

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

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**R.R., Appellant**

**and**

**DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD,  
Philadelphia, PA, Employer**

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**Docket No. 17-0799  
Issued: October 20, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 28, 2017 appellant filed a timely appeal from a January 26, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that his claim should be expanded to include multiple additional conditions as causally related to his accepted April 2, 1985 injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts of the case as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On December 10, 1986 appellant, then a 33-year-old sandblaster, filed an occupational disease claim (Form CA-2) alleging that on April 2, 1985 he first obtained medical care for his bilateral hand contact dermatitis and on September 17, 1986 realized that the condition was due to working with paint and paint thinner. He did not stop work. OWCP accepted the claim for contact dermatitis and paid wage-loss compensation for the period March 14, 1992 until it placed appellant on the periodic rolls for temporary total disability with the first payment for the period April 3 to 30, 1994.<sup>3</sup>

In a letter dated September 2, 1999, the Berkeley County School District related that appellant had been employed as a child care attendant since August 9, 1999.

By decision dated November 22, 2002, OWCP reduced appellant's wage-loss compensation effective November 3, 2002 as his actual wages as a child care attendant fairly and reasonably represented his wage-earning capacity. It noted that, because he had shown the ability to perform the duties of the position for 60 days or more, the position was considered suitable to his partially disabled condition.<sup>4</sup>

In an April 30, 2009 letter, appellant informed Goose Creek School that he was resigning from his position as Child Care Attendant. He noted that he had worked 10 years in the position and attributed his resignation to the impact his excessive sweating had on his life, including an inability to handle a steering wheel while driving and skin breakouts which caused him emotional stress.

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<sup>2</sup> Docket No. 17-0799 (issued August 24, 2016); Docket No. 01-2002 (issued September 3, 2002).

<sup>3</sup> The record contains a Notification of Personnel Action (Form SF-50) notifying appellant that his employment was terminated effective March 14, 1992 due to a reduction-in-force.

<sup>4</sup> By decision dated June 30, 1999, OWCP adjusted his compensation based upon his wage-earning capacity as a credit clerk. By decision dated March 30, 2000, an OWCP hearing representative vacated the June 30, 1999 determination finding that the position of child care attendant should have been used to determine appellant's wage-earning capacity instead of the constructed position of credit clerk. In a September 5, 2000 decision, an OWCP Assistant Branch Chief of Hearings and Review rescinded the March 30, 2000 OWCP hearing representative's decision. He found that the decision was erroneously based on evidence of employment, which was not in existence at the time of the 1999 wage-earning capacity determination. Thus, the Assistant Branch Chief rescinded the March 30, 2000 decision and reinstated the June 30, 1999 wage-earning capacity determination. Appellant requested reconsideration on May 30, 2001. By decision dated July 9, 2001, OWCP denied modification of the September 5, 2000 decision. On July 16, 2001 appellant filed an appeal with the Board. In a decision dated September 3, 2002, the Board reversed the September 5, 2000 decision. Docket No. 01-2002 (issued September 3, 2002). In reaching its determination regarding the September 5, 2000 decision, the Board found that the vocational rehabilitation counselor failed to consider all the medical evidence from appellant's treating psychologists that the position was not within his mental, psychological, and technical abilities. The Board also found that the vocational rehabilitation specialist failed to provide sufficient rationale regarding the suitability of the constructed position. Thus, the Board found that OWCP improperly reduced appellant's wage-loss compensation based on its finding that he was capable of performing the constructed position of credit clerk.

The record contains yearly reports from 2007 to 2011 by Dr. Pierre Jaffe, a treating Board-certified dermatologist. In the annual reports for this period, he noted that appellant's dermatitis condition was under control. On February 8, 2007 Dr. Jaffe indicated that the dermatitis was controlled by the job change to teaching and the current environment. In reports dated February 16, 2009, February 17, 2010 and February 18, 2011, he noted that appellant also suffered from hyperhidrosis (excessive sweating), which was controlled by medication.

In a January 12, 2012 report, Dr. Jaffe noted that appellant was seen for his annual visit and that his atopic dermatitis and hyperhidrosis was controlled with medication. He completed a work capacity evaluation form (Form OWCP-5c) on January 12, 2012 indicating that appellant was not capable of working any hours and noted that appellant should avoid heat.

Dr. Jaffe, in a June 8, 2012 report, reiterated findings from his January 12, 2012 report. He noted that appellant's symptoms and medical condition were controlled by current treatment. Dr. Jaffe opined that appellant's condition dated back over 27 years and would persist indefinitely.

