United States Department of Labor
Employees' Compensation Appeals Board

JERRY L. BETRO, Appellant	)	
and	)	**Docket No. 04-625**
	)	**Issued: October 5, 2004**
DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, Sacramento, CA, Employer	)	

Appearances:
Jerry L. Betro, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 2, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated October 2, 2003 which denied that he sustained a noise-induced hearing loss, a back or wrist condition, or multiple chemical sensitivity in the performance of duty. Appellant also appealed a June 17, 2003 decision in which an Office hearing representative denied his subpoena requests. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the October 2, 2003 decision and whether the Office abused its discretion in denying appellant's subpoena requests.

ISSUES

The issues are: (1) whether the Office properly denied appellant's requests for subpoenas; (2) whether appellant met his burden of proof to establish that he sustained a multiple chemical sensitivity condition causally related to factors of his employment; (3) whether appellant met his burden of proof to establish that he sustained a cervical or wrist condition causally related to factors of his employment; and (4) whether appellant met his burden of proof

to establish that he sustained a noise-induced hearing loss causally related to factors of his employment.

FACTUAL HISTORY

On June 24, 2002 appellant, then a 57-year-old industrial hygienist, filed an occupational disease claim, Form CA-2, alleging that carrying large cases, using a laptop computer for years, a poor desk set up and use of the telephone caused deteriorating cervical discs and neuropathy of the right wrist. He first realized the condition was employment related on June 1, 2002.[1] On June 26, 2002 appellant filed another occupational disease claim, alleging that exposure to chemicals throughout his federal career caused multichemical sensitivity. He first became sensitive in 1996 and this continued until a few months prior to filing the claim.[2] On July 2, 2002 he filed an occupational disease claim, alleging that his hearing loss was related to noise exposure in his employment which he first realized on June 12, 2002.[3] Appellant submitted personal statements and medical evidence in support of his claims.

Regarding the orthopedic claim, in a statement dated June 24, 2002, appellant contended that his condition became worse after he carried heavy objects such as the cases he was required to carry for work, transporting heavy materials and equipment, and moving materials throughout the employing establishment offices. He stated that working on the computer exacerbated his condition, noting that he had to use a laptop for five years and that his working environment was not ergonomically designed. He was diagnosed with dyslexia which meant that he had to spend a longer amount of time preparing reports and necessitating longer hours at the computer. Appellant further contended that use of the telephone, which he held on his neck while looking up information, contributed to his condition, noting that in 1994 he was required to be on the telephone for eight-hour stretches. He advised that he had been under treatment for his neck condition since the 1990s.

Appellant submitted various medical reports beginning in 1994 noting his status and restrictions. A November 9, 2001 magnetic resonance imaging (MRI) of the cervical spine was

[1] Office File No. 112009365.

[2] Office File No. 112009565.

[3] Office File No. 112009766. Appellant initially filed three appeals with the Board regarding these claims, and they were assigned docket numbers 04-625, 04-626 and 04-627. By orders dated June 29, 2004, docket numbers 04-626 and 04-627 were dismissed as duplicate appeals with the instant case going forward. Appellant also had three prior appeals to the Board, adjudicated by the Office under File No. 110120853. In a decision dated January 5, 2000, Docket No. 97-2123, the Board found that the Office improperly denied appellant's request for reconsideration of a claim that he sustained an employment-related ear infection, an ear-drainage condition and hearing loss caused by frequent air travel. The Board remanded the case to the Office for determination on the issue of whether these conditions were caused or aggravated by factors of employment. On remand the Office again denied the claim. In a decision dated July 2, 2001, Docket No. 00-2564, the Board again remanded the case to the Office for referral to an appropriate medical specialist, to be followed by a *de novo* decision. On remand the Office again denied the claim. By decision dated February 14, 2003, Docket No. 02-903, the Board again remanded the case to the Office. The Board found that the second-opinion evaluation relied upon by the Office was not responsive to the Board's July 2, 2001 remand order. On remand the Office was to again refer appellant for an appropriate medical evaluation.

