 29, 2003, appellant provided a list of chemicals to which he was exposed and stated that he was responsible for admixture of chemotherapy agents for patients diagnosed with cancer. He noted that his exposure to these agents was enhanced by an inadequate preparation station hood. Appellant stated that exposure occurred weekly, occasionally multiple times weekly, that the exposure periods were from one to eight hours and that the time and frequency of exposure varied widely. The performance standards for appellant's position of pharmacist state that he correctly dispenses all inpatient medications including chemotherapy prescriptions. In a May 8, 2003 letter, the director of the pharmacy stated that appellant was not exposed to harmful chemicals, that he sometimes performed computer entry tasks his entire eight-hour shift and that another employee worked with numerous chemotherapeutic agents, preparing them in a specially designed biological safety cabinet approved for this type of activity. He noted that no exposure to cytotoxic agents was considered completely safe, that this was the reason for stringent precautions designed to eliminate any potential for exposure and that "all chemotherapy compounding staff members were provided with specially designed gowns, special chemotherapy compounding gloves, face masks and a certified biological safety cabinet to minimize the risk of exposure."

Appellant requested a hearing, which was held on January 28, 2004. He testified that he was claiming chemotherapy toxicity and that the hood that was exposing individuals to chemotherapy agents they prepared was removed. Appellant submitted an October 27, 2002 email from the contract inspector stating that the biological safety cabinet being used for oncology was not NSF certified, that it had passed certification on its annual inspection to manufacturer's specifications and that it should not be used for mixing of oncology drugs in IV bags, as these bags caused a large amount of air disturbance which could cause contaminated air to be regurgitated into the room. He also submitted an April 24, 2003 letter from the Occupational Safety and Health Administration (OSHA) area director to the employing establishment noting that an inspection on November 26, 2002 disclosed a potential hazard to pharmacists while preparing chemotherapy drugs. As OSHA did not have a specific standard that applied to these hazards, it was not considered appropriate to issue a notice of unsafe and unhealthful working conditions. The area director recommended that the employing establishment take steps to eliminate or reduce its employees' exposure to the potential hazards described, including providing pharmacists with the appropriate class and type of biological safety cabinets for the preparation of chemotherapy drugs. In a May 1, 2003 letter to appellant, the OSHA area director noted that its workplace inspection on April 8, 2003 did not show a violation of OSHA standards but that a hazard alert letter was sent to the employing establishment.[1]

[1] These documents were submitted to the Office hearing representative at the January 28, 2004 hearing, but were associated with appellant's other file, a claim for neck, shoulder, arm and hand pain. The OSHA letters were discussed in the Office's July 14, 2004 decision in the chemical exposure claim.

Appellant submitted a January 27, 2004 report from Dr. Julie Deles Stanfield, an internist, stating that he had years of low level exposure to chemotherapy agents because the hood did not provide protection from inhalation and that there was no other explanation for his persistent leukopenia. In a report received March 23, 2004, Dr. Mark J. Vellek, a Board-certified internist specializing in medical oncology, stated that appellant's findings on T-cell rearrangement were consistent with T-gamma lymphocytosis, which presently did not require any treatment.

By decision dated April 27, 2004, an Office hearing representative found that the evidence was sufficient to require further development of the claim. She remanded the case for preparation of a statement of accepted facts and referral to an appropriate medical specialist for a second opinion evaluation.

In a May 14, 2004 letter, the employing establishment's human resources manager stated that appellant worked in a biological safety cabinet that was certified by the manufacturer and the contract inspector as appropriate for the functions associated with chemotherapy compounding. The cabinet was vented outside the building and designed to prevent any aerosol created by accident from escaping into the room air. All equipment was approved for the function it performed and was fully functional at all times. In a May 21, 2004 telephone call, appellant stated that he started working with chemotherapy drugs in 1997 or 1998. By letter dated May 24, 2004, the Office requested that he provide more details on his exposure and on the functioning of the hood and requested that the employing establishment provide detailed information about the operation of the hood including maintenance and inspection records. The employing establishment submitted a report of a January 20, 2004 test of the biological safety cabinet, showing it passed all tests.

In a June 22, 2004 letter, appellant stated that the preparation hood did not meet standards for hazardous materials preparation, that the employing establishment took two years to resolve the inadequacies and that harmful exposure could occur from hood regurgitation, room ventilation override and recycled contaminated particulate matter. He submitted a November 25, 2002 OSHA notice of alleged safety or health hazard that stated the laminar flow hoods used in preparation of chemotherapy for patients had been identified as not meeting current safety standards for employee safety in preparation, that the employees affected by the hoods were limited to three to four pharmacists and that the decision was made to exchange the hoods and no longer use sub-standard hoods.

By decision dated July 14, 2004, the Office found the evidence insufficient to establish that the exposure occurred as alleged, noting that it could not prepare an adequate statement of accepted facts because appellant had not provided a detailed description of how the hood was defective or of the number of hours per day or per week he was exposed.

LEGAL PRECEDENT

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the

evidence. It has the obligation to see that justice is done.[2] In particular, the Office has the responsibility to develop the evidence when such evidence is of the character normally obtained from the employing establishment or other government source.[3] In cases where working conditions are alleged as a factor causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding the working conditions.[4]

ANALYSIS

In the present case, the record contains contradictory evidence on appellant's exposure to chemotherapy agents during his preparation of such using a biological health cabinet or hood. The director of the pharmacy stated that appellant was not exposed to harmful chemicals, but did not address his allegation of a defective hood. The employing establishment's human resources manager stated that all equipment was approved for the function it performed and was fully functional at all times.

This statement is contradicted by the statement from the contract inspector that the cabinet was not NSF certified and should not be used for mixing of oncology drugs in IV bags. The statement from the OSHA area director noted that a November 26, 2002 inspection disclosed a possible hazard to pharmacists while preparing chemotherapy drugs. OSHA did not issue a notice of unsafe and unhealthful working conditions, but that was based on the absence of a specific standard applicable to the hazard to which appellant may have been exposed. OSHA recommended that the employing establishment provide pharmacists with the appropriate class and type of biological safety cabinets for the preparation of chemotherapy drugs, which strongly implies that the employing establishment was not doing so. Another OSHA notice stated that the decision was made to exchange the hoods and no longer use substandard hoods.

The Office did not attempt to reconcile this contradictory information on the safety of the hoods used by appellant. The January 20, 2004 passing inspection occurred after the hoods or cabinets were replaced and thus, does not bear on appellant's possible exposure that may have occurred between 1997 and the date of the replacement of these devices. The Office should obtain, if possible, results of testing of such devices done from 1997 to 2003. The Office should also attempt to obtain more detailed information from appellant and the employing establishment on the frequency and duration of his use of the cabinets or hoods in preparing chemotherapy agents. If any exposure is established, the Office should prepare a statement of accepted facts which it should refer to an appropriate medical specialist for a reasoned medical opinion of whether such exposure caused or aggravated a medical condition.

[2] *Isidore J. Gennino*, 35 ECAB 442 (1983).

[3] *Robert A. Redmond*, 40 ECAB 796 (1989); *Robert M. Brown*, 30 ECAB 175 (1978).

[4] *Richard Kendall*, 43 ECAB 790 (1992); *Clarence E. Brockman*, 40 ECAB 753 (1989); *John A. Snowberger*, 34 ECAB 1262 (1983).

CONCLUSION

Further development of the factual and medical evidence is needed to resolve the issues in this case.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.

Issued: November 4, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board