

**United States Department of Labor
Employees' Compensation Appeals Board**

E.S., Appellant)
and) Docket No. 07-1118
DEPARTMENT OF THE NAVY, NAVAL) Issued: November 1, 2007
FACILITY ENGINEERING COMMAND,)
Jacksonville, FL, Employer)

)

Appearances:
Appellant, 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 March 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 13, 2007 decision denying his request for a review on the written record as untimely filed and a November 28, 2006 merit decision denying his claim for Parkinson's disease. 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 met his burden of proof in establishing that he sustained an occupational disease causally related to factors of his employment; and (2) whether the Office properly denied a request for a review of the written record pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On September 27, 2006 appellant, a 57-year-old maintenance supervisor, filed an occupational disease claim. He alleged manganese-induced Parkinson's disease caused or aggravated by his federal employment. Appellant worked in welder positions from 1981 to 1998 mostly in confined spaces such as mechanical rooms, utility rooms and boiler rooms. He first realized that he was getting symptoms such as right hand tremor, drooling, anxiety, depression, headaches and cold sweats, in 1998 and 1999. Appellant advised that he was not aware of the type of disease he had until 2000, when he saw a neurologist. Since 2003, he has been employed as a supervisor. Appellant attributed his condition to exposure to manganese fumes.

In a letter dated October 17, 2006, the Office asked appellant to provide additional factual and medical information, including a comprehensive medical report from his treating physician which contained an explanation of how such exposure or incidents in his federal employment contributed to his condition.

Appellant submitted a statement describing his welding duties and exposure to heavy concentrations of welding fumes two to three times a week, four to six hours a day from 1981 to 1998. He also submitted a May 23, 2006 tremor test of his arms.

In a January 9, 2006 discharge summary, Dr. Paul A. Nausieda, a Board-certified neurologist, noted that appellant was hospitalized for a trial of anti-Parkinson medications to treat his symptoms related to chronic manganese exposure. He noted that appellant had a history of extensive welding and exposure to fumes since 1974. In 1998 a tremor developed in appellant's right arm, which gradually worsened and caused other symptoms to evolve. Dr. Nausieda presented his examination findings and provided an impression of Parkinsonian features and neuropsychological abnormalities. In a February 22, 2006 report, he noted appellant's occupational history of extensive fume exposure due to internal pipe welding. Dr. Nausieda compared the examination findings of December 16, 2005 to an earlier 2002 examination and noted a slow progression of the disease as appellant's left arm and head were now involved. A December 16, 2005 accelerometry showed a high-frequency tremor of about seven hertz in the right hand versus the typical four to five hertz tremor seen in untreated idiopathic Parkinson's disease with no discrete frequency distribution noted in the left hand. Dr. Nausieda noted that laboratory studies during appellant's January 9, 2006 hospitalization showed elevated serum manganese levels on two separate determinations, in the absence of other laboratory abnormalities. He concluded that appellant remained Parkinsonian, with mild right-sided bradykinesia with a resting, postural and action tremor component. Dr. Nausieda stated that his examination showed clear signs of Parkinsonism with an atypical action tremor and bilateral distribution with a limited and unsustained response to medication. He opined that appellant's symptoms were consistent with manganese-induced Parkinsonism, noting that appellant's neuropsychiatric, autonomic and motor complaints were consistent with this disorder. Dr. Nausieda indicated that examination findings suggested a slowly progressive disease process. Copies of treatment notes dated December 10, 2005 to May 12, 2006 were provided.

In a January 31, 2006 report, Dr. Jorge E. Mendizabal, a Board-certified neurologist, noted that appellant worked as a welder for 20 years until 1999. Appellant presented with a five-year history of tremor and rigidity, predominantly involving his right side. Dr. Mendizabal noted

that appellant had a history of welding and exposure to manganese fumes. He stated that at some point appellant's blood manganese levels were obtained and were elevated. Dr. Mendizabal reported examination findings and opined that appellant had Parkinsonism with a possible manganese fume exposure. He explained that, due to a lack of access to appellant's records, he had no objective evidence of whether a magnetic resonance imaging (MRI) scan showed basal ganglia abnormalities on T1 sequence or whether appellant's manganese levels were elevated to a toxic range.

