

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**THOMAS J. MILES, Appellant**

**and**

**DEPARTMENT OF THE NAVY, MARINE  
CORPS LOGISTICS BASE, Albany, GA,  
Employer**

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**Docket No. 04-2057  
Issued: February 14, 2005**

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*Appearances:*  
*Thomas J. Miles, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On August 17, 2004 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated August 29 and November 26, 2003 and July 13, 2004 which found that he had not established that his cardiac condition was caused or aggravated by factors of his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that his cardiac condition was caused or aggravated by factors of his federal employment.

**FACTUAL HISTORY**

On October 9 and December 12, 2002 appellant, then a 48-year-old heavy mobile equipment mechanic, filed a traumatic and an occupational disease claim, respectively, alleging that he was chemically exposed to Turco 6776 Thin for a period of 10 months while he was on medication for job-related injuries and that the medication and the chemical fumes affected his

central nervous system. Appellant indicated that he first realized that his medical condition was caused or aggravated by his employment on October 4, 2002. There is no indication that appellant stopped work.

Appellant submitted copies of a May 24, 2002 emergency room triage assessment, along with objective testing, which diagnosed chest wall pain and uncontrolled hypertension.

By letter dated January 14, 2003, the Office informed appellant that the evidence submitted was insufficient to establish his claim and advised him to provide a medical report including a physician's opinion with medical reasons on the cause of his condition.

Appellant submitted a report dated February 11, 2003 in which Dr. Robert V. Glover, Jr. a cardiologist, advised that appellant had been diagnosed with paroxysmal atrial tachycardia -- a "racing heart," around 1973 and had been medically treated for this condition over the years. Dr. Glover noted that appellant recently started having palpitations and shortness of breath to which he attributed the fumes and vapors from the chemical "Turco 6776 [Thin]" as precipitating those attacks. He stated that appellant's condition was that of sinus tachycardia, which was the "normal" kind of racing and not atrial tachycardia. Dr. Glover further stated that if it could be proven that the chemical exposure caused appellant's heart to race in any way, then he must be removed from that environment.

In an undated letter, which the Office received on February 6, 2003, the employing establishment controverted appellant's claim. The employing establishment denied appellant's allegation that he was working in a hazardous environment, noting that the need for personal protective equipment for vapors from the chemical in question had not been identified by any of the industrial hygiene studies conducted within appellant's work area. Moreover, vapors emanating from the chemical were carried away from the workers by specially engineered local exhaust ventilation system and all air samples revealed that the vapor levels within the work area were below any established permissible exposure level or threshold limit value. The employing establishment further noted that the symptoms appellant described as his overexposure symptoms were virtually the same as the symptoms of overexposure identified by the material safety data sheet for that chemical. Copies of material supporting the employing establishment's position were submitted, which included a December 3, 2002 Department of Veterans Affairs rating decision denying appellant's claim for service-connected paroxysmal atrial tachycardia and asbestos exposure and a previously submitted copy of the employing establishment's investigation into appellant's mishap and injury report he filed on October 3, 2002 alleging that he was working and eating near the chemical, Turco 6776 Thin, in his shop.<sup>1</sup>

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<sup>1</sup> The investigation report revealed that Turco 6776 Thin was an organic paint stripper used in appellant's shop, there were no exposure limits established for three of the four active chemical ingredients contained in the product, and the permissible exposure limits for formic acid, the other active chemical ingredient were noted. The report stated that any vapors which might be released from the vat were well contained by the upgraded ventilation system and, for approximately 12 minutes a day, the vapors are uncontrolled when the basket was lifted above the air curtain for the residual chemicals to drain back to the vat. The report found that appellant's work space was 27 feet from the corner of the vat to the nearest point of his work space and disputed appellant's allegation that he worked within 10 feet of the chemical as the area around the vats of chemicals had a clear space of approximately 12 feet by 9 feet and, outside the clear space, was a driving lane which was approximately 12 feet wide. A material data safety sheet for formic acid accompanied the report.

By decision dated March 17, 2003, the Office denied the claim, finding the medical evidence insufficient to establish causal relationship.

In a letter dated June 10, 2003, appellant requested reconsideration alleging that his preexisting atrial tachycardia condition worsened as a result of his exposure to the chemical Turco 6776 Thin stripper. Various factual documents were submitted along with a June 8, 2003 emergency room report diagnosing appellant with palpitations and paroxysmal supraventricular tachycardia; and progress notes from Dr. Glover dated April 7, June 9 and August 11, 2003. Neither progress note addresses causation, but the April 7, 2003 note indicated that appellant had been moved to a new location.

By decision dated August 29, 