United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 05-536**
	)	**Issued: October 24, 2006**
DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Catherine P. Carter, Esq., for the Director

Oral Argument January 25, 2006

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 24, 2005 appellant filed a timely appeal from a November 24, 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 over the merits of this case.

ISSUES

The issues are: (1) whether appellant is entitled to compensation for additional hours during which she used annual leave from July 18, 1983 to March 14, 1986; (2) whether appellant is entitled to interest on retroactive compensation; (3) whether appellant's compensation was paid at the proper rate of pay; and (4) whether appellant's allergic reaction to cinnamic alcohol is causally related to her employment.

FACTUAL HISTORY

On September 14, 1983 appellant, then a 36-year-old editor, filed an occupational disease claim alleging that she sustained allergic contact dermatitis due to factors of her federal employment. She attributed her condition to a severe reaction to chemicals on Dylux pages or

negatives.[1] The employing establishment confirmed that appellant was exposed to chemicals from Dylux copies, negatives and preprinted carbonless forms for 8 to 12 hours per day for approximately 6 to 8 months.

In a July 19, 1983 note, Dr. Mark H. Pillor, a Board-certified family practitioner, diagnosed vaginitis. He noted that appellant called on July 28, 1983 complaining of itching of her thighs, vaginal area and arms. On August 2, 1983 Dr. Pillor saw her for itching unrelieved by medication and on August 17, 1983 he noted that her itching had improved.

In a report dated September 13, 1983, Dr. David A. Spott, a Board-certified dermatologist, diagnosed generalized allergic dermatitis of uncertain etiology. In a September 19, 1983 report, he stated that he treated appellant on August 25, 1983 for an allergic contact dermatitis or possibly a severe irritant dermatitis from Dylux. Dr. Spott noted that her condition was chronic and that she swelled with flare ups. In an April 9, 1984 report, Dr. Spott opined that it was possible that Dylux caused dermatitis and itching around appellant's genitalia by exposure during routine hygiene techniques in the restroom.

An Office medical adviser reviewed the medical evidence on June 18, 1984 and attributed appellant's vaginal itching to a pelvic inflammatory disease unrelated to chemical exposure. On September 28, 1984 the Office referred appellant to Dr. Zenona Mally, a Board-certified dermatologist, for a second opinion evaluation. In an October 3, 1984 report, Dr. Mally stated that appellant's records and history indicated that she had received treatment for allergic contact dermatitis that was well healed, with no evidence of continuation of her problem since leaving work that put her in close proximity with Dylux, negatives and preprinted carbonless paper. She noted that appellant had a history of asthma and hay fever which were usually found in persons who were atopic and very frequently sensitive to allergens encountered in their work. There was data in medical literature that mentioned carbonless typing paper causing skin problems. Dr. Mally concluded that appellant should stay away from her job and recommended patch testing with the offending chemicals.

In a December 28, 1984 report, Dr. Pillor attributed appellant's severe pruritic condition and contact dermatitis to the Dylux copies, negatives and preprinted carbonless paper. In a January 2, 1985 report, Dr. Elizabeth Ross, a Board-certified psychiatrist, stated that she first saw appellant in August 1982 for symptoms of diffuse generalized itching, and that a pelvic examination showed diffuse erythema believed to be related to her generalized dermatologic reaction. In an April 3, 1985 report, Dr. Mally stated that she concurred with Drs. Spott and Pillor that appellant's Dylux exposure was responsible for her genital dermatitis and vaginal itch.

On February 22, 1985 the Office accepted appellant's contact dermatitis as related to her work with Dylux copies. On May 7, 1985 the Office advised her that it had accepted that her "vaginitis condition was causally related to the previously approved condition of allergic contact dermatitis."

In an August 22, 1985 report, Dr. Pillor stated that appellant had itching all over her body, especially in her groin area, and that she was next seen on September 16, 1985 with her

[1] Dylux is a trademark registered by DuPont for an instant image proofing system for film negatives.

itching and rash having completely subsided during the two weeks she was off work. He diagnosed atopic dermatitis *versus* contact dermatitis from work activities. In a form report dated August 22, 1985, Dr. Pillor attributed appellant's dermatitis to her skin contact with Dylux negatives and carbonless paper, and recommended that she avoid contact with these items.

