

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JULIUS GREEN and DEPARTMENT OF THE NAVY,  
MARINE CORP RECRUIT DEPOT, Parris Island, SC

*Docket No. 98-1901; Submitted on the Record;  
Issued February 4, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant established that he sustained chronic obstructive pulmonary disease or an aggravation of his chronic lung condition in the performance of duty.

On September 17, 1997 appellant, then a 56-year-old materials handler supervisor, filed a notice of occupational disease and claim for compensation alleging that he developed a respiratory condition in the performance of duty. Appellant alleged that between 1975 to 1988 he was exposed to chemicals including freon, asbestos, ammonia and cooling tower-cleaning chemicals. He noted that he worked around ammonia leaks while making refrigeration and air conditioning repairs, which contributed to a deterioration of his lungs. He also alleged that he was exposed to ammonia leaks in a cold storage warehouse during 1987 to 1988. Appellant indicated that he first became aware that his lung condition was related to his employment on December 26, 1995.

In support of his claim, appellant submitted admission records from Chandler Hospital, which indicate that he was treated on January 2, 1995 for cough, wheezing and increasing shortness of breath due to severe "chronic obstructive pulmonary disease (COPD)." Dr. James A. Daly, a Board-certified pulmonary physician, noted that appellant was a chronic heavy smoker and given the severity of his lung function, was a candidate for a lung transplant or lung reduction surgery.

In a report dated December 26, 1995, Dr. Daly noted that appellant was diagnosed with pulmonary emphysema in December 1990, that he had a smoking history of 1½ packs per day for 41 years and that he had a history of tuberculosis. He discussed appellant's work history, noting that appellant "gets exposed to dust regularly, but [denied] any exposure to fumes or chemical dust." Dr. Daly diagnosed severe COPD with components of advanced emphysema and asthmatic bronchitis. He was concerned about the severity of appellant's lung condition at such a young age and suggested that he might have an alpha-1 antiprotease deficiency. Dr. Daly advised appellant to stop smoking.

Hospitalization reports dating from January to June 1997 indicate that Dr. Daly treated appellant on an intermittent basis for symptoms related to his lung condition. He attributed appellant's lung problems to heavy smoking and a possible tuberculosis infection. Dr. Daly approved appellant for a return to work on March 11, 1996 so long as appellant avoided dusty, fume-filled environments.

In a statement dated October 23, 1997, an employing establishment safety officer reported that during 1989 there were major and minor ammonia leaks at the cold storage facility where appellant was employed; however, the leaks were within the approved safe working limits set by the Occupational Health and Safety Administration (OSHA). He noted appellant was in the same building as the leaks, but his office area had a separate ventilation system which kept the area free of ammonia. One leak took place in the evening when employees were not at work and appellant was not provided access to the building until the leak was repaired and the area was safely ventilated. Respirators were not used by employees or appellant to enter cold storage areas that were above permitted entry levels.

In a January 1, 1998 report, Dr. Daly stated that appellant reported to him that he had been "exposed to ammonia fumes sometime ago at work." He noted that "[a]mmonia is a well-known, respiratory irritant and can promptly lead to asthma exacerbation, characterized by wheezing, cough, shortness of breath and sputum production. Repeated exposure to ammonia fumes certainly could have contributed to [appellant's] respiratory impairment."

In a decision dated March 4, 1998, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that he failed to establish fact of injury. The Office specifically noted that the evidence was insufficient to establish that appellant was exposed to gas leaks as alleged or that his respiratory condition was causally related to factors of his employment.

The Board finds that appellant failed to establish that he sustained chronic obstructive pulmonary disease or an aggravation of his chronic lung condition in the performance of duty.<sup>1</sup>

An employee seeking benefits under the Federal Employees' Compensation Act,<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty, as alleged and that any disability and/or specific condition, for which compensation is claimed, are causally related to the employment injury.<sup>3</sup> These are essential

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<sup>1</sup> The Board did not consider evidence submitted by appellant after the Office issued its March 4, 1998 decision as the Board does not have jurisdiction to consider evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</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>5</sup> The medical evidence required to establish causation, generally, is rationalized medical opinion evidence. 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, must be one of reasonable medical certainty, 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>

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of the employee that the condition was caused by or aggravated by an employment incident or factors, is sufficient to establish causal relation.<sup>7</sup>

In the instant case, appellant alleged that his exposure to ammonia and other fumes in the performance of duty caused or aggravated his lung condition, which has been diagnosed as COPD. Although an employing establishment safety officer acknowledged that there were ammonia leaks at the cold storage facility where appellant was employed during 1989, he also stated that appellant was never exposed to unacceptable levels of ammonia as established by OSHA and that appellant was not present in the building at night when some of the leaks occurred.

The record does not establish that appellant was generally exposed to ammonia in his federal employment, as alleged. Moreover, the medical records pertaining to appellant's lung condition only identify smoking, tuberculosis and a possible alpha-1 antiprotease deficiency as causative factors for his respiratory impairment. Appellant's treating physician, Dr. Daly, noted that ammonia exposure could have contributed to appellant's lung condition, but his opinion is

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>5</sup> *See Woodhams*, *supra* note 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Joseph T. Gulla*, 36 ECAB 516 (1985).

only speculative and does not constitute a rationalized medical opinion.<sup>8</sup> In the absence of a rationalized medical opinion fully addressing appellant's work history and the amount of his exposure to ammonia and which adequately explains with medical rationale how factors of appellant's employment caused or aggravated his respiratory condition, the Board finds that appellant failed to carry his burden of proof in establishing fact of injury.

The decision of the Office of Workers' Compensation Programs dated March 4, 1998 is hereby affirmed.

Dated, Washington, D.C.  
February 4, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment. *William S. Wright*, 45 ECAB 498 (1994).