U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. PARKER, claiming as administratrix of the estate of THOMAS W. PARKER and DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, Ga.

Docket No. 99-589; Submitted on the Record;
Issued August 2, 1999

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the employee was disabled beginning December 14, 1995.

On March 12, 1991 the employee filed a claim for a rash on his hands which he attributed to his exposure to grease and solvents in the performance of his duties as an aircraft electrical worker. By letter dated August 29, 1991, the Office of Workers' Compensation Programs advised the employee that it had accepted his claim for "an aggravation of your preexisting dermatitis condition." The Office paid the employee compensation for intermittent absences from work beginning February 24, 1991. On November 8, 1991 the employing establishment disqualified the employee for his position of aircraft electrical worker on the basis that he could not be exposed to chemicals and solvents. The employee was assigned light duty.

On July 22, 1995 the employee filed a claim for a recurrence of disability related to his February 14, 1991 exposure to methyl ethyl ketone (MEK). The employee listed the date of the recurrence of disability as April 14, 1995, the date he was declared medically disqualified for his position by the employing establishment. The employee continued to work except for intermittent absences, for which the Office paid compensation. By decision dated November 22, 1995, the Office found that the accepted aggravation of the employee's preexisting condition had ceased.

On August 28, 1995 the employee filed another claim for occupational disease, contending that the condition of his feet was related to his exposure to MEK. The Office assigned this claim a different claim number and on November 17, 1995 advised the employee that it had accepted his claim for contact dermatitis of both feet. The Office later consolidated the two claim files.

By decision dated December 5, 1995, the employing establishment separated the employee effective December 13, 1995 due to physical disability. The employee filed a claim

for compensation for the period beginning December 14, 1995. By decision dated August 11, 1998, the Office found that the evidence established that the employee's employment-related dermatitis had resolved without residuals no later than December 10, 1995, the date he last worked.

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

The Office properly determined that there was a conflict of medical opinion between the employee's attending physicians and physicians at the employing establishment. To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,[1] referred the employee, the case record and a statement of accepted facts to Dr. Alvin H. Clair, a Board-certified dermatologist. In a report dated April 21, 1997, Dr. Clair noted that the only skin conditions present on his examination of the employee on that date were a small asymptomatic corn in the right metatarsal area, a callus in the right fifth metatarsal area and thickening of the nail of the second right toe. Dr. Clair stated that the employee had no permanent effects or residuals of his chemical exposure, as his skin looked normal otherwise. Dr. Clair stated that the employee's exposure to MEK years ago should not be a cause of discomfort in his feet on April 21, 1997 and that the only limitation he had for work was to "avoid contact with irritating chemicals such as MEK." In response to the Office's question -- "If the work exposure caused only a temporary aggravation, when did that aggravation cease?", Dr. Clair only stated, "Unable to determine the nature of events that occurred years ago."

The Board finds that the report of Dr. Clair does not resolve the conflict of medical opinion. It does not show that the employee's employment-related dermatitis resolved without residuals no later than December 10, 1995, as the Office found in its August 11, 1998 decision, denying compensation after that date. Dr. Clair indicates that the employee's condition resolved by April 21, 1997, when he examined the employee, but does not indicate it resolved by any earlier date.

Further development of the medical evidence is needed in order to determine if the employee's work restrictions on December 10, 1995 arose from his employment.[2] If they did, the employing establishment's withdrawal of light duty on that date constitutes a recurrence of disability. On the other hand, if the employee's employment-related condition had resolved without residuals by December 10, 1995 and his work restrictions at that time were prophylactic, the employing establishment's withdrawal of light duty would not constitute a recurrence of disability, as fear of future injury is not compensable under the Act.[3]

[1] 5 U.S.C. § 8123(a) states in pertinent part,- "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[2] If the employee's employment-related condition caused a heightened sensitivity to future exposures to chemicals, the work restriction against such exposures would be considered to have arisen from his employment. *Bobby W. Hornbuckle*, 38 ECAB 626 (1987); *Fred Rambus*, 34 ECAB 325 (1982).

[3] *Louise G. Malloy*, 45 ECAB 613 (1994).

To resolve these issues, the Office should refer the case record[4] and its statement of accepted facts augmented by a listing of the accepted conditions,[5] to another appropriate medical specialist to resolve the conflict of medical opinion.[6] The Office should then proceed to a determination, consistent with the principles set forth in this decision of the Board, as to whether the employee sustained a recurrence of disability beginning December 14, 1995.

The decision of the Office of Workers' Compensation Programs dated August 11, 1998 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
August 2, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] The employee is deceased, but, as pointed out above, his condition on December 10, 1995 is determinative of the outcome of the case, and this can be determined by a medical review of the case record.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.12 (June 1995) is titled "Essential Elements," and states that a statement of accepted facts must provide the accepted conditions.

[6] Dr. Clair has indicated that he is "Unable to determine the nature of events which occurred years ago." For this reason, referral to Dr. Clair for a supplementary opinion would be unfruitful.