

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. RHOADES and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, MN

*Docket No. 03-750; Submitted on the Record;
Issued July 14, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an aggravation of his preexisting rhinitis and sinusitis causally related to factors of his federal employment.

On October 12, 2001 appellant, then a 52-year-old clerk, filed an occupational disease claim alleging that he sustained an aggravation of his preexisting rhinitis and sinusitis due to factors of his federal employment. In a statement accompanying his claim, appellant related that he began to have sinus and asthma problems while in Vietnam. He stated that from November 1989 until June 29, 2001 he worked in ATAL [attendance, time and leave] at the employing establishment in an environment that was "a benefit to my health with the air conditioning of a computer room and away from secondhand smoke." Appellant related that at the end of June 2001 he was transferred to the workroom floor. He stated:

"My health problems relating to rhinitis and sinusitis are being aggravated by the temperature and humidity on the workroom floor plus the secondhand smoke on my coworkers clothes within all my assigned work areas. When I go down to the dock office to visit my assigned supervisor I can react to the secondhand smoke being sucked into the first floor from the outside break areas. Sometimes secondhand smoke inhaled while entering from the ramp, when I get to work, starts my reactions even before getting to my work area."

In a statement dated November 30, 2001, appellant described his health problems since being transferred to the workroom floor in June 2001. He indicated that the employing establishment had not followed his physician's restrictions in placing him on the workroom floor.

By decision dated January 22, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish fact of injury. The Office found that appellant had experienced the claimed employment factors but failed to submit medical evidence in support of his claim.

In a letter dated February 15, 2002, appellant requested a review of the written record.

In a report dated March 29, 2002, Dr. John Juola, Board-certified in family practice and appellant's attending physician, noted that appellant had a prior claim approved by the Office for vasomotor rhinitis. He opined that appellant should not work "outside of a controlled environment" as it would be "detrimental to his health...."

In a report dated May 13, 2002, Dr. Juola opined that appellant was disabled from employment from April 22 until May 13, 2002. He noted that appellant had required three types of antibiotics to cure his sinus infection and recommended that the employing establishment "follow his medical restrictions."

In an employing establishment memorandum dated May 20, 2002, an official noted that his restrictions were "to avoid smoky environments and to work in a place where the temperature is less than 72 degrees with the humidity less than 40 [percent]." She noted that she assigned appellant to a general expeditor position in the basement and stated: "This is a smoke[-]free environment. We do not have a controlled environment where the temperature is less than 72 degrees with humidity less than 40 [percent] any place in this facility." The official further noted that appellant was using four hours a day under the Family and Medical Leave Act (FMLA).

An official with the employing establishment, in a letter dated May 21, 2002, informed the Office that appellant had lost his job in timekeeping due to a reduction-in-force. The official indicated that due to appellant's restrictions he was placed in a location without exhaust fumes. The official further related that appellant had refused training for a position as a general expeditor, which would allow him to work in a cooler location.

In a letter dated May 23, 2002, appellant indicated that the ban on smoking was not enforced at his work location. He stated that he was not exposed to exhaust fumes at his work location but to secondhand smoke and temperatures in excess of his restrictions.

By decision dated June 6, 2002, the hearing representative affirmed the Office's January 22, 2002 decision as modified, to reflect that the medical evidence was insufficient to establish a medical condition causally related to employment factors. The hearing representative noted that appellant had a prior approved claim for vasomotor rhinitis, assigned file number A10-417703. The hearing representative found that appellant had established only that he was exposed to temperatures outside of his work restrictions and not to secondhand smoke or excessive humidity.

Appellant requested reconsideration of his claim on September 6, 2002. In support of his request, he submitted a report dated May 31, 2002, from Dr. Juola, who stated that appellant had vasomotor rhinitis and chronic sinusitis triggered by "secondhand smoke, other fumes and temperatures above a certain level and humidity above a certain level." Dr. Juola related:

"Individual irritants affect the condition of [appellant]. A combination of irritants provokes an exaggerated response and places a great strain on his system. Since July 2001, his primary concern has been secondhand smoke on coworkers' clothes and direct secondhand smoke from tobacco around the workplace. An example of this would be during the week of April 15[, 2002] the temperatures in

the workplace ranged from 75 to 83 degrees and combined with the secondhand smoke exacerbated his chronic mild sinus infection and went into one that he could [not] control. [Appellant] missed the following three weeks from work, while I placed him on three different antibiotics.”

In a statement dated May 31, 2002, a coworker of appellant indicated that the employing establishment did not require smokers to stay in designated areas and that smokers also smoked in their cars on the ramps. She stated: “Smoke in the enclosed ramp can be very strong as the ramp does [not] have proper ventilation.” The record also contains an internal employing establishment memorandum dated February 14, 2002, regarding employees “smoking in the parking ramp in the alcove west of the passenger elevator.”

Appellant further submitted a disability certificate dated June 7, 2002 from Dr. Juola, who recommended that he remain off work until “his work conditions are modified to eliminate exacerbations of his vasomotor rhinitis.”

By decision dated October 31, 2002, the Office denied modification of its prior merit decision.

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

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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.¹ The medical opinion 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.²

In this case, the Office accepted that appellant was exposed to temperatures outside of his work restrictions but not to secondhand smoke or excessive humidity. The Office further found that he did not submit sufficient medical evidence to establish that he sustained an aggravation of his preexisting sinusitis or rhinitis due to the identified employment factor.

In a report dated May 31, 2002, Dr. Juola diagnosed vasomotor rhinitis and chronic sinusitis. He stated: “Individual irritants affect the condition of [appellant]. A combination of irritants provokes an exaggerated response and places a great strain on his system.” Dr. Juola noted that appellant was concerned about secondhand smoke at work both directly and from his coworker’s clothes. He opined that appellant missed work in April 2002 as “temperatures in the workplace ranged from 75 to 83 degrees and combined with the secondhand smoke exacerbated his chronic mild sinus infection and went into one that he could [not] control.” In another report

¹ *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *See Morris Scanlon*, 11 ECAB 384-85 (1960); *Williams E. Enright*, 31 ECAB 426, 430 (1980).

of the same date, Dr. Juola found that appellant was disabled from April 22 until May 13, 2002 due to a sinus infection and recommended that the employing establishment follow his medical restrictions.

Causal relation does not denote a single and exclusive causative factor, nor does it preclude aggravation of an underlying condition by employment factors. Where a person has a preexisting condition which is not disabling, but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable.³

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁴ Although Dr. Juola's reports are insufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he sustained an employment-related aggravation of his preexisting sinusitis and rhinitis, they raise an uncontroverted inference of causal relationship sufficient to require further development of the record by the Office.⁵ The Board notes that there is no medical evidence of record refuting a causal relationship between the aggravation of appellant's sinus condition and factors of his federal employment.

On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate medical specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

Additionally, the Office found that appellant was not exposed to secondhand smoke but did not adequately explain why he was not exposed to secondhand smoke from his coworkers' clothing. Further, appellant submitted a statement from a coworker alleging that the employing establishment did not adequately prevent smoking at the workplace. He also submitted a memorandum from the employing establishment regarding employees smoking in an enclosed parking ramp above an employee elevator. On remand, the Office should further develop this factual aspect of appellant's claim.

³ *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁴ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁵ *See Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated October 31 and June 6, 2002 are set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
July 14, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member