



berms. Appellant concluded that the pressure he was under as a site manager resulted in high blood pressure and “working with other hazardous waste destroyed the remainder of my kidneys.”

In a report dated October 2, 1997, Dr. John Endicott noted that appellant had been working with hazardous materials since 1993. He indicated that he underwent rapidly progressing renal failure, with a biopsy revealing IgA nephropathy. Dr. Endicott stated that the etiology of IgA nephropathy was ill-defined and “there [are] numerous reports of renal failure due [to] heavy metals and other potential exposures, including solvents and silica, but so far no hard evidence that there is correlation between IgA nephropathy and exposure occupationally.”

In a report dated August 17, 1999, Dr. David Ono, a Board-certified internist, stated that appellant was exposed to an insecticide in July 1997 and was admitted in August 1997 with advanced renal failure. Dr. Ono stated that this rapid renal failure was unusual in IgA nephropathy and “there may have been a contributing role” from the insecticide exposure.

In a report dated August 18, 1999, Dr. Josephine Waite stated that appellant was first noted to have elevated blood pressure in March 1997. She notes that he was exposed to insecticide in July 1997 and was under stress at work. Dr. Waite stated that it may have been the stress at work, especially around July 1997, that aggravated his blood pressure elevation.

By decision dated December 9, 1999, the Office denied appellant’s claim for compensation. The Office found that the medical evidence was insufficient to establish causal relationship between exposure to insecticides and a diagnosed condition.

Appellant requested a hearing before an Office hearing representative, which was held on April 26, 2000. He indicated that his job required him to classify, process and prepare hazardous waste for shipment.

By decision dated July 24, 2000, the hearing representative affirmed the December 9, 1999 decision. The hearing representative found that appellant had not submitted rationalized medical evidence in support of his claim.

Appellant requested reconsideration by letter dated July 14, 2001. The Office prepared a brief statement of accepted facts and referred appellant for a second opinion examination. By decision dated October 17, 2001, it denied modification, indicating that he did not attend the scheduled examination. Appellant appeared for the second opinion examination on December 6, 2001.

The second opinion physician, Dr. Ajit Arora, a Board certified internist, provided a December 20, 2001 report with a history, results on examination and review of medical evidence. He opined that appellant’s renal disease was not casually related to his federal employment. Dr. Arora noted that the review of the medical literature indicated that heavy metals and a variety of solvents, may precipitate renal failure but the pathologic insult occurs in the form of acute tubular necrosis. He reported that the medical evidence in this case did not indicate any tubular lesions as was not consistent with chemical nephrotoxic insult. With respect to insecticides, Dr. Arora noted that renal disease had started before the July 1997 exposure and

the exposure was limited. He concluded that it was highly improbable that the exposure was clinically significant.

By decision dated November 13, 2002, the Office denied modification of its prior decisions. It found that the weight of the evidence was represented by Dr. Arora.

Appellant requested reconsideration and submitted a November 3, 2003 report from Dr. James Dahlgren, a Board-certified internist, who provided an occupational history and a review of medical records and medical literature on kidney conditions and chemical exposure. He stated that the neurotoxic effects of organic solvents, petroleum and hydrocarbons were well known and that appellant had sustained significant damage to his body through his chemical exposure, as exhibited by his development of glomerulonephritis with progressive renal failure and kidney transplant.

By decision dated January 27, 2004, the Office reviewed the case on its merits and denied modification. The Office noted that Dr. Dahlgren had not examined appellant and found that his report was speculative.

In a report dated May 6, 2004, Dr. Dahlgren provided a history and results on examination and diagnostic testing. He opined that exposure to organic solvents and hydrocarbons had caused or aggravated a number of health problems, including renal failure with IgA nephropathy, respiratory tract irritation with impaired pulmonary function and nervous system problems including headaches, fatigue, lack of concentration and decreased short term memory.

The Office reviewed the merits of the claim and denied modification by decision dated September 17, 2004. In a report dated November 30, 2004, Dr. Dahlgren reiterated his opinion on causal relationship with employment. He stated that he disagreed with Dr. Arora's opinion that appellant's kidney disease was not caused by environmental exposure. Dr. Dahlgren reviewed the medical literature and opined that Dr. Arora's statement that tubulointerstitial kidney disease was the only kidney problem attributable to chemical exposure was incorrect. He concluded that appellant had a kidney condition that is characteristic of hydrocarbon exposure.

In a decision dated December 9, 2005, the Office reviewed the case on its merits and denied modification. The Office found that the weight of the evidence rested with Dr. Arora.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup>

The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.<sup>4</sup> The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>5</sup>

### ANALYSIS

In the present case, appellant's initial claim discussed both hypertension as well as a kidney condition. He noted stress from personnel problems and his job as a supervisor at the job site. To the extent that appellant was claiming that stress from his job contributed to hypertension, he would have to clearly identify the alleged job factors so that a determination on compensability could be made.<sup>6</sup> In addition, there must be medical evidence on causal relationship between the diagnosed condition and compensable work factors. Appellant did not provide any detail with regard to personnel problems or other sources of stress at work. Dr. Waite appeared to relate hypertension to mental stress as a result of insecticide exposure, without providing a reasoned medical opinion. On the issue of hypertension, the Board finds that the evidence is insufficient to establish the claim.

On the issue of a kidney condition causally related to chemical exposure, however, the medical record is in conflict and must be resolved by referral to a referee examiner. Both Dr. Arora and Dr. Dahlgren provided detailed medical reports with conflicting opinions on whether appellant's renal disease was causally related to his employment. Dr. Arora found no causal relationship between his kidney condition and his federal employment, while Dr. Dahlgren opined that exposure to chemicals during federal exposure contributed to a kidney condition, as well as other conditions. To resolve the conflict, the Office should prepare a detailed statement of accepted facts that clearly explains the nature and extent of employment exposure to chemicals and other substances. The case should then be referred to a referee examiner for a reasoned medical opinion as to whether appellant sustained an injury as a result of

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<sup>3</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>4</sup> 5 U.S.C. § 8123.

<sup>5</sup> 20 C.F.R. § 10.321 (1999).

<sup>6</sup> *See, e.g., Jamel A. White*, 54 ECAB 224, 227 (2002).

such exposure. After such further development as the Office deems necessary, it should issue an appropriate decision.

**CONCLUSION**

The case will be remanded to the Office for resolution of a conflict in the medical evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 9, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 21, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board