read by Dr. David J. Seidenwurm, Board-certified in diagnostic and neuroradiology, as demonstrating multilevel degenerative disease with foraminal narrowing at C4-5 on the right and bilaterally at C5-6 with flattening of the ventral sac at C5-6. By report dated January 15, 2002, Dr. Rosalind A. Hsia, Board-certified in neurology, advised that electromyographic (EMG) study of the upper extremities was consistent with very mild right ulnar neuropathy, most likely from compression at the wrist and also demonstrated mild chronic denervative changes in the paraspinous muscles at C5-7 consistent with root dysfunction proximal to the neuroforamina. The study was otherwise normal. Dr. John J. Champlin, Board-certified in family practice, provided an attending physician's report dated June 26, 2002 in which he stated that he first examined appellant on December 31, 1998 and noted a history of complaints of pain with numbness in the fingers of the right hand. He noted the MRI and EMG findings and diagnosed cervical neuritis and cervical degenerative disc disease. Dr. Champlin checked the "yes" box, indicating the diagnosed conditions were employment related, stating they were due to carrying heavy cases and a poor set up at appellant's workstation as well as a fall into an empty pool.

Appellant also submitted employing establishment annual safety and health reports which noted his need for ergonomic equipment.

By letter dated August 7, 2002, the Office informed appellant that the evidence submitted was insufficient to establish the orthopedic claim and advised him regarding the evidence needed. In a response dated August 29, 2002, Gabriel Gillotti, Director of Voluntary Programs and Outreach (VPO) of the employing establishment, advised that appellant had worked for him for seven years and had filed the three claims just prior to retirement. Mr. Gillotti disputed that appellant was required to engage in heavy lifting and noted that he was unaware of any ergonomic problems at the workstation. He included a copy of appellant's job description.[4]

Regarding the multiple chemical sensitivity claim, in a statement dated June 25, 2002, appellant advised that during his employment he had been exposed to sensitizing chemicals. He identified chemical agents such as aldehydes, amines, phenols, isocynates, herbicides and pesticides, mold and carbon dioxide. Appellant advised that he had been treated by an allergist, a dermatologist and an occupational physician, and that he reacted more easily when under heavy stress. He also submitted various standards and memoranda regarding safety inspections and ergonomics, and an article entitled "Sick Buildings." In an attending physician's report dated June 26, 2002, Dr. Champlin reported a history that appellant suffered red rashes and swelling when exposed to chemical compounds. He diagnosed allergic reactions and dermatitis and checked the "yes" box indicating the conditions were employment related, stating "exposed to chemicals during employment during inspections in company vehicles and hotels."

[4] The job description indicated that an industrial hygienist performed site evaluations and field visits, responded to telephone, written or visitor-initiated inquiries, and could be required to perform safety inspections and other duties as required. The physical demands indicated that the position was essentially sedentary but that inspections could require considerable walking, crawling, climbing, prolonged standing, lifting and carrying some moderately heavy pieces of equipment. The position required frequent driving and/or travel for considerable distances. Work was to be performed in an office setting with infrequent exposure to hazards when visiting industrial and construction worksites where there could be exposure to operating machines and equipment, hazardous materials, extremes of temperature, noise, vibrations, dust and fumes.

By letter dated August 7, 2002, the Office informed appellant that the evidence submitted was insufficient to establish the multiple chemical sensitivity claim and advised him regarding the evidence needed. In a response dated August 27, 2002, Mr. Gillotti advised that he had first become aware of appellant's allergic condition in 1996 when appellant, who was on temporary duty travel, informed him that he had a reaction to chemicals used to clean his hotel room and sanitize the bedding. Mr. Gillotti advised that he had observed appellant on numerous occasions with deep red skin discoloration of the neck and arms, and noted that appellant stated he continued to have reactions to hotel rooms and rental cars.

Regarding the hearing loss claim, in a statement dated June 24, 2002, appellant contended that he had employment-related noise exposure due to conducting inspections and evaluations at smelters and foundries, from construction noise, leaking hearing protection, headphones, noise from cars and wind entering his car while driving, and from having tubes in his ears. He also submitted various publications, audiograms and reports dating from June 13, 1989 to April 18, 2002. Dr. Champlin provided an attending physician's report dated June 26, 2002 in which he provided a history of gradual loss of hearing due to noise exposure. He noted a slight congenital hearing defect and diagnosed hearing impairment and serous otitis media and checked the "yes" box indicating the conditions were employment related, stating "continuous exposure to high decibels, frequent air travel causing fluid build up in ears."