In a November 5, 1985 report, Dr. Pillor stated that appellant told him she made a compete recovery from her itching, rash, dry throat, cough and swelling when she discontinued work for the past several weeks. He recommended that she return to work for a challenge test to determine if there was some substance she was reacting to, and that she discontinue work in that area if she again reacted with a severe allergy. On November 14, 1985 Dr. Pillor stated that appellant had recurrent itching and swelling after three days back at work and diagnosed environmental allergies. He recommended that she continue working the next several days with close observation of any further or increased itching or swelling and stated, "If symptoms increase she will be advised to seek a work activity in an office far removed from Dylux contamination." In a December 4, 1985 report, Dr. Pillor noted recurring itching by appellant's history after she returned to work three days earlier and rash on examination. He recommended she "seek employment in an area far removed from this environment which apparently is causing the allergic phenomenon. These recurring bouts of skin rash and itching have consistently recurred and disappeared as she leaves work for a week or two and then returns to the work environment which points to a causal relationship to the work environmental areas."

On January 16, 1986 Dr. Pillor noted that appellant had "again discontinued her work activity at the [employing establishment] when severe, recurring itching and rash happened. Appellant has been on Prednisone to suppress allergic reaction and is now generally free of itching or rash…." Dr. Pillor advised appellant to avoid all work from January 10 to 15, 1986 and on January 16, 1986 he advised her to avoid all work indefinitely. In a report dated February 5, 1986, he noted a complete relief of itching and skin rash since she began using sick leave and recommended a transfer to another department where she would not be exposed to dyes. In a March 5, 1986 report, Dr. Pillor noted that all appellant's symptoms were absent after an extended period away from work, and that her skin was clear on examination. He concluded:

> "In view of her repeated, severe allergic findings and reaction to her return on three separate occasions to her work conditions, one must conclude that she is totally disabled by this environment. It is, therefore, my opinion that she retire from this type of occupation as totally disabled for this kind of situational environment. She may seek retraining for other activity but returning to the same type of environmental work would inevitably cause the symptoms to return with even more severe conditions than she has had in the past."

Appellant lost intermittent time from work beginning July 19, 1983. She stopped work on January 10, 1986 and used a combination of annual and sick leave until March 14, 1986.

In a worksheet dated February 21, 1986, the Office determined that appellant was entitled to 78 hours of leave buy back for intermittent dates from July 19, 1983 to January 9, 1984 at an effective pay rate date of July 15, 1983, the date of injury. The Office further found that appellant was entitled to leave buy back from October 23 to November 11, 1985 at an effective recurrent pay rate date of October 13, 1985. Effective March 20, 1986 the Office began payment

of compensation for temporary total disability. The Office paid her compensation on the periodic rolls based on the recurrent pay rate date of October 13, 1985.

The record indicates that appellant received a step increase from a GS-9, Step 5 to a GS-9, Step 6 effective August 3, 1986.[2]

Appellant returned to work as a GS-5 clerk on March 16, 1987. On July 16, 1987 she filed a recurrence of disability on March 17, 1987 due to her accepted employment injury, alleging that she had experienced itching and rashes after resuming work. She stopped work on March 20, 1987.

In a decision dated October 12, 1987, the Office reduced appellant's compensation after finding that her actual earnings as a clerk effective March 16, 1987 fairly and reasonably represented her wage-earning capacity.

By decision dated October 13, 1987, the Office found that appellant did not establish a recurrence of disability. Appellant appealed to the Board. On April 19, 1988 the Board granted the Director's motion to dismiss the case in order to develop the evidence further.[3]

By decision dated August 30, 1988, the Office denied modification of its October 13, 1987 decision. In a decision dated February 13, 1989, the Office again denied modification. However, by decision dated June 28, 1989 the Office vacated the October 13, 1987 decision and reinstated compensation retroactive to March 20, 1987. The Office placed appellant on the periodic rolls effective August 27, 1989 with an effective pay rate date of October 13, 1985.

On May 28, 1994 appellant filed a claim for compensation (Form CA-7) requesting compensation for intermittent dates from July 19, 1983 through February 14, 1986. The employing establishment noted that she was claiming the repurchase of 621 hours of annual leave used between July 15, 1983 and February 14, 1986.