In a February 6, 2014 report, Dr. Jaffe reported that appellant continued to suffer from his accepted chronic allergic dermatitis. Other diagnoses included hyperhidrosis, chronic exfoliative dermatitis, mild schematization, and adjustment disorder with mixed emotions of depression and preoccupation with his health. Dr. Jaffe opined that appellant's condition had changed as his condition was partly controlled by medication. He reported that appellant's "pruritus and continuous itching and dermatitis has resulted in [appellant's] skin becomes (sic) thickening, hardening, excoriations, and erythema all discomfort to him." Dr. Jaffe further noted that appellant had become depressed and anxious as a result of his chronic contact dermatitis. He noted that 50 percent of appellant's body was involved. Next, Dr. Jaffe reported that appellant's skin condition was aggravated by heat, moisture, humidity, airborne irritants, chemicals, working in wet and humid environments, and sweat, causing pain and discomfort. He concluded that appellant was disabled from working as the stress of holding a job "appear[ed] to flare his rash" and his excessive sweating required multiple changes of clothes during the day. Dr. Jaffe also reported that appellant had episodes of memory loss and headaches as well as periods of chronic neurodermatitis and tenseness. Appellant related that his excessive sweating limited his ability to write, to handle a steering wheel while driving, or to walk, and caused weakness in his arms, feet, legs, and hands. Dr. Jaffe opined that appellant's excessive sweating and skin breakouts caused him stress and impaired his ability to perform daily functions.

Dr. Jaffe, in a November 20, 2015 report, reiterated findings from his prior reports and requested that appellant's claim be expanded to include musculoskeletal impairments, loss of joint mobility of the arms, hands, fingers, legs, and face, and arthritis. In support of this, he explained that appellant's leg, arms, hands, fingers, and face musculoskeletal impairments were associated with effects of severe psoriasis including loss of joint mobility and arthritis. Dr. Jaffe further attributed appellant's scrotal disease to the accepted contact dermatitis and other eczema as appellant had previously been sexually active and recommended an impairment rating for his reproductive organs

In a January 8, 2016 report, Dr. Jaffe requested that OWCP expand acceptance of the claim to include carpal tunnel syndrome, musculoskeletal impairment as the result of joint

mobility loss, severe arthritis which he opined was associated with severe psoriasis, scrotal disease, reproductive organ area, organic brain disorder/damage, and joint pain, muscle weakness, stiffness and tingling in the arms, legs, hands, feet, face, and fingers. He explained that these conditions resulted from appellant's accepted contact dermatitis and other eczema. Dr. Jaffe found that appellant's condition was chronic because he had experienced symptoms for over 23 years.

On February 15, 2016 appellant requested that his claim be expanded to include the conditions noted by Dr. Jaffe in his November 20, 2015 and January 8, 2016 reports.

In a June 6, 2016 report, Dr. Jaffe again requested OWCP to expand appellant's claim to include additional conditions. The report reiterated the physician's rationale from prior reports.

By letter dated June 14, 2016, OWCP informed appellant that it had received his request to expand the acceptance of his claim. It informed him that, while Dr. Jaffe attributed these conditions to appellant's accepted conditions, the physician failed to sufficient medical rationale or reasoning explaining the causal relationship. OWCP afforded appellant 30 days to provide the requested evidence.

On July 12, 2016 OWCP received a June 7, 2016 report by Dr. Jaffe summarizing his treatment of appellant over the years. Dr. Jaffe provided results on examination and noted clinical testing results. Diagnoses included chronic allergic and irritant contact, hands, arms, forearms, fingers, foot, face, and groin exfoliative, nummular, and general skin disorder.

In a July 5, 2016 letter, appellant detailed the reports that he was submitted covering the period and medical articles regarding the impact of ethylene glycol ether exposure.

In an August 16, 2016 report, Dr. Jaffe summarized his treatment of appellant and opined that appellant's condition had worsened and changed. As a result of the worsening of his dermatitis, appellant become withdrawn and sexual relations with his spouse were impaired by the excessive itching and sweating caused by the worsening of his condition. Diagnoses included contact dermatitis and other eczema from solvent exposure, other psoriasis, generalized hyperhidrosis, unspecified pruritic disease, atopic dermatitis and related conditions, contact dermatitis and other chemical products, and contact dermatitis and other eczema of unspecified cause.