By letter dated August 6, 2002, the Office informed appellant that the evidence submitted was insufficient to establish the noise-induced hearing loss claim and advised him regarding the evidence needed.

In three decisions dated September 30, 2002, the Office denied the respective claims on the grounds that fact of injury had not been established. On October 28 and 30, 2002 appellant requested a hearing regarding all three claims. He submitted voluminous evidence and a July 17, 1995 decision of the Office which accepted that he sustained an aggravation of depression not to exceed September 1994.[5]

On October 18, 2002 appellant reiterated his contentions about employment factors he felt contributed to his orthopedic condition. He also stated that he had been involved in nonemployment-related motor vehicle accidents in 1988 and 2000 and sustained a fall into an empty swimming pool in 2001. He first noticed neck numbness in 1986 and that it had not been accepted with his stress claim.[6] By report dated October 24, 2002, Dr. Champlin advised that appellant had "by history" worked in numerous nonergonomically optimal conditions where he was required to carry and transport on at least a weekly and often a daily basis numerous text volumes, files, a portable computer and various equipment such as sampling pumps which weighed 30 to 40 pounds. The physician stated that appellant reported that he was not provided with any type of cart to transport these, and advised that he had developed significant symptoms

[5] This claim was adjudicated by the Office under file No. 11-116616.

[6] Appellant also submitted various publications and medical records that did not address whether his employment affected his claimed orthopedic condition. In notes dated November 6 and 30, 2000, Dr. Champlin diagnosed lumbosacral strain and wrist contusion following appellant's six-foot fall into an empty swimming pool.

consistent with internal disc derangement of the cervical spine with degenerative radiographic findings. The physician concluded:

> "These are, in my opinion, significantly in advance of what I would expect from a similar individual with a relatively sedentary job. It is my opinion that the occupational activities listed above contributed substantially to his current level of pain and disability regarding his neck and ongoing upper extremity neuritis symptoms as well as the development of relatively mild carpal tunnel syndrome on NCV [nerve conduction velocity] EMG examination."

Dr. Champlin advised that the nonindustrial fall into the swimming pool "only temporary aggravated his preexisting symptoms."

In a response dated September 30, 2002, received by the Office on November 13, 2002, appellant again discussed his sensitivity symptoms and employment history from 1974 to 1988 and noted possible exposures for certain periods.[7] Medical evidence included treatment notes dating from January 29, 1993 to February 9, 2001 in which Dr. Malcolm Ettin, Board-certified in otolaryngology, diagnosed sinusitis. In a February 8, 1993 report, Dr. Barry A. Kohn, a Board-certified allergist, noted treating appellant for multiple allergic symptoms that occurred when he was exposed to chemicals. In an April 10, 1996 report, Dr. Dennis B. Daughters, Board-certified in dermatology, diagnosed seborrheic and genital erythema and dermatitis. Appellant also submitted treatment notes from Dr. Champlin dating from December 26, 1990 to November 6, 2001 in which diagnoses of allergies, sinusitis, contact dermatitis and persistent rashes were noted. These included a 1992 note[8] in which contact dermatitis was diagnosed due to a reaction to a nicotine patch, a November 7, 1995 note in which Dr. Champlin advised that appellant had a rash from a new laundry soap, notes dated February 17 and 18, 1996 in which it was noted that appellant had a sudden, generalized rash following taking Xanax and a November 26, 1997 note in which a two-day history of rash due to a drug reaction was noted.

In the October 24, 2002 report, Dr. Champlin advised:

> "I have personally examined [appellant] on many occasions and it is well documented in my medical record that [appellant] has clear objective evidence of some type of skin sensitivity especially in his neck, chest and groin area. [He] reports that he had multiple exposures to isocyanates and formaldehydes and other similar significantly sensitizing chemicals in the course of his occupational inspections. While there is no specific testing for chemical sensitivities, these sensitivities by history did occur after sensitizing exposures which [appellant] reports on an occupational basis and tended to reoccur [sic] after exposures in lower levels to similar chemical[s] including isocyanates and formaldehydes. It is

[7] He stated that in 1974 he worked for the National Oceanic & Atmospheric Administration at the University of Washington; from 1974 to 1975 for the employing establishment; from 1975 to 1977 for FMC Marine and Rail Division; for 10 months in 1980 as a consultant for EPA Research Laboratories; from 1980 to 1984 for the employing establishment; from 1986 to 1997 for the Veterans Administration (VA) Medical and Research Center in Albuquerque, NM; and then returned to the employing establishment in Sacramento, CA.

