

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM D. BORDEN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, West Roxbury, MA

*Docket No. 98-228; Submitted on the Record;
Issued February 8, 2000*

DECISION and ORDER

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

The issue is whether appellant sustained a disabling condition causally related to factors of his federal employment.

On March 30, 1988 appellant, then a 46-year-old boiler plant operator, filed a notice of occupational disease alleging that he sustained a pulmonary and sinus condition due to his exposure to "stack fumes" containing carbon monoxide on January 15, 1986 in the course of his federal employment. Appellant also indicated that he was exposed to diesel gas fumes on May 27, 1987.

On January 25, 1980 Dr. Leonard Friedman, a Board-certified psychiatrist and neurologist, treated appellant for anxiety neurosis with depression.

On August 11, 1980 Dr. Charles Lowney, appellant's treating physician and a doctor of osteopathy, indicated that he treated appellant for severe agitation, depression and paranoia.

On February 19, 1980 Dr. Edward E. Jacobs, a Board-certified otolaryngologist, indicated that in 1962 appellant was the victim of an assault impacting his nose which required a nasal septoplasty.

A neurological consultation report dated February 1, 1986, documented that appellant was involved in two motor vehicle accidents and suffered postconcussion syndrome. The report further indicated that appellant had a history of manic depression, anxiety and panic attacks. Hospital records also established that appellant had a history of motor vehicle accidents and depression with insomnia.

On December 23, 1986 Dr. Lowney noted that appellant was hospitalized from January 20 through February 5, 1986 for neurologic disease secondary to smokestack gas. On February 14, 1986 he diagnosed neurologic disease secondary to exposure to smokestack gas, anxiety and depression. Dr. Lowney reported that appellant was exposed to smokestack gas on

January 2, 1986 and on January 15, 1986. He noted that, after the January 15, 1986 exposure, appellant's blood pressure and blood gases were tested and found to be normal. On March 26, 1987 Dr. Lowney diagnosed acute sinobronchitis, probable industrial allergen or industrial chemical sinobronchitis and postconcussion syndrome by history. On August 28, 1987 he diagnosed *Klebsiella pneumoniae pneumonia* with *enterococcus aerogenes*, depression neurosis and acute and chronic lung disease with sinusitis. Dr. Lowney noted that there was a probability of industrial allergen or industrial chemical syndrome.

On February 29, 1988 Dr. Bruce Suzuki stated that he treated appellant since 1986 for recurrent upper respiratory symptoms, some sinusitis and postnasal drainage. He stated that because appellant indicated that these symptoms were worse at his work site that most likely they were related to exposure to chemicals and gases at work.

On March 1, 1988 Dr. Lowney stated that he examined appellant on January 17, 1986 for complaints of multiple symptoms due to exposure to stack gases in the work boiler room. He stated that appellant informed him that he was exposed to stack gas fumes and that he complained of weakness, dizziness and light-headedness. Dr. Lowney also noted a cough, head congestion, difficulty breathing, poor sleeping, muscle pain and sinus problems. He recorded that appellant was exposed to 16 hours of excessive diesel fumes on July 31 and August 1, 1987. Subsequently, appellant presented with diffuse abdominal distress, head and sinus condition, pharyngeal irritation, lethargy and weakness. Dr. Lowney noted that appellant was admitted to the hospital on August 4, 1987 for acute pneumonitis. He stated that appellant also suffered acute and chronic lung disease with sinus and bronchial infection along with peripheral neuropathies of his upper and lower extremities. Dr. Lowney stated that he was treating appellant for multi-system disease of the respiratory, gastrointestinal and neurological tracts, and that these conditions were exacerbated during his exposure to stack gas and diesel gas fumes.

By decision dated November 14, 1988, the Office denied appellant's claim inasmuch as it found that the weight of the medical evidence failed to establish that appellant suffered a medical condition causally related to factors of his federal employment. In an accompanying memorandum, the Office noted that the record did not contain any rationalized medical opinion evidence relating a diagnosed condition to work factors.

On March 23, 1989 Dr. Lowney indicated that appellant had been under treatment since he was exposed to stack gases at work on January 15, 1986. He stated that he first saw appellant for this exposure on January 17, 1986. Dr. Lowney noted that appellant complained of weakness, dizziness, light-headedness, cough, chest congestion, difficulty breathing, poor sleeping, muscle pain and sinus problems. He stated that appellant developed multiple cerebral, muscular, neurological, respiratory and sinus complaints. Dr. Lowney stated that appellant was completely disabled and unable to work due to these conditions. He opined that appellant's gradual deterioration was causally related to his exposure to both acute and chronic carbon monoxide poisoning.