In a November 30, 2016 report, Dr. Jaffe opined that appellant's accepted contact dermatitis had caused appellant's arthritis, several arm, finger, and hand ailments, reproductive organ disorder, and musculoskeletal impairment. In support of his conclusion, he opined that the medical and factual background of appellant's employment, work injury, and medical treatment were sufficient to establish that appellant's claim should be expanded to include these additional diagnosed conditions. Dr. Jaffe further explained that appellant's exposure to ethylene glycol ether impacted his reproductive system, as samples of his semen and blood were sent for testing which found his reproductive function had been affected. Next he discussed the difficulty in diagnosing appellant's arthritis in its early stages and that appellant's musculoskeletal, extremities, central nervous system, and reproductive organ had all been modified by his exposure to ethylene glycol ether, which was the cause of appellant's accepted dermatitis.

Dr. Jaffe opined that appellant was currently totally disabled due to his accepted contact dermatitis and that the claim should be expanded to include additional conditions.

In a January 9, 2017 report, Dr. Jaffe opined that appellant's prolonged and overexposure to ethylene glycol ether paint thinner while working for the employing establishment was the cause of appellant's conditions. Thus, he explained that the musculoskeletal impairment, reproductive organ, and several other arm, hand, and finger ailments were causally related to the accepted April 2, 1985 injury as these conditions are comparable to the accepted contact dermatitis and are related to paint thinner exposure.

By decision dated January 26, 2017, OWCP denied appellant's request to expand his claim to include additional conditions. It found that the evidence submitted failed to contain a rationalized opinion explaining how the diagnosed conditions were attributable to the accepted work injury of April 2, 1985 or to his accepted dermatitis condition.

### **LEGAL PRECEDENT**

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>5</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting causal relationship.<sup>6</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>8</sup> Neither the mere 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.<sup>9</sup>

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.<sup>10</sup> The subsequent injury is compensable if it is the direct and natural result of a

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<sup>5</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>6</sup> *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>7</sup> *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>9</sup> *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>10</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

compensable primary injury.<sup>11</sup> With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.<sup>12</sup>

### ANALYSIS

OWCP accepted that appellant sustained contact dermatitis as a result of exposure to paint and paint thinner prior to April 2, 1985. Appellant did not stop work until he was terminated due to a reduction-in-force on March 14, 1992. OWCP began paying him wage-loss beginning on March 14, 1992. Appellant subsequently worked as a child care attendant for a private employing establishment commencing in 1999 for 10 years until resigning on April 30, 2009. The Board finds that the medical evidence of record is insufficient to establish additional medical conditions due to the accepted injury.

In support of his claim appellant submitted numerous reports from Dr. Jaffe. In reports from November 20, 2015 through January 19, 2017, Dr. Jaffe requested expansion of appellant's claim to include musculoskeletal, central nervous system, reproductive organ impairments, carpal tunnel syndrome, loss of joint mobility of the arms, hands, fingers, legs, and face, and arthritis. In support of his request, Dr. Jaffe explained that appellant's exposure to paint thinner or ethylene glycol ether and his contact dermatitis were the direct cause of the additional conditions. However, he failed to address that appellant had not worked for the employing establishment since March 1992 nor did he discuss what impact appellant's subsequent employment as a child care attendant for 10 years might have had on the conditions. Dr. Jaffe diagnosed the additional conditions based on new medical test findings and concluded that appellant had suffered from these condition for more than 20 years. The Board finds these reports to be conclusory and offer no supporting medical rationale to explain how these diagnosed conditions were caused or aggravated by the original exposure to paint and paint thinner in 1985. The Board has found such conclusory opinions are insufficient to establish causal relationship.<sup>13</sup> The Board finds that Dr. Jaffe failed to provide a rationalized medical explanation as to how appellant's exposure to paint or paint thinner would have caused any of the additional medical conditions beyond the accepted dermatitis.<sup>14</sup>

Appellant has the burden of proof to establish a claim for additional injuries through the submission of rationalized medical opinion evidence.<sup>15</sup> The Board thus finds that he has not submitted evidence from a physician who, based on an accurate factual history, explained with

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<sup>11</sup> *S.M.*, 58 ECAB 166 (2006); *Debra L. Dillworth*, 57 ECAB 516 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998); *A. Larson*, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>12</sup> *L.S.*, Docket No. 08-1270 (issued July 2, 2009); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>13</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>14</sup> *See G.C.*, Docket No. 13-0573 (issued May 17, 2013).

<sup>15</sup> *Id.*

supporting medical rationale that the additional diagnosed conditions were a consequence of his 1985 work injury.<sup>16</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden to proof to establish that his claim should be expanded to include additional conditions as causally related to his accepted April 2, 1985 injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 26, 2017 is affirmed

Issued: October 20, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> See *C.L.*, Docket No. 17-0249 (issued June 22, 2017).