[8] The date is incomplete on the imaged copy.

> my opinion that, pursuant to the definitions provided by the Encyclopedia of Occupation Health and Safety, 4th edition, published by the International Labor Office in Geneva, section 13.6, Multiple Chemical Sensitivities, [appellant] does meet the diagnostic criteria as outlined for multiple chemical sensitivities. His repetitive reactions to various low level exposures which were undoubtedly on an occupational and nonoccupational, demonstrate clear sensitivity. [He] does have a documented history of high level exposures in the past and states that he has provided your office with CA-2 documentation of these chemical exposures in the past and despite my long association with [him], I have no knowledge of any other exposures which may have indeed sensitized him. While there is no specific testing which can correlate the exposure to the current symptomatology, there is certainly no testing which would also eliminate it as the cause. It is my opinion that based on my multiple examinations showing clear objective evidence of chemical sensitivities that it is reasonable to conclude that this came about at least in part by [appellant's] multiple documented chemical exposures in the past which included both isocyanates, pesticides and formaldehydes."

Regarding his hearing loss claim, on September 26, 2002 appellant advised that he had a birth defect with a hearing loss at 1000 hertz (Hz) and that he had another occupational disease claim related to his ears but that the instant claim was for a noise-induced hearing loss. He described his employment history and noise exposure. Appellant also submitted a number of publications regarding hearing loss and medical treatment notes dating from January 29, 1993. On June 27, 2002 Dr. Ettin noted a history of hearing loss related to noise exposure at work. He diagnosed sensorineural hearing loss, chronic serous otitis media, perforated tympanum and noise-related hearing loss and checked the "yes" box, indicating the conditions were employment related, stating that they were caused by noise exposure and frequent airplane travel which caused pressure changes in the middle ear. In an October 24, 2002 report, Dr. Champlin advised that he had treated appellant for a number of years for Eustachian tube dysfunction, not caused by occupational exposure but which did predispose appellant to the development of significant sensorineural hearing loss, chronic otitis media and a perforated tympanum as well as noise-related hearing loss. He opined that the exposure was significantly aggravated by repetitive job-related airplane travel and increased noise exposure during testing and inspections.

By letter dated November 12, 2002, the Office Branch of Hearings and Review informed appellant that if he wished to request subpoenas, the request must be filed no later than 60 days from the date of his initial request for a hearing. In statements dated January 2 and 9, 2003,[9] appellant requested that records of the employing establishment regarding his physical examinations and audiograms and employing establishment medical and supervisory staff be subpoenaed, as well as Public Health Service medical staff who had conducted his physical examination in 2002. By decision dated June 17, 2003, an Office hearing representative denied appellant's request for subpoenas as untimely, noting that a subpoena request must be submitted in writing no later than 60 days after the initial hearing request which, in the instant case, was October 28, 2002.

[9] The two statements are dated January 2 and 9, 2002, which are apparently typographical errors, as they were stamped received by the Office on January 16 and 23, 2003 respectively and reference the November 12, 2002 letter.

At the hearing, held on July 16, 2003, appellant reiterated that his hearing loss claim was for noise-induced hearing loss and distinguished it from his claim for aggravation of bilateral otitis media with subsequent hearing loss.[10] He addressed his contentions regarding his orthopedic and chemical sensitivity claims. The hearing representative explained what was needed to establish the various claims, and the record was left open for 30 days.