In a September 28, 2006 statement, Donald Taylor, production division director, agreed with appellant's statement of work activities and his exposure to manganese during welding work performed. In a report conducted by Materials Analysis Services, Inc., it was found that appellant was exposed to significant amounts of manganese from the welding jobs he performed.

By decision dated November 28, 2006, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his Parkinson's condition was caused or aggravated by his federal employment.

On December 15, 2006 the Office received additional material from the employing establishment.¹ On January 5, 2007 appellant requested a review of the written record. He advised that he did make an earlier request as he had been out of town.

By decision dated February 13, 2007, the Office denied appellant's request for a review of the written record, finding that it was not made within 30 days of the November 28, 2006 decision. The Branch of Hearings and Review further denied the request finding that the issue could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while 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 and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

¹ This included occupational surveillance and certification physical examinations dated March 12, 1998 to August 4, 2004; Occupational Safety and Health Administration Respirator medical evaluation questionnaires dated February 6, 2001 to November 25, 2002; navy air sampling result summaries for welding/cutting/brazing operations performed by welding shop employees at the employing establishment; and an Associated Press article of June 27, 2006.

² 5 U.S.C. §§ 8101-8193.

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ See *Ellen L. Noble*, 55 ECAB 530 (2004).

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;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing 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.⁷

The medical evidence required to establish causal relationship generally 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹²

ANALYSIS -- ISSUE 1

The record supports that appellant was exposed to manganese during his work as a welder. The Board finds however that there is insufficient medical evidence to support that his claimed condition was caused or aggravated by his employment.

Dr. Nausieda noted appellant's occupational history of exposure to welding fumes since 1974 and that his initial symptoms appeared in 1998. In a February 22, 2006 report, he diagnosed manganese-induced Parkinsonism based on a comparison of examination findings from 2002 and 2005, a December 16, 2005 accelerometry and laboratory studies during appellant's January 9, 2006 hospitalization which showed evaluated serum manganese levels. While Dr. Nausieda was aware of appellant's occupational history, he did not specifically explain how appellant's Parkinsonism was caused or contributed to by the history of exposure to fumes. The Board has long held that medical evidence which does not offer any opinion

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² *Charles E. Evans*, 48 ECAB 692 (1997).

regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ The Board finds that this evidence is insufficient to establish appellant's claim.

Dr. Mendizabal also noted an occupational history of 20 years of welding experience and being exposed to manganese fumes. In a January 31, 2006 report, he diagnosed Parkinsonism with a possible exposure to manganese fumes, noting that he did not have access to appellant's records to verify the objective medical evidence of record. Dr. Mendizabal did not address causal relationship between the accepted employment factors and appellant's diagnosed condition. His report acknowledged that it was not based on a full medical history or record review. Dr. Mendizabal's report is insufficient to establish appellant's claim as he failed to offer an opinion regarding the cause of appellant's condition.¹⁴

Appellant did not submit adequate medical evidence addressing causal relationship. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained an occupational disease causally related to factors of his employment. He failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.¹⁵ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁶ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹⁷

ANALYSIS -- ISSUE 2

In a November 28, 2006 decision, the Office denied appellant's claim. Appellant's letter requesting a review of the written record was dated January 5, 2007, more than 30 days after the November 28, 2006 decision. Thus, the Office properly found that appellant's hearing request was not timely filed under section 8124(b)(1) of the Act and that he was not entitled to a review of the written record as a matter of right.

¹³ A.D., 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006).

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8124(b)(1).

¹⁶ 20 C.F.R. §§ 10.616, 10.617.

¹⁷ *Claudio Vasquez*, 52 ECAB 496 (2002).

The Office then exercised its discretion and determined that appellant's request for a hearing could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that the claimed occupational disease was causally related to his federal employment. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.¹⁸ The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the Office's denial of appellant's request for a review of the written record was proper under the law and the facts of this case.

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that he sustained an occupational disease causally related to factors of his employment, he has failed to meet his burden of proof. The Board additionally finds that the Office properly denied appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2007 and November 28, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 1, 2007

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

¹⁸ *Daniel J. Perea*, 42 ECAB 214 (1990).