In a decision dated February 22, 1996, the Office found that appellant was entitled to 242 hours of compensation between July 18, 1983 and March 14, 1986. On February 28, 1996 appellant requested reconsideration. By decision dated July 7, 1996, the Office modified the February 19, 1996 decision and found that appellant was entitled to two additional hours of compensation for January 2, 1985.

By letter dated March 9, 1996, appellant contended that if not for her employment injury she would be a GS-12. In a letter dated March 21, 1996, she requested leave buy back based on a pay rate as a GS-9, Step 6.

The employing establishment notified the Office on December 16, 1996 that it no longer used the chemicals in Dylux paper. On March 21, 1997 the Office referred appellant to Dr. Angel Frank Triana, a Board-certified dermatologist, for a second opinion examination.

[2] The record contains other SF-50s in the file indicating that the increase to a GS-9, Step 6 occurred on either March 16, 1987 or January 4, 1987.

[3] Order Dismissing Appeal, Docket No. 88-561 (issued April 19, 1988).

In a report dated April 9, 1997, Dr. Triana diagnosed persistent allergic contact dermatitis. He stated, "Although [appellant] does have an atopic background, she has been clearly documented to have severe allergic reactions to cinnamic alcohols and even life threatening anaphylactic reactions which are clearly still disabling." Dr. Triana found that she was unable to return to her usual employment but may be able to work at home. In a supplemental report dated September 10, 1997, he diagnosed airborne contact dermatitis and noted that she had "positive patch tests to cinnamic alcohol which may be related to perfumes." Dr. Triana stated:

> "This particular problem is not directly related to paper products that she may be exposed to, but I think at this time, it is probably the most significant factor which prevents her return to the workplace. As to whether or not this allergy was acquired in the workplace or at home, I do not think there is any way to answer this question."

Dr. Triana opined that appellant continued to experience symptoms due to her cinnamic alcohol allergy which cross reacted with perfumes and could be present wherever fragrances were in use. He found that she was unable to return to work due to her airborne contact dermatitis absent complete isolation from coworkers "as there will always be a possibility that she will be exposed to perfume or fragrance type products present on other workers…."

On September 11, 1997 the Office referred appellant to Dr. Michael Kletz, a Board-certified allergist, for a second opinion evaluation. In a report dated September 25, 1997, Dr. Kletz diagnosed vasomotor rhinitis due to appellant's employment. He noted that appellant reported contact dermatitis but this did not appear to be due to the employment as she was no longer exposed to Dylux or carbonless paper. Dr. Kletz stated, "I do not feel that her current condition is a result of her working in 1983, although it is impossible to know for sure and I do not feel that she is disabled from work if she remains unexposed to strong scents and chemicals as she would at home."

In a decision dated February 11, 1999, the Office denied appellant's claim for compensation on the grounds that she would have been promoted but for her employment-related disability. The Office noted that she worked as a GS-9 editor at the time of her injury. Appellant subsequently returned to work as a GS-5 secretary on March 16, 1987 but sustained a recurrence of disability within a few days. The Office indicated that it was paying appellant's compensation for total disability based on her GS-9 salary including all cost-of-living adjustments. The Office noted that the provisions of the Federal Employees' Compensation Act[4] relevant to minors or those in a learner's capacity were not applicable to appellant.

Appellant requested a review of the written record. In a decision dated August 5, 1999, a hearing representative affirmed the February 11, 1999 decision. The hearing representative determined that appellant was paid at the proper pay rate and was not entitled to interest on retroactive payments. She further informed her that second opinion evaluations were necessary to determine her current condition and disability and its relationship to her employment.

[4] 5 U.S.C. §§ 8101-8193.

In a report dated October 26, 1999, Dr. Triana diagnosed airborne contact dermatitis, possible due to fragrance and possible chemically-induced asthma due to cinnamates. He stated, "… [H]er most severe condition, which is her respiratory condition, is unchanged from before and is probably a chemically-induced asthma related to cinnamates and other fragrance-type products and as such, she cannot go back to the workplace because exposure to these products in the workplace would cause severe respiratory reactions." Dr. Triana recommended an evaluation by an allergist to determine the extent of her respiratory disability.