Subsequent to the hearing, appellant again reiterated his contentions and his request that the employing establishment furnish information regarding his medical examinations and exposure record. He submitted additional publications and duplicates of evidence previously of record. A June 13, 1986 cervical spine x-ray that was reported as normal. Thoracic spine x-ray demonstrated questionable osteopenia and focal collapse of a solitary mid to lower T-spine body. In a report dated March 24, 1989, Dr. Joe T. Hartzog, a physiatrist, noted that appellant was seen in consultation for neck and left upper extremity complaints with a history of neck problems going back to a motor vehicle accident in 1975. On December 31, 1988 he was in a motor vehicle accident when he hit his head on a windshield. Dr. Hartzog diagnosed minor cervical degenerative disc disease with possible minor early neuropathy of the left elbow.

By report dated August 1, 1990, Dr. Donald L. Ansel, a Board-certified neurologist, noted that appellant had been in motor vehicle accidents in 1975 and on December 31, 1988. He opined that it was "certainly reasonable" that appellant's neck and left arm complaints were causally related to the December 1988 motor vehicle accident. A cervical spine MRI dated March 13, 2003 was interpreted by Dr. James Steidler, Board-certified in diagnostic radiology, as demonstrating a small to moderate-sized posterior right paracentral disc protrusion at C6-7 which encroached the right neural foramen and which had not been seen on the November 2001 MRI. Dr. Steidler further noted a broad-based disc bulge/osteophyte at C5-6 with severely narrowed neural foramina at that level and a small posterior disc protrusion at C4-5.

Appellant also submitted statements in which he chronicled his employment history. He discussed his contention that he had been exposed to a multitude of chemicals during his federal employment[11] and that his hearing loss was also caused by noise exposure during employment. He submitted copies of publications and memoranda, duplicates of evidence previously of record, and information regarding his other hearing loss claim.

By decision dated October 2, 2003, an Office hearing representative affirmed each of the September 30, 2002 decisions, finding that appellant failed to establish that any of the claimed conditions were causally related to employment factors.

[10] *Supra* note 3.

[11] Appellant specifically alleged that he was exposed to various chemicals, molds and irritants at Yosemite National Park, Golden Gate National Recreational Area, Moffett Field, Loma Linda VA Hospital, San Diego VA Hospital, Palo Alto VA Hospital, McClellan Air Force Base and many other locations.

LEGAL PRECEDENT -- ISSUE 1

Section 8126 provides that the Secretary of Labor, on any matter within her jurisdiction, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles. This provision gives the Office discretion to grant or reject requests for subpoenas. Office regulations state that subpoenas for documents will be issued only where the documents are relevant and cannot be obtained by any other means. Subpoenas for witnesses will be issued only where oral testimony is the best way to ascertain the facts.[12] In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could have been obtained. The Office hearing representative retains discretion on whether to issue a subpoena. The function of the Board on appeal is to determine whether there has been an abuse of discretion.[13]

Section 10.619(a)(1) of the implementing regulation provides that a claimant may request a subpoena only as part of the hearings process, and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must submit the request in writing and send it to the hearing representative as early as possible but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.[14]

ANALYSIS -- ISSUE 1

In the instant case, on October 28 and 30, 2002 appellant requested a hearing regarding the instant claims. By letter dated November 12, 2002, the Office Branch of Hearings and Review informed appellant that if he wished to request subpoenas, the request must be filed no later than 60 days from the date of his initial request for a hearing. In statements dated January 2 and 9, 2003, appellant requested that the employing establishment records and staff and Public Health Service staff be subpoenaed.

The Board notes that 60 days following appellant's hearing request dated October 30, 2002 falls on December 29, 2002, a Sunday. Appellant did not timely submit any request for subpoenas on or before Monday, December 30, 2002. Section 10.619(a)(1) provides that a subpoena request must be submitted in writing to the hearing representative no later than 60 days following the request for a hearing.[15] Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are clearly contrary to logic and probable deductions from established facts.[16] The Board therefore finds

[12] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[13] *Id.*

[14] 20 C.F.R. § 10.619(a)(1).

[15] *Id.*

[16] *Claudio Vazquez*, 52 ECAB 496 (2001).

that the Office hearing representative did not abuse his discretion in finding that appellant's requests for subpoenas on January 2 and 9, 2003 were untimely.