On April 24, 1989 Dr. William A. Rohde, a Board-certified psychiatrist and neurologist, stated that, since August 30, 1988, appellant consistently reported forgetfulness, concentration problems, irritability, dizziness, visual problems, depression, coordination problems and weakness in the extremities. Dr. Rohde stated that research studies indicated that this cluster of

symptoms demonstrated the probability of toxic exposure and that if the symptoms did not abate it usually reflected multiple exposures. He opined that appellant was suffering the consequences of several incidents of gas exposure.

On May 25, 1989 Dr. Rohde stated that he initially treated appellant on June 17, 1988 and found appellant confused and unable to provide an accurate history. He stated that this behavior state occurred after appellant's exposure to stack gas. Dr. Rohde diagnosed an organic personality disorder. He stated that this diagnosis was supported by the exclusion of schizophrenia and depression as a cause of appellant's behavior change. Dr. Rohde indicated that appellant subsequently provided a history indicating that he was exposed to stack gas on January 4, 7 and 15, 1986. He stated that appellant's positive response to anticonvulsant medication confirmed his diagnoses of organic brain syndrome. Dr. Rohde opined that appellant suffered from chronic organic brain impairment caused by multiple exposures to stack gas which impaired appellant's memory, concentration and emotional control. He noted appellant's history of pneumonitis and stated that his symptoms of chest pain, dyspnea, cough and wheezing were consistent with toxic exposure. Dr. Rohde stated that appellant's mental condition deteriorated due to his chronic hypoxemia. He also stated that appellant had full blown, irreversible respiratory distress syndrome. Dr. Rohde concluded that appellant's exposure to toxic solvents caused his chronic pneumonitis. He indicated that his opinion was supported by a medical research and the fact that other causes of appellant's illness were ruled out. Dr. Rohde stated that the condition was termed cacosmia. He noted that his diagnosis was supported by a tomogram showing that appellant had bilateral dilation of the temporal horns. Since appellant had no other traumatic injuries to his head, Dr. Rohde concluded that appellant's bilateral temporal brain damage and his organic brain impairment or cacosmia, were caused by stack gas inhalation.

By decision dated July 20, 1989, the Office hearing representative set aside the Office's November 14, 1988 decision and remanded the case for further development. The hearing representative specifically requested that the Office prepare an accurate statement of facts documenting appellant's gas exposure at work and then refer appellant to a panel of specialists for second opinions regarding the relationship between appellant's diagnosed conditions and his gas exposure at work.

On remand, the Office referred appellant, together with the case record and a statement of accepted facts, to a panel of medical specialists comprised on Dr. Howard D. McIntyre, a neurologist; Dr. John Bernardo, a Board-certified internist specializing in pulmonary medicine; Dr. Mark Friedman, an internist, and Dr. J. Peter Strang, a Board-certified psychiatrist and neurologist, for a second opinion. The statement of accepted facts stated that the major issue in this case is to determine whether the claimant's condition found in January 1986 was related to factors of his employment and if there is a continuing employment-related disability.

On March 25, 1991 appellant underwent examination by the medical panel. The panel completed an extensive report which contained a lengthy review of the factual and medical histories, including previous diagnostic studies. Dr. Bernardo diagnosed a work-related condition of an acute, transient, upper airway injury which had resolved completely following the alleged exposure of January 15, 1986 and nonwork-related diagnoses of probable coronary