By letter dated January 31, 2000, the Office referred appellant to Dr. Michael D. Darden, a Board-certified pediatrician, for an impartial medical examination. In a report dated May 24, 2000, Dr. Darden found that appellant had no further residuals due to her employment injury and stated, "Her delayed sensitivity to cinnamic alcohol (as determined by patch skin testing) could have been stimulated by exposure to the general public and not necessarily to her workplace as an editor. Certainly her symptoms are not active presently." Dr. Darden found that appellant's current problem was her delayed hypersensitivity to cinnamic alcohol delayed hypersensitivity and related:

> "Since this hypersensitivity is only produced upon exposure, the avoidance of such agents would reverse her symptoms. This is probably why her present condition is stable since she has been out of the workplace. Reversibility then does not imply permanent damage, disease, or disability. [Appellant] is certainly not permanently disabled. Upon reexposure to her editors job environment or to any public environment where perfumes are ambient, her symptoms may recur. I do [not] see where a clerical job would pose a greater danger than any public place."

Dr. Darden found that appellant could work if provided an isolated room with air filters with weekly pulmonary function testing and skin evaluations for six weeks.

By letter dated December 13, 2000, appellant requested reconsideration. In a decision dated May 4, 2001, the Office denied reconsideration on the grounds that her request was untimely filed and did not establish clear evidence of error.

Appellant appealed to the Board. On November 29, 2001 the Board granted the Director's motion to dismiss the appeal to incorporate material submitted by appellant subsequent to the filing of her appeal into the case record, to be followed by a decision to protect her appeal rights.[5]

In a decision dated January 8, 2002, the Office denied appellant's claim for an additional 377 hours of leave from July 18, 1983 to March 5, 1986. The Office further found the Act contained no provision for either interest on back pay for 1987 to 1989 or an increased pay rate based on a possible promotion. The Office determined that the medical evidence failed to establish that her cinnamic alcohol allergy was employment related.

[5] Order Dismissing Appeal, Docket No. 01-1710 (issued November 29, 2001).

Appellant requested an oral hearing on January 23, 2002. She submitted a report dated March 21, 2002 from Dr. Triana, who noted that she continued to have rashes periodically which appeared "to be precipitated by exposure to fragrances." He opined:

> "It is clear that by history she does develop significant skin rashes and respiratory distress with shortness of breath when she is exposed to fragrances in the workplace, and thus far the only way she has been able to avoid developing these symptoms has been to stay away from work or public place[s] where people are using fragrances. She has not had any exposure to carbonless copy paper since leaving the workplace. [Appellant] has developed symptoms in response to this exposure as well, and it would be very likely that she would have the same symptoms if she went back to work. Thus it appears that her skin findings are related to work exposure."

Dr. Triana opined that her respiratory condition was consistent with allergic asthma due to fragrance but that a pulmonary physician would be better able to make the determination.

A hearing was held on June 17, 2002. By decision dated September 5, 2002, the hearing representative affirmed the Office's denial of additional compensation for leave repurchase from July 1983 through March 1986 after finding that it had paid a greater amount to her than supported by the record. The hearing representative listed the dates on which appellant sought medical treatment and found that she established disability for all dates during that period November 19, 1985 onwards. She further found that appellant was not entitled to interest on back pay or an increased pay rate. The hearing representative determined that the opinion of Dr. Darden, the impartial medical specialist, represented the weight of the medical evidence and established that appellant's cinnamic alcohol sensitivity was not employment related.

Appellant appealed to the Board. By order dated June 4, 2004, in Docket No. 03-318, the Board remanded the case for reconstruction to be followed by an appropriate decision preserving appellant's appeal rights after finding that the record submitted on appeal was incomplete.

In a decision dated November 24, 2004, the Office reissued its September 5, 2002 decision.

LEGAL PRECEDENT -- ISSUE 1

The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[6]

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[7] Findings on examination are generally

[6] 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

[7] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[8] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[9]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[11] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained employment-related contact dermatitis and vaginitis. She stopped work on January 10, 1986 and began receiving compensation for total disability effective March 20, 1986. On May 28, 1994 appellant filed a claim requesting compensation for intermittent dates of disability for which she used annual leave from July 19, 1983 through February 14, 1986. The Office found that she was entitled to no more than 242 hours of compensation for that period.

