

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONALD MEGGINSON and DEPARTMENT OF THE ARMY,  
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 98-192; Submitted on the Record;  
Issued February 1, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury caused by factors of his federal employment.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision.

On October 5, 1996 appellant, then a 60-year-old mechanical helper, forklift operator, industrial equipment mechanic and refrigerator mechanic, filed a claim for an occupational disease (Form CA-2) alleging that he first realized that his shortness of breath, anxiety, nervousness, fatigue, short-term memory loss and pulmonary, respiratory and neurological conditions were caused or aggravated by his tour of duty in Saudi Arabia during the Persian Gulf War on March 1, 1991. Appellant's claim was accompanied by factual evidence, including a September 30, 1996 narrative statement indicating that he sustained the above conditions, in addition to a sleeping disorder, kidney problems and skin rashes on his chest and hands during his tour of duty in Saudi Arabia while participating in the Persian Gulf War from February 2, 1991 through mid-September 1991. Appellant also indicated that he had open heart surgery in 1994 and that a lung collapsed later that same year.

By letter dated November 27, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office then advised appellant to submit additional factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence. In an undated response letter, appellant stated that he was exposed to a very heavy concentration of smoke from an oil well, "CARC" paint and all types of dust. Appellant also stated that he was only furnished with dust mask-type respirators. Further, appellant stated that his exposure was daily and for eight months. Appellant explained that he was not sure what he was exactly exposed to during this period. Appellant noted his complaints regarding a fever, sore throat, coughing, flu-like symptoms and burning in his lungs. Appellant also noted his

medical treatment and smoking history. Finally, appellant stated that he never had any problems until he went to Saudi Arabia.<sup>1</sup>

By decision dated March 12, 1997, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged.

Appellant submitted a December 16, 1996 letter reiterating his response to the Office's November 27, 1996 letter along with correspondence between himself and the Office and medical evidence. By letter dated May 9, 1997, the Office advised appellant that the additional evidence was received subsequent to its March 12, 1997 decision. The Office then advised appellant to exercise his appeal rights if he disagreed with its decision.

In a May 12, 1997 letter, appellant requested an "appeal" and "reconsideration" of the Office's decision. By letter dated May 21, 1997, the Office advised appellant that his request had been forwarded to the Board for appropriate action. In a June 13, 1997 letter, the Board advised appellant that it could not consider evidence that was not reviewed by the Office at the time of its decision. The Board then advised appellant to provide whether he wished to appeal his case to the Board or to request reconsideration before the Office.

By letters dated April 28 and June 19, 1997, appellant requested reconsideration of the Office's decision accompanied by medical evidence. Appellant also filed an April 29, 1997 claim for a schedule award (Form CA-7) for a permanent respiratory impairment.

By decision dated August 26, 1997, the Office denied appellant's request for modification based on a merit review of the claim. In a September 1, 1997 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

In a September 25, 1997 decision, the Office denied appellant's request for reconsideration without a merit review of the claim.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which

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<sup>1</sup> The record reveals that appellant subsequently resubmitted this letter on May 8, 1997.

<sup>2</sup> The Board notes that the record does not reveal a decision from the Office regarding appellant's claim for a schedule award.

<sup>3</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

includes a physician's rationalized 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,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> 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.<sup>6</sup>

Although the medical evidence of record is insufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he sustained an injury caused by factors of his federal employment, it raises an uncontroverted inference that appellant suffered from respiratory problems due to his employment factors to require further development of the case record by the Office.<sup>7</sup> In support of his claim, appellant submitted a January 29, 1997 note from Dr. Lowell Vereen, a Board-certified internist, revealing that he required authorization to undergo evaluation at the University of Texas Tyler Health Center occupational clinic for his respiratory problems. Dr. Vereen did not address the cause of appellant's respiratory problems.

Further, appellant submitted a March 31, 1997 medical report of Dr. Jack E. Farnham, a Board-certified allergist and immunologist. In this report, Dr. Farnham opined:

"Based on the history physical examination and pulmonary function tests done here at the hospital on March 3, 1997 and pulmonary function tests done by Dr. Vereen on December 17, 1996, along with 'DLCO' data, it is my professional judgement that [appellant] has reached maximum medical improvement on this date and that he has Class II (10 to 25 percent) mild respiratory impairment of whole person based on his respiratory impairment."

Dr. Farnham indicated that his impairment rating was in accord with Table 8, page 117 of the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Farnham diagnosed "[c]hronic obstructive pulmonary disease, probably from reactive airways dysfunction syndrome, secondary to inhalation of Gulf War fumes." Dr. Farnham's report, while supportive of appellant's claim, did not provide sufficient medical rationale to support his opinion regarding causal relation.

Similarly, the medical treatment notes covering the period January 21, 1990 through November 14, 1996 indicating appellant's development of asthma while in Saudi Arabia failed to provide sufficient medical rationale to support a causal relationship between appellant's respiratory condition and his tour of duty in Saudi Arabia.

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<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *See James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> *See Gary L. Fowler*, 45 ECAB 365 (1994); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 821 (1978).

On remand, the Office should prepare a new statement of accepted facts regarding appellant's employment duties in Saudi Arabia during the Persian Gulf War and the elements, which he was exposed to during this time period. The Office should then refer appellant, together with the complete case record and questions, to a Board-certified specialist for a detailed opinion on whether appellant has a respiratory or pulmonary condition, or any other condition caused by his work environment during his tour of duty in Saudi Arabia. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The September 25, August 26 and March 12, 1997 decisions of the Office of Workers' Compensation Programs are hereby vacated and the case is remanded to the Office for further consideration consistent with this opinion.

Dated, Washington, D.C.  
February 1, 2000

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member