

U S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES DEMARAIS and DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, Frederick, MD

*Docket No. 98-66; Submitted on the Record;
Issued August 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that his current medical condition is causally related to his accepted aggravation of allergic rhinitis, thus entitling him to continuing medical benefits.

The Board has duly reviewed the record in the present appeal and finds that appellant failed to meet his burden of proof to establish a causal relationship between his current condition and his accepted employment-related temporary aggravation of allergic rhinitis.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his current condition and need for continuing medical treatment and his accepted employment condition.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that appellant's current condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In this case, on December 3, 1984, appellant, then a biological laboratory technician, filed a claim for occupational disease alleging that he developed a disabling allergic reaction to mice, which he worked with daily in the course of his federal employment duties. On May 16, 1986 the Office of Workers' Compensation Programs accepted that appellant sustained a temporary aggravation of his perennial allergic rhinitis. The Office paid appellant appropriate wage loss and medical benefits until June 7, 1987, when he elected to waive his entitlement to continuing compensation benefits in lieu of disability retirement benefits from the Office of Personnel Management. The Office continued to pay appellant's medical benefits until June 2, 1995, when the case was closed due to a lack of activity on the claim.

¹ See *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melon*, 33 ECAB 1305, 1308-09 (1982).

² See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

Subsequent to the closing of the file, appellant submitted several medical bills to the Office for payment. By letter dated September 20, 1995, the Office informed appellant, through his representative, that his case file had been closed and that his medical bills were no longer payable. The Office advised appellant to file a claim for a recurrence of disability if he believed he was still experiencing the effects of his employment-related exposure. The Office also advised that appellant needed to submit detailed medical evidence to support a causal relationship between his current symptoms and the accepted aggravation.

On October 3, 1995 appellant submitted his claim for a recurrence of disability. In support of his claim, appellant submitted office notes from his treating physician, Dr. Jose Muniz, a Board-certified allergist and immunologist. In a letter dated March 20, 1992, Dr. Muniz stated that appellant had been his patient for many years and that he had last seen him on November 7, 1991. He explained that appellant is on immunotherapy for allergies to house dust, dust mites and pollen and continued to have some shortness of breath, at times, after walking up hills and also had periods of nasal congestion. Dr. Muniz gave his impression as “perennial allergic rhinitis with good prognosis if treatment is continued and he avoids known offenders. (lab[oratory] animals, especially. Including rabbits, guinea pigs, mice and rats).” In a treatment note dated April 21, 1994, Dr. Muniz noted that appellant reported feeling worse after recently eating shellfish and after going on a turkey hunting expedition. The physician noted that appellant continued to suffer from perennial allergic rhinitis and prescribed ongoing treatment. In a consultation note dated September 28, 1995, Dr. Muniz noted that appellant reported feeling worse after installing plastic pipes at home. He diagnosed perennial allergic rhinitis and an upper respiratory infection and ordered continuing immunotherapy and medication. In a treatment note dated October 18, 1995, Dr. Muniz noted that appellant reported feeling well and advised appellant to continue his immunotherapy treatment and return in six months.

In a letter dated April 17, 1996, the Office informed appellant that the medical evidence submitted was insufficient to establish entitlement to continuing compensation benefits. The Office allowed appellant 30 days to submit a detailed narrative medical report from his treating physician as to the causal relationship, if any, between his current need for medical treatment and his employment-related temporary aggravation of allergic rhinitis which occurred almost 10 years earlier.

In response to the Office’s request for additional medical evidence, appellant submitted letters from Dr. Muniz’s office manager dated February 8 and March 1, 1995. The letters, identical except for the date, read:

“[Appellant] has acute allergy, Allergic Rhinitis. He receives immunotherapy on a regular on-going basis for this condition. As you can see by the enclosed copy of the letter from his last visit to this office, it is necessary for him to continue on immunotherapy. Patient is due for his annual visit in April 1995.”

In a decision dated September 26, 1996, the Office denied appellant’s claim on the grounds that he failed to submit medical evidence that would support his claim that his medical condition was causally related to his employment exposure.

By letter dated March 25, 1997, appellant requested reconsideration of the Office's decision and submitted additional evidence in support of his request. In addition to copies of medical reports already submitted, appellant submitted a treatment note dated April 24, 1996 from Dr. Muniz, in which the physician noted that appellant was on "mites-grasses immunotherapy" and was having his "best year." Dr. Muniz noted that appellant continued to suffer from perennial allergic rhinitis and should continue with his immunotherapy and return to the office in one year.

In a letter dated March 18, 1997, Dr. Muniz wrote:

"[Appellant] has been a patient of this office since November 1993.

"[Appellant] was found to be allergic to mice in 1985. [He] is not exposed to mice anymore since he stopped working as a lab[oratory technician].

"As it is frequently seen in patients with allergic disease, [appellant] is also allergic to other allergens such as dust mites-Farinae and grasses, for which he is receiving immunotherapy every one to three weeks.

"[Appellant] has occasional exacerbations of allergic rhinitis treated with antihistamine-decongestants and steroid nasal sprays.

"I would also like to include here, a copy of letter of March 10, 1992 sent to the Office of Personnel Management were I have given as impression, perennial allergic rhinitis with good prognosis if treatment is continued and he avoids known offenders (lab[oratory] animals especially including rabbits, guinea pig, mice and rats)."

In a similar letter dated April 26, 1996, Dr. Muniz wrote:

"[Appellant] has been a patient of this office since November 1993.

"[Appellant] was found to be allergic to mice in 1985. [Appellant] is not exposed to mice anymore after he stopped working as a lab[oratory] technician.

"[Appellant] is receiving immunotherapy only for dust mites-Farinae and grasses at this time every one to three weeks.

"[Appellant] has had a good year according to his own information on April 24, 1996, when I saw him for his routine visit to this office. [Appellant] had recently developed some 'chest tightness and clogged nose' for which he was taking Seldane tablets prn. He is going to continue on Seldane, 1 tablet b.i.d. and on Beconase-AQ, 2 sprays in each nostril twice a day for 1 month. Strict allergic hygiene for dust mites is mandatory as always. I would like to see [appellant] in one year."

In a decision dated August 7, 1997, the Office denied appellant's request for reconsideration on the grounds that the medical evidence was immaterial and repetitious in nature and insufficient to warrant merit review of the prior decision.

As mentioned above, it is appellant's burden to establish a causal relationship between his current medical condition, for which he is seeking continuing medical benefits and his accepted 1985 temporary aggravation of his preexisting perennial allergic rhinitis. It is undisputed that the medical evidence from Dr. Muniz, appellant's treating physician, establishes that appellant continues to suffer from and require treatment for, his preexisting perennial allergic rhinitis, which was not accepted by the Office as employment related and further establishes that appellant cannot return to work in an environment containing mice or other laboratory animals. However, the medical evidence does not establish that the accepted 1985 temporary aggravation of appellant's preexisting allergic rhinitis continues to require ongoing medical treatment more than 10 years after appellant's last employment-related exposure to mice and other laboratory animals.

As appellant has failed to submit the necessary rationalized medical opinion evidence to meet his burden of proof, the Office properly denied his claim.

The decisions of the Office of Workers' Compensation Programs dated June 18, 1997 and September 26, 1996 are hereby affirmed.

Dated, Washington, D.C.
August 16, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member