The record indicates that appellant received medical treatment on July 19, August 2, 17 and 25 and September 13, 1983, April 9, October 3 and December 28, 1984, January 2, April 3, August 22, September 22, November 5 and December 4, 2005 and January 16, 1986. She requested annual leave for two hours on January 2, 1985 and eight hours on December 4, 1985 and the Office found that she was entitled to compensation for those hours.

Regarding her claim for disability for intermittent dates from July 19, 1983 through February 14, 1986, the hearing representative found that she had established disability beginning

[8] *Id*.

[9] *Id*.

[10] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

November 19, 1985. In order to establish disability for any time claimed, appellant must submit rationalized medical evidence demonstrating that she was disabled from work due to her accepted employment injury.[13]

In a report dated July 19, 1983, Dr. Pillor diagnosed vaginitis. Dr. Spott, in reports dated September 13 and 19, 1983 and April 9, 1984, treated appellant for allergic dermatitis. Neither physician, however, found that she was disabled from employment and thus these reports are of little probative value. The Board does not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[14]

In a report dated October 8, 1984, Dr. Mally recommended patch testing and found that appellant should remain away from her job. She did not however, provide any specific dates of disability rationale for her conclusion and thus her opinion is of little probative value.[15]

In a report dated December 28, 1984, Dr. Pillor diagnosed contact dermatitis due to exposure to Dylux copies and carbonless paper. In a January 2, 1985 report, Dr. Ross diagnosed erythema due to a dermatologic reaction. Dr. Mally, in an April 3, 1985 report, attributed appellant's Dylux exposure to her vaginal dermatitis. Again, as none of the physicians addressed the relevant issue of whether appellant was disabled from employment, these reports are insufficient to meet her burden of proof.

In a report dated August 22, 1985, Dr. Pillor diagnosed atopic or contact dermatitis and recommended that appellant avoid contact with Dylux negatives and carbonless paper. She did not, however, claim any annual leave for a period contemporaneous to August 22, 1985. In a report dated November 5, 1985, Dr. Pillor recommended that appellant return to work to determine if she was reacting to a substance at her work location.

Appellant has not submitted sufficient probative medical evidence establishing entitlement to leave buy back for annual leave used from July 19, 1983 through February 14, 1986 in excess of the 244 hours of compensation found by the Office.

LEGAL PRECEDENT -- ISSUE 2

In *Abraham Hoffenberg*,[16] the Board addressed the question of entitlement to interest on compensation under the Act, noting: "Payments under the Act are in the nature of grants or gratuities and are limited to the amounts and under the circumstances specified in the Act." The Board noted that, "although interest is payable under the workers' compensation laws of several

[13] *Donald E. Ewals*, 51 ECAB 428 (2000).

[14] *See Fereidoon Kharabi*, *supra* note 7.

[15] *Charles W. Downey*, 54 ECAB 421 (2003).

[16] 17 ECAB 527 (1966).

states, the Act deals with payments of compensation by the sovereign to its employees." The Board has since reiterated that interest is not payable on an award of compensation.[17]

The Board held in *Robert S. Winchester*,[18] that there is no provision in the Act for payment of interest on awards of compensation. The Act contains no provision which either in specific terms or by way of implication would authorize the payment of interest to a beneficiary when awards of compensation are made retroactively.[19]

The terms of the Act are specific as to the method and amount of payment of compensation. Neither the Office nor the Board has the authority to enlarge the terms of the Act, nor to make an award of benefits under any terms other than those specified in the statute.[20] Unless a claimant's contentions are in keeping with the scope or intent of the Act, *i.e.*, unless the statute authorizes payment of the kind demanded by appellant, the Office's denial of such demands must be affirmed.[21]

ANALYSIS -- ISSUE 2

Appellant contended that she was owed interest on retroactive payments from the Office. The Act, however, contains no provision for the payment of interest on retroactive payments. The Board specifically addressed this issue in similar cases and held that "interest is not payable on an award of compensation."[22] In cases requesting interest on various types of compensation payments, including retroactive payments, the Board has determined that "the Act contains no provision which either in specific terms or by way of implication would authorize the payment of interest when awards of compensation are made retroactively."[23] The terms of the Act are specific as to the method and amount of payment of compensation. Neither the Office nor the Board has the authority to enlarge the terms of the Act, nor to make an award of benefits under any terms other than those specified in the statute.[24] Since the Act does not provide for payment of interest, the Board finds that the Office properly denied appellant's request.