artery disease with an old myocardial infarction; mild seasonal rhinitis by history; diabetes mellitus; a history of nasal fracture, status post septoplasty; and cervical radiculopathy status postcervical laminectomy. He found no evidence of respiratory disability based on his normal pulmonary function studies performed shortly after his exposure and his apparent total recovery after decreased smoking. Dr. Friedman reviewed the factual and medical histories and noted that appellant's physical examination was unrevealing. He stated that appellant's pneumonia during his January 1986 hospital admission followed a gastrointestinal procedure in which he was most likely aspirated. Dr. Friedman stated that the precipitating reasons for his symptoms were gastrointestinal difficulties which lead to an x-ray which lead to a fainting episode. He stated that appellant's pulmonary function testing, as demonstrated by arterial blood gases, chest x-rays and pulmonary function tests, failed to show any abnormality despite appellant's smoking history. Dr. Friedman indicated that appellant's symptoms failed to suggest pulmonary disease. He noted that appellant's diabetes could not be reasonably related to an acute inhalation injury. Dr. Friedman stated that appellant's inferior myocardial infarction appeared to be an incidental electrocardiogram finding unrelated to an acute inhalation injury. He stated that the only evidence of neurologic disease was an electromyogram which demonstrated peripheral neuropathy, but that this was most likely related to appellant's diabetes. Dr. Friedman noted that appellant's sinus infections predated his gas exposure in January 1986. Dr. McIntyre reviewed appellant's factual and medical histories, and concluded that there were no symptoms or neurologic abnormalities defined by history or detected on examination. He found no work-related or nonwork-related neurologic diagnoses. Dr. Friedman noted that appellant did not report any symptoms that would limit his daily activities regarding work capability. He stated that the respiratory distress appellant experienced in 1986 did not lead to a significant alteration of consciousness or prolonged immobilization that would suggest anoxic brain damage. Dr. Friedman stated that his neurologic examination was unremarkable. He concluded that there was nothing detected in the history or in the neurologic examination to suggest that appellant's symptoms were neurologically related or that they were the result of a specific accident at the workplace. Finally, Dr. Strang, the psychiatrist, reviewed appellant's factual and medical history, his findings on examination, and the results of his psychological testing. He concluded that the mental status examination did not reveal signs of any significant cognitive impairment. Dr. Strang noted some symptoms of depression and self-reports of fear and anxiety. He stated that the most important psychological feature of the case was appellant's anger. Dr. Strang diagnosed dysthymic disorder of moderate severity, personality disorder with mixed features, subjective stressors of a moderate grade and a quite reduced level of function. He concluded that the January 15, 1986 incident was not causally related to any of appellant's psychiatric difficulties.

By decision dated May 6, 1991, the Office accepted that appellant sustained an episode of gas inhalation on January 15, 1986 with no employment-related disability subsequent to January 20, 1986 for any medical condition.

On August 5, 1991 appellant's representative requested an appeal. In its decision,¹ the Board found that the Office failed to properly develop the medical evidence and remanded the case to the Office to create a new statement of accepted facts addressing not only appellant's gas

¹ Docket No. 91-1717 (January 13, 1992).

exposure on January 15, 1986, but any subsequent gas exposure. The Board also directed the Office to obtain, if necessary, a supplemental report from the medical panel addressing the causal relationship between appellant's condition and any subsequent gas exposure.

In its subsequent statement of accepted facts, the Office indicated that appellant was also exposed to diesel exhaust fumes at work on July 31 and August 4, 1987. The Office subsequently requested that the medical panel address whether any of appellant's alleged medical conditions were related to factors of his employment, including his exposure to stack gas fumes and diesel exhaust fumes.

On August 14, 1992 Dr. Strang reviewed the statement of accepted facts and stated that the additional information did not alter the previous rationale or findings of the medical panel.

By decision dated September 28, 1992, the Office rejected the claim because the evidence failed to establish that the alleged medical condition or disability subsequent to January 15, 1986 was causally related to the injury.

By decision dated November 7, 1994, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision.

On November 3, 1995 appellant requested reconsideration. Appellant stated that the second opinion examining panel was biased and that the Office "stalled" his claim. Appellant stated that on numerous occasions he was exposed to large quantities of gas and that the employing establishment harassed him.

Appellant also submitted a report from Dr. Paul K. Ling, a clinical psychologist. Dr. Ling diagnosed post-traumatic stress disorder and stated that he based his diagnosis on the facts that appellant suffered a near death accident on January 16, 1986 and that he experienced harassment from his supervisors and coworkers concerning the incident. He also indicated that his diagnosis was based on appellant's symptoms of spontaneous reexperiencing the suffocation incident, nightmares, fear, decreased participation in life activities, a lack of trust, a depressed affect, chronic sleep disturbance, irritability verging on rage and startled responses.

By decision dated January 30, 1996, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was insufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to meet his burden of establishing that he sustained a disabling condition causally related to factors of his federal employment.²

² In a letter dated December 3, 1996 and received by the Office on December 5, 1996, appellant indicated under a heading entitled "appeal" that he requested a reopening and payment of his claim. On April 4, 1997 the Office indicated that it would forward his request to the Board. On June 18, 1997 appellant confirmed that he had requested an appeal before the Board.