LEGAL PRECEDENT -- ISSUES 2, 3 & 4

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 diagnosed condition is causally related to the employment factors identified by the claimant. 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.[17]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[18] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[19] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[20]

ANALYSIS -- ISSUE 2

In support of his claim that he sustained multiple chemical sensitivity causally related to his federal employment, appellant described perceived exposures at the employing establishment and while on business travel, both in hotels and at inspection sites, following which he had reactions to chemicals, herbicides, pesticides and mold.

Appellant's position description generally provided that frequent travel was required and indicated that he might have infrequent exposure to hazardous materials, dust and fumes.[21] Appellant, however, has not established that he was exposed to any specific hazardous materials during these inspections. Appellant has not established that he was exposed to harmful

[17] *Solomon Polen*, 51 ECAB 541 (2000).

[18] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[19] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[20] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[21] *Supra* note 4.

chemicals or conditions at the employing establishment premises. While he made general allegations regarding exposures to paints, fumes, mold, etc., he submitted no probative evidence to show that these conditions existed at the employing establishment facility. Thus the evidence does not support that appellant could have had harmful exposures there.

There is no dispute that appellant had to travel and thus stay in hotels. There is no probative evidence to establish that any harmful exposures occurred and no rationalized medical evidence to establish that any reaction appellant sustained was employment related. The fact that the etiology of a disease or condition is obscure does not shift the burden of proof to the Office to disprove an employment relationship. Neither does the absence of a known etiology for a condition relieve an appellant of the burden of establishing a causal relationship by the weight of the evidence, which includes affirmative medical opinion evidence based on the material facts with supporting rationale.[22]

While Mr. Gillotti observed appellant on numerous occasions with a rash and appellant was diagnosed with various allergic conditions including sinusitis and contact dermatitis, the medical evidence of record fails to establish that these conditions were caused by employment factors. The medical evidence does not contain a rationalized opinion regarding the cause of appellant's allergic conditions. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[23]

In a June 26, 2002 attending physician's report, Dr. Champlin, appellant's attending family practitioner, diagnosed allergic reactions and dermatitis and checked the "yes" box indicating the conditions were employment related, stating that appellant suffered red rashes and swelling when exposed to chemicals during employment inspections, in vehicles and at hotels. Dr. Champlin also submitted a report dated October 24, 2002 in which he reported that his records documented that appellant had objective evidence of "some type of skin sensitivity" which met the criteria for multiple chemical sensitivity which he attributed to the multiple exposures reported by appellant. A medical opinion 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.[24] Furthermore, medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[25] In order to meet his burden of proof, appellant must submit medical evidence diagnosing a specific disease or condition and explaining how identified employment factors have inflicted injury.[26]

[22] *Judith A. Peot,* 46 ECAB 1036 (1995).

[23] *Michael E. Smith*, 50 ECAB 313 (1999).

[24] *Leslie C. Moore*, *supra* note 19.

[25] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

[26] *Judith A. Peot, supra* note 22.

The Board finds the reports of Dr. Champlin insufficient to meet appellant's burden to establish that he has multiple chemical sensitivity causally related to employment factors as they fail to indicate when and under what circumstances these reactions occurred and fail to describe specific employment factors as the cause of appellant's diagnosed condition.[27] These reports are therefore too general in nature to meet appellant's burden of proof to establish that he has employment-related multiple chemical sensitivity.[28]

ANALYSIS -- ISSUE 3

Regarding appellant's orthopedic claim, the MRI studies document appellant's cervical degenerative disc disease and protrusions at C4-5, C5-6 and C6-7. The medical evidence, however, does not contain a rationalized opinion regarding causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[29] In reports dated March 24, 1989 and August 1, 1990, Drs. Hartzog and Ansel advised that appellant's neck complaints were caused by a December 31, 1988 motor vehicle accident. In a September 3, 1997 report, Dr. Hsia noted appellant's complaints of neck pain and numbness after he spent four days pruning trees and hedges.

