United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 10-06**
	)	**Issued: July 8, 2010**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY & HEALTH INSPECTION SERVICE, Minneapolis, MN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 30, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 22, 2009 which affirmed a January 7, 2009 decision denying appellant's claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability commencing September 9, 2008 causally related to his accepted employment condition.

FACTUAL HISTORY

On April 15, 2005 appellant, then a 42-year-old food safety and health inspector, filed a claim alleging that he developed multiple chemical sensitivities due to exposure to an unknown

airborne irritant while employed from 1992 to 2003.[1] The Office initially denied his claim and in a decision dated August 7, 2007 accepted allergic reaction to chemicals and contact dermatitis due to other chemical products. Appellant did not stop work.

Appellant was initially treated by Dr. Kathy J. Liddle, a Board-certified allergist and immunologist, from January 8 to July 23, 1998, for nasal and pulmonary symptoms which occurred at work. She noted that appellant's exposure to sodium hydroxide and sodium hypochlorite caused nasal and pulmonary symptoms and recommended the chemicals be removed from the workplace. Appellant was treated by Dr. Melody S. Franks, a family practitioner, from August 21, 2003 to November 29, 2005 and June 20, 2006 to October 11, 2007, for recurrent blistering occurring on his lips and feet. Dr. Melody diagnosed blisters on the feet, allergy symptoms, neck pain and depression. She opined that the rash and lesions on appellant's lips and headaches were related to previous chemical exposure and his chemical sensitivity syndrome. Other reports from Dr. Deborah Otto Sunderman, a psychologist, dated May 23, 2005 to April 18, 2006, noted appellant's treatment for stress and anxiety due to chronic exposure to toxic chemicals while at work from 1993 to 2003. She diagnosed post-traumatic stress disorder. Appellant submitted a notice of personnel action dated January 27, 2003 which indicated that he was reassigned effective January 12, 2003 from the Columbia Farms facility to the Snow Creek meat processing plant due to reasonable accommodations for his accepted medical condition of allergic reaction to chemicals in File No. xxxxxx608.

Thereafter, in the course of developing the claim, the Office referred appellant to a second opinion physician.

Appellant sought treatment from Dr. Patricia Patterson, a neurologist, from August 7, 2006 to March 6, 2007, for headaches which began in 1992 secondary to chemical exposure at work. She diagnosed vascular headaches triggered by certain odors. Appellant was treated by Dr. Theresa G. Knoepp,[2] a Board-certified dermatologist, from May 9 to 23, 2007, for erosions and erythematous plaques with scales on his skin consistent with contact dermatitis. Dr. Knoepp noted appellant's symptoms began in 1992 after exposure to an unknown irritant at work and he continued to have cutaneous eruptions within 45 minutes of beginning work and his symptoms improved after leaving the workplace. She recommended appellant be removed from the exposure to alleviate his illness.

On September 9, 2008 appellant filed a CA-2a, notice of recurrence of disability, alleging that he experienced a recurrence of allergic symptoms including blisters, rashes and flu-like symptoms on April 2, 2005 as a result of chemical exposure at work causally related to his accepted employment condition. He indicated that he stopped work on September 9, 2008 and at the time, he was working limited duty with restrictions.

[1] Appellant initially filed a CA-2a, notice of recurrence of disability, alleging a recurrence of his previously accepted allergic reaction to chemicals in File No. xxxxxx608. The Office developed appellant's claim as a new occupational disease because appellant described a new exposure to an unknown airborne irritant.

[2] Dr. Knoepp served as the second opinion physician and appellant continued under her care.

By letter dated September 25, 2008, the Office advised appellant of the type of factual and medical evidence needed to establish his recurrence claim and requested that he submit such evidence, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed recurrent condition and specific employment factors.

In a decision dated January 7, 2009, the Office denied appellant's claim for a recurrence of disability beginning September 10, 2008.