[17] *Robert S. Winchester*, 45 ECAB 135 (1993); *Ralph W. Moody*, 42 ECAB 364 (1991); *Steven M. Gourley (Louise E. Gourley)*, 39 ECAB 413 (1988); *Edith C. Alter (David E. Alter, III)*, 32 ECAB 995 (1981).

[18] *Robert S. Winchester*, *supra* note 17.

[19] *Id*.

[20] *Raymond C. Beyer*, 50 ECAB 164 (1998); *Robert S. Winchester*, *supra* note 17.

[21] *Id*.

[22] *Robert S. Winchester*, *supra* note 17.

[23] *Id*.

[24] *Raymond C. Beyer*, 50 ECAB 164 (1998); *Robert S. Winchester*, *supra* note 17.

LEGAL PRECEDENT -- ISSUE 3

Section 8105(a) of the Act provides: If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as [her] basic compensation for total disability.[25] Section 8101(4) of the Act defines monthly pay for purposes of computing compensation benefits as follows: "[T]he monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater…."[26]

In *Johnny A. Muro*,[27] the employee sustained a recurrence of disability more than six months after he resumed regular, full-time employment with the employer and the Board found that under 5 U.S.C. § 8101(4) he was entitled to have his compensation increased based on his pay at the time of this first recurrence of disability. In *Muro*, the Board also found that, if an employee had one recurrence of disability which meets the requirements of 5 U.S.C. § 8101(4), any subsequent recurrence of disability would also meet such requirements and would entitle the employee to a new recurrence pay rate.[28]

ANALYSIS -- ISSUE 3

Appellant lost intermittent time from work beginning July 19, 1983. She stopped work on January 10, 1986 and used sick leave and annual leave until March 14, 1986. The Office placed her on the periodic rolls on March 20, 1986 and found that she was entitled to a recurrence pay rate date of October 13, 1985. Appellant returned to work on March 16, 1987 as a clerk to accommodate her work restrictions. She stopped work on March 20, 1987 and filed a notice of recurrence of disability. The Office reinstated compensation based on an effective pay rate date of October 13, 1985.

Section 8101(4) of the Act defines "monthly pay" for purposes of computing compensation benefits as the monthly pay at the time of injury, the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time federal employment, whichever is greater.[29] In this case, the Office accepted that appellant was entitled to a recurrent pay rate date of October 13, 1985. The Board has held that if an employee has one recurrence of total disability which meets the requirements of 5 U.S.C. § 8101(4), any subsequent recurrence of total disability would also meet such requirements and would entitle

[25] 5 U.S.C. § 8105(a).

[26] 5 U.S.C. § 8101(4).

[27] 19 ECAB 104, 106-06 (1967).

[28] *See id.*; *see also Jon L. Hoagland*, 57 ECAB ___ (Docket No. 05-17791, issued June 20, 2006).

[29] 5 U.S.C. § 8101(4); *Carl R. Benavidez*, 56 ECAB ___ (Docket No. 04-2264, issued June 20, 2005).

the employee to a new recurrence pay rate.[30] Consequently, appellant would also be entitled to receive greater compensation based on her rate of pay at the time of her subsequent recurrence of disability on March 20, 1987. The case, therefore, will be remanded to the Office to recalculate appellant's pay rate. After such further development as deemed necessary, the Office should issue an appropriate decision.

On appeal, appellant argued that she would have been promoted to the GS-12 level if not for her employment injury. The Board has held, however, that the probability that an employee, if not for her injury-related condition, might have had greater earnings is not proof of a loss of wage-earning capacity and does not afford a basis for payment of compensation under the Act.[31]

LEGAL PRECEDENT -- ISSUE 4

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[32] 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.[33] The opinion of the physician must be based on a complete factual and medical background of the claimant,[34] must be one of reasonable medical certainty[35] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[36]

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter.[37] While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[38] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[39]

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[30] *See supra* note 28.

