

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARLENE M. HARTLEY and DEPARTMENT OF THE ARMY,
GENERAL LEONARD WOOD ARMY COMMUNITY HOSPITAL,
Fort Leonard Wood, Mo.

*Docket No. 96-1076; Submitted on the Record;
Issued June 23, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant had any disability after April 12, 1994 causally related to factors of her employment.

On April 4, 1991 appellant, then a 54-year-old supervisory medical technologist, filed a claim for reactive airways disease and chronic restrictive airways disease which she related to exposure to chemical and toxic fumes at the employing establishment. She noted that her condition would improve when she was away from the toxic environment. In an April 17, 1991 statement, the employing establishment indicated that appellant, in her job in a clinical laboratory, had been exposed to hydrochloric acid, sulfuric acid, sodium hydroxide, acetic acid, methanol, xylene, formaldehyde and various azides. The employing establishment controverted appellant's claim on the grounds that monitoring of laboratory air quality over the years had consistently shown that there was no health hazards to the laboratory's employees.

In a March 29, 1991 report, Dr. Michael D. Hoeman, an internist, stated that he had been treating appellant since March 15, 1985. He reported that appellant's primary problem had been reactive airways disease and chronic restrictive airways disease as documented by pulmonary function studies. He indicated that over the years appellant's had frequent exacerbations of her reactive airways disease which were directly attributable to exposure to chemical and toxic fumes in the workplace. He stated that the exacerbations had been particularly prominent during episodes of exposure and had improved when appellant was removed from the toxic environment. Dr. Hoeman concluded that this pattern would provide sufficient causal relationship between the toxic fumes exposure and the exacerbation of the reactive airways disease.

In a March 17, 1992 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that fact of injury under the Federal

Employees' Compensation Act had not been established. Appellant requested a hearing before an Office hearing representative.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. H. James Wedner, an allergist, for an examination and a second opinion on the diagnosis and cause of appellant's condition. In an April 24, 1992 report, Dr. Wedner stated that currently there was no evidence to suggest appellant had significant chronic disease. He commented that many of the symptoms appellant experienced were irritative in nature and, given sufficient concentration of irritants in the workplace, could account for some of her symptoms on an acute basis. He indicated that chemicals such as xylene, formaldehyde, or acetic acid were primary irritants and the symptoms associated with them should disappear rapidly when exposure was either decreased or disappeared entirely. He stated that none of the substances was capable of causing longstanding and ongoing disease once appellant was absent from work. Dr. Wedner recommended that appellant avoid irritating substances since she appeared to be extremely sensitive to them. He reported, however, that there was no evidence that appellant had suffered chronic or permanent injury from her workplace exposure. He indicated that appellant could return to work without any significant adverse affect to her health.

An Office hearing representative conducted a hearing on February 4, 1993. In a May 11, 1993 decision, the Office hearing representative found that there existed a conflict in the medical evidence on the diagnosis of appellant's condition and its relationship to factors of her employment. The hearing representative therefore set aside the Office's March 17, 1992 decision and remanded the case for referral of appellant to an impartial medical specialist to resolve the conflict in the medical evidence.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Anthony Hicks, a specialist in occupational medicine, for an examination to resolve the conflict in the medical evidence. In a September 13, 1993 report, Dr. Hicks stated that appellant had undergone multiple laboratory tests which had been largely unremarkable for exposure-related findings. He indicated that appellant's symptomatology was nonspecific and subjective. He commented that her symptoms of shortness of breath had not been substantiated by abnormal arterial blood gases or abnormal pulmonary function testing. He stated that there was no objective evidence that appellant had either restrictive or reactive lung disease. He concluded that there was no causal relationship between appellant's alleged environmental exposures to any toxins or any degree of temporary or permanent damage to her health. He further concluded that there was no residual objective deficit resulting from appellant's alleged exposures to environmental mucosal irritants.