On January 15, 2009 appellant requested a telephonic oral hearing which was held on May 12, 2009. He submitted reports from Dr. Sunderman dated July 28, 2005 and April 18, 2006 and from Dr. Franks dated November 29, 2005 and June 20, 2006, previously of record. In an August 29, 2008 report, Dr. Knoepp noted that appellant underwent a patch test which revealed allergies to paraben, quinoline, carba and thimerrosal and advised that exposure to these elements in the workplace would cause breakouts, rash and blisters. She further noted that appellant developed rashes and blisters when he was exposed to chlorine at work. On September 6, 2008 appellant was treated by Dr. Liddle who opined that his symptoms were secondary to occupational chemical exposures and recommended that the chemicals be removed from the workplace. He reported working as an inspector at a hog plant for five years and in 1999 he was diagnosed with contact dermatitis. Dr. Liddle advised that most contact dermatitis reactions improve once exposure to the offending agent is avoided. He noted appellant was on administrative leave with resolution of his symptoms which suggested that an occupational exposure was responsible. Dr. Liddle noted that 25 percent of all cases may become chronic despite avoidance of allergen exposure.

In a decision dated July 22, 2009, the hearing representative affirmed as modified the January 7, 2009 Office decision denying appellant's claim for a recurrence of disability. The hearing representative noted that the decision denied a recurrence commencing on or after September 9, 2008.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[3]

The Office's regulations define the term recurrence of disability as follows: "Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made

[3] *Terry R. Hedman*, 38 ECAB 222 (1986).

specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[4]

Causal relationship is a medical issue,[5] and the medical evidence required to establish a causal relationship is rationalized medical evidence. 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.[6]

ANALYSIS

The Office accepted appellant's claim for allergic reaction to chemicals and contact dermatitis due to other chemical products. Appellant did not initially stop work but worked in a full-time light-duty job. On September 10, 2008 he stopped work and claimed disability compensation alleging that he developed allergic symptoms including blisters, rashes and flu like symptoms as a result of chemical exposure at work which was causally related to his accepted employment condition. In the instant case, appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

Appellant submitted reports from Dr. Sunderman dated July 28, 2005 and April 18, 2006 and from Dr. Franks dated November 29, 2005 and June 20, 2006, previously of record. These reports are insufficient to establish the claim as they generally predate the period of claimed recurrent disability and do not otherwise support that appellant would be disabled during the claimed period due to his accepted conditions.

Appellant submitted reports from Dr. Knoepp, including an August 29, 2008 report from Dr. Knoepp, who noted that appellant had allergies to paraben, quinoline, carba, thimerrosal and chlorine and that exposure to these elements in the workplace would cause breakouts, rash and blisters. However, Dr. Knoepp's earlier reports clearly predated the claimed recurrence of disability and her August 29, 2008 report, the most contemporaneous report with the recurrence of disability, did not reference a specific date of a recurrence of disability nor did she note a spontaneous change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position. She did not specifically explain why any work-related breakouts, rashes or blisters incurred on particular

[4] *J.F.*, 58 ECAB 124 (2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

dates disabled appellant from his light duty for specific periods. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[7]

Appellant submitted a September 6, 2008 report from Dr. Liddle who initially evaluated appellant in 1998 for nasal and pulmonary symptoms which occurred at his workplace. He reported working as an inspector at a hog plant for five years and in 1999 he was diagnosed with contact dermatitis. Dr. Liddle noted that appellant's symptoms were secondary to occupational chemical exposures. She noted that appellant was on administrative leave with resolution of his symptoms which suggests that an occupational exposure was responsible. However, Dr. Liddle did not provide a rationalized opinion explaining the reason appellant's recurrent condition and disability was due to the accepted work injury.[8] For instance, she failed to explain how appellant experienced a spontaneous change in his accepted condition of allergic reaction to chemicals and contact dermatitis due to other chemical products. Additionally, Dr. Liddle failed to note specific dates of recurrences of disability nor did she note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position.

The Board further finds that the evidence does not substantiate that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions. The record does not establish that appellant's work exceeded his light-duty restrictions.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements after he returned to work.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on or after September 9, 2008 causally related to his accepted condition.

[7] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board