Dr. Champlin submitted an attending physician's report dated June 26, 2002 in which he diagnosed cervical neuritis and cervical degenerative disc disease and checked the "yes" box indicating that the conditions were employment related, stating that they were due to carrying heavy cases and to a poor setup at appellant's workstation as well as his fall into an empty pool. In his October 24, 2002 report, Dr. Champlin reported that "by history" appellant worked in numerous nonergonomically optimal conditions where he was required to carry and transport on at least a weekly and often a daily basis numerous text volumes, files, a portable computer, various equipment such as sampling pumps which weighed 30 to 40 pounds. Dr. Champlin stated that appellant reported that he was not provided with any type of cart to transport these, and advised that appellant had developed significant symptoms consistent with internal disc derangement of the cervical spine with degenerative radiographic findings. The physician continued that appellant's degenerative findings were "significantly in advance of what I would expect from a similar individual with a relatively sedentary job" and concluded that it was his opinion that employment factors "contributed substantially" to appellant's neck and upper extremity symptoms as well as the development of relatively mild carpal tunnel syndrome.

The evidence of record documents that appellant's workstation was not ergonomically correct and his supervisor, Mr. Gillotti, acknowledged that appellant spent many hours at the computer and helped him with a "minor" lifting chore in 2002. These exposures are thus accepted. However, Mr. Gillotti also advised that, during the seven years appellant had worked for him, he did not carry any equipment while performing inspections and had been furnished a wheeled case in 1999. He further stated that day laborers were hired for office moves.

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[27] *Frank Luis Rembisz, supra* note 25.

[28] *Leslie C. Moore, supra* note 19.

[29] *Michael E. Smith, supra* note 23.

It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[30] Dr. Champlin provided a general opinion that appellant's cervical condition was causally related to his federal employment, the Board finds his opinion of insufficient probative value to meet appellant's burden. Dr. Champlin was seemingly unaware that appellant's position since 1995 was essentially sedentary,[31] and factors he did not specifically explain how any nonergonomic conditions contributed to appellant's condition. Furthermore, he did not discuss the contribution of appellant's several motor vehicle accidents that were not employment related, and, other than a brief reference, did not discuss the impact of appellant's fall into the empty swimming pool, another nonemployment-related injury.

A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.[32] The Board finds Dr. Champlin's reports were not based on an accurate history and he failed to provide detailed medical reasoning to support his conclusion. They are therefore insufficient to meet appellant's burden of proof to establish that his cervical condition was caused by employment factors.

ANALYSIS -- ISSUE 4

The Board finds, however, that appellant's claim for employment-related noise-induced hearing loss is not in posture for decision and will be remanded to the Office. The Board notes that appellant has an additional claim for an ear condition, including hearing loss, adjudicated by the Office under file number 110120853.[33] Office procedures regarding doubling cases indicate that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body.[34] Appellant's previous claim, 11120853, and the case at hand, 112009766, are both claims for employment-related hearing loss and should, therefore, be doubled.

It is well established that proceedings under the Act are not adversarial in nature,[35] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[36] On remand the Office should double the

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[30] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[31] *Supra* note 4.

[32] *Beverly A. Spencer*, 55 ECAB ___ (Docket No. 03-2033, issued May 3, 2004).

[33] *Supra* note 3.

[34] Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(b)(1) (February 2000).

[35] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[36] *Claudio Vazquez, supra* note 16.

instant case record for an employment-related noise-induced hearing loss, Office file number 112099766, with that of appellant's claim adjudicated by the Office under file number 110120853, for an ear condition and employment-related hearing loss caused by frequent air travel. On remand the Office should obtain any relevant information from the employing establishment regarding appellant's employment-related noise exposure, the dates of exposure and the approximate levels of exposure based on available data. In conformance with our previous decision regarding file number 112099766,[37] the Office should prepare a statement of accepted facts and refer appellant, together with both case records and questions to be answered, to a Board-certified specialist for an opinion regarding whether appellant's hearing loss is employment related. After such development as the Office deems necessary, an appropriate decision shall be issued.

CONCLUSION

The Board finds that appellant failed to establish that he sustained either multiple chemical sensitivity or a cervical condition causally related to factors of his federal employment. The Board, however, finds his claim regarding employment-related noise-induced hearing loss is not in posture for decision, and that case should be remanded to the Office for doubling with his separate claim for an ear condition and employment-related hearing loss caused by frequent air travel.

[37] *Supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 17, 2003 be affirmed. The decision of the Office dated October 2, 2003 is hereby affirmed in part and vacated in part, and the case is remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: October 5, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member