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.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁴ Rationalized medical opinion evidence is medical evidence which 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,⁵ must be one of reasonable medical certainty,⁶ 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.⁷

In the present case, appellant's claim that he suffered a continuing medical condition as a result of his exposure to stack gas or diesel fumes at his federal employment is supported by the opinions of Drs. Lowney, Suzuki, Rohde and Ling. In his reports dated December 23 and February 14, 1986, March 26 and August 28, 1987, March 1, 1988 and March 23, 1989, Dr. Lowney, appellant's attending physician and a doctor of osteopathy, indicated that appellant suffered multi-system diseases of the respiratory, gastrointestinal and neurological tracts exacerbated by his exposure to stack gas and diesel fumes. Dr. Lowney's opinions, however, are not supported by any medical rationale explaining how appellant's condition resulted from the exposure to the gases or fumes. Moreover, Dr. Lowney based his diagnoses solely on appellant's recitation of symptoms and the fact that the symptoms appeared subsequent to the gas exposure at his employment. Because Dr. Lowney failed to provide adequate rationale for his opinion⁸ and based his conclusions solely on the appearance of appellant's symptoms following his gas exposure at work⁹ his opinion is entitled to little weight.

³ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ The Board held that, in certain cases, where the causal connection is obvious, expert testimony may not be necessary; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not one of obvious casual connection.

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁹ *Ruby I. Fish*, 46 ECAB 276 (1994).

In addition, the February 29, 1988 opinion of Dr. Suzuki, a Board-certified otolaryngologist, stating that because appellant indicated that symptoms were worse at his work site that most likely they were related to exposure to chemical and gases at work is entitled to little weight because the opinion is equivocal¹⁰ and based solely on appellant's recitation of symptoms.¹¹

In his reports dated April 24 and May 25, 1989, Dr. Rohde, a Board-certified psychiatrist and neurologist, indicated that appellant suffered both bilateral temporal brain damage and organic brain impairment as a result of stack gas inhalation. Essential to Dr. Rohde's analysis is his assumption that appellant never suffered any traumatic injuries to his head. The record, however, reveals that appellant was the victim of an assault in 1962 so severe that he required a nasal septoplasty. The record also reveals that appellant was involved in multiple motor vehicles accidents and, as a result, suffered from postconcussion syndrome. Because Dr. Rodhe's report was based on an inaccurate medical background, it is entitled to little weight.¹²

Finally, appellant submitted the report of Dr. Ling, a clinical psychologist, indicating that appellant suffered post-traumatic stress disorder due to his near death accident on January 16, 1986 and harassment from his superiors and coworkers. Dr. Ling, however, failed to provide any explanations of his conclusions, other than noting that appellant's symptoms appeared following the accident. Moreover, he did not address the fact that appellant previously received treatment for depression prior to the January 16, 1986 incident. Consequently, because Dr. Ling failed to provide a reasoned opinion based on an accurate medical background his opinion is also entitled to little weight.¹³

In contrast to these opinions, the second opinion panel of Drs. Bernardo, Friedman, McIntyre and Strang provided rationalized medical opinions establishing that appellant did not continue to suffer from any employment-related conditions. In this regard, these physicians obtained a complete factual and medical background of appellant prior to rendering their conclusions. Dr. Bernardo, a Board-certified internist specializing in pulmonary medicine, opined that because appellant's pulmonary function studies performed shortly after his gas exposure were normal that there was no evidence of a employment-related pulmonary condition. Similarly, Dr. Friedman, an internist, opined that appellant's physical examination, normal arterial blood gas studies, chest x-rays and pulmonary function tests suggested an absence of pulmonary disease. Moreover, he noted that appellant's electromyogram failed to indicate neurologic disease. Dr. McIntyre, a neurologist, concluded that because appellant demonstrated no neurologic abnormalities on examination and because his history was inconsistent with neurologic disease that appellant failed to establish any condition related to gas or fume exposure. Finally, Dr. Strang, a Board-certified psychiatrist and neurologist, opined that appellant demonstrated no significant cognitive impairment on psychological testing indicating

¹⁰ *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹¹ *See Ruby I. Fish*, *supra* note 9.

¹² *See William Nimitz, Jr.*, *supra* note 5.

¹³ *See Carolyn Allen*, *supra* note 8; *William Nimitz, Jr.*, *supra* note 5.

that appellant did not have any difficulties related to gas or fume exposure. Inasmuch as the opinion of the panel was based on a complete medical and factual background and each physician offered a reasoned opinion for their conclusions that appellant did not suffer any continuing disability related to gas or fume exposure, the opinion of the panel of second opinion physicians is entitled to determinative weight. According, appellant failed to meet his burden of proof to establish that he sustained a disabling condition causally related to factors of his employment.

The decision of the Office of Workers' Compensation Programs dated January 30, 1996 is affirmed.

Dated, Washington, D.C.
February 8, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member