[31] *Dempsey Jackson, Jr.*, 40 ECAB 942 (1989).

[32] *John J. Montoya*, 54 ECAB 306 (2003).

[33] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[34] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[35] *John W. Montoya*, *supra* note 32.

[36] *Judy C. Rogers*, 54 ECAB 693 (2003).

[37] *Vanessa Young*, 55 ECAB ___ (Docket No. 04-562, issued June 22, 2004).

[38] *Richard E. Simpson*, 55 ECAB ___ (Docket No. 04-14, issued May 3, 2004).

[39] *Melvin James*, 55 ECAB ___ (Docket No. 03-2140, issued March 25, 2004).

ANALYSIS -- ISSUE 4

The Office determined that a conflict in medical evidence existed between Dr. Triana, appellant's attending physician, and Dr. Kletz, an Office referral physician, on the issue of whether appellant sustained an allergy to cinnamic alcohol due to her federal employment.[40] The Office referred appellant to Dr. Darden for resolution of the conflict in evidence. The Board notes, however, that the record contained no conflict at the time of the Office's referral. In a report dated April 9, 1997, Dr. Triana diagnosed allergic contact dermatitis and found that appellant was unable to resume her usual employment due to her severe allergic reaction to cinnamic alcohol. In a report dated September 10, 1997, Dr. Triana opined that it was not possible to state whether appellant developed her allergy to cinnamic alcohol at work or at home. Dr. Kletz, in a report dated September 25, 1997, diagnosed vasomotor rhinitis due to employment and contact dermatitis that did not appear employment related due to her lack of current exposure to Dylux or carbonless paper. He stated, "I do not feel that her current condition is a result of her working in 1983, although it is impossible to know for sure…." Dr. Kletz opined that appellant could return to work if she was not exposed to perfumes or chemicals. As neither physician reached a definite conclusion regarding the cause of appellant's sensitivity to cinnamic alcohol, the record does not contain a conflict in medical opinion between the physicians on this issue.

In a report dated May 24, 2000, Dr. Darden found that appellant had no residuals of her employment injury. He found that her sensitivity to cinnamic alcohol "could have been stimulated by exposure to the general public and not necessarily to her workplace as an editor." He opined that she could work in an isolated room with an air filter. Dr. Darden's determination that appellant's cinnamic alcohol sensitivity "could have been" due to general exposure and "not necessarily" to factors of her federal employment is speculative in nature and thus of little probative value.[41]

In a report dated March 21, 2002, Dr. Triana noted that appellant experienced rashes and respiratory distress when exposed to fragrances. He indicated that it appeared that her skin condition was "related to work exposure. Dr. Triana opined that an allergist could better determine the cause of her respiratory distress.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter.[42] While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[43] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[44] In this case, the record contains

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[40] Dr. Triana was initially a referral physician but subsequently became appellant's attending physician.

[41] *Lois E. Culver (Claire L. Culver)*, 53 ECAB 412 (2002).

[42] *Vanessa Young*, *supra* note 37.

[43] *Richard E. Simpson*, *supra* note 38.

[44] *Melvin James*, *supra* note 39.

no reasoned opinion on whether appellant sustained a sensitivity to cinnamic alcohol due to factors of her federal employment. As the Office referred appellant to Drs. Kletz and Darden for an opinion on the issue, it has the responsibility to obtain a report which resolves the issue presented.[45] On remand, the Office should secure a medical report containing a reasoned medical opinion on the relevant issue of whether appellant's allergy to cinnamic alcohol is causally related to her employment. After such further development as deemed necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that appellant is not entitled to compensation for additional hours during which she used annual leave from July 18, 1983 to March 14, 1986 or interest on retroactive compensation. The Board further finds that the case is not in posture for decision on the issue of appellant's pay rate or whether her allergic reaction to cinnamic alcohol is causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 24, 2004 is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 24, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[45] *Robert Kirby*, 51 ECAB 474 (2000).