In a September 28, 1993 decision, the Office denied appellant's claim for compensation on the grounds that appellant had not established fact of injury under the Act. Appellant requested a written review of the record by an Office hearing representative. In a March 1, 1994 decision, a second Office hearing representative found that the Office had not followed its procedures in selecting Dr. Hicks to serve as an impartial medical specialist because he was not Board-certified as required by the Office procedures and was not shown to have any special qualifications that would permit his appointment as an impartial medical specialist. The hearing representative also found that the Office had not adequately described the substances to which

appellant had been exposed. She therefore remanded the case to the Office for preparation of an amended statement of accepted facts and referral of appellant, together with the statement and the case record, to an appropriate Board-certified specialist for an impartial medical examination.

In a March 4, 1994 memorandum, the employing establishment informed appellant that her employment was being terminated. The employing establishment indicated that appellant continued to suffer from chemical sensitivities resulting in long and frequent absences from work. It noted that, in her current office environment, appellant was exposed to paper dust and odors from a variety of office equipment. The employing establishment stated that there were no vacant positions available in her medical position nor any positions at the employing establishment that offered a completely contaminate free environment. Appellant's employment was terminated effective April 12, 1994.

The Office referred appellant to Dr. Dennis Estep, an osteopath. In a May 20, 1994 report, Dr. Estep stated that appellant had asthma. He noted that formaldehyde was widely accepted to have chronic effects on the exacerbation of asthma and bronchitis. He indicated that the direct irritant effect of formaldehyde may precipitate wheezing in those with underlying asthma or bronchial hyperactivity. He concluded that appellant had a Class II respiratory impairment on exacerbation of asthma. He noted that appellant was well controlled on medication and stated that she should be able to be employed in an area where she was not exposed to formaldehyde or other related chemicals. He commented that employment in these areas should provide minimal difficulty for appellant. The Office requested clarification of the issue of causal relationship. In a September 15, 1994 report, Dr. Estep stated that appellant's asthma preexisted her employment and the workplace irritated and aggravated her condition.

The Office accepted appellant's claim for temporary aggravation of respiratory irritant hypersensitivity. The Office requested further clarification on whether appellant was disabled after April 12, 1994, due to the effects of her chemical exposure. In a June 5, 1995 report, Dr. Estep stated that the aggravation of appellant's reactive airways disease should diminish when not exposed to respiratory irritants. He stated that appellant's aggravation of her underlying condition should cease when removed from irritants but her underlying condition would remain. He commented that, when appellant retired in April 1994, the irritants that she was most concerned about should have also been eliminated.

In a December 22, 1995 decision, the Office found that appellant's accepted condition of temporary aggravation of respiratory irritant hypersensitivity ceased as of April 12, 1994.

The Board finds that the case is not in posture for decision.

Under the Office's procedures, a physician selected to perform an impartial medical examination should be a Board-certified specialist. A specialist who is not Board-certified may be selected to perform such an examination but the necessity for such a selection must be documented.¹ The Board notes that the decision of the Office was set aside by the second Office

¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (August 1994).

hearing representative because the Office had improperly selected as an impartial medical specialist a physician who was not Board-certified. However, after that action by the second hearing representative, the Office referred appellant to Dr. Estep to resolve the conflict in the medical evidence even though Dr. Estep was not Board-certified. The Office did not provide any documentation to justify the referral of appellant to Dr. Estep to resolve the conflict in the medical evidence. The Office therefore improperly referred appellant to Dr. Estep.

The case must therefore be remanded for referral of appellant to an appropriate Board-certified specialist to resolve a conflict in the medical evidence that has existed for five years. The Board-certified specialist should be requested to give a diagnosis of appellant's condition and indicate whether the condition was caused by appellant's exposure to chemicals at work or preexisted appellant's employment with the federal government. The specialist should discuss whether appellant's exposure to the chemicals at work caused a permanent sensitivity to such chemicals to the extent that appellant would be disabled for her position as a medical technologist. If the specialist should find that appellant had a preexisting condition unrelated to her federal employment, he or she should state whether appellant's exposure to chemicals at work aggravated the underlying condition and, if so, whether the aggravation was permanent or temporary. If he or she should find that any such aggravation was temporary, the impartial medical specialist should describe the extent and duration of such aggravation, addressing specifically whether appellant had any disability after she stopped working on April 12, 1994 that was due to an employment-related aggravation of a preexisting underlying condition. After further development as it may find necessary the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated December 22, 1995, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
June 23, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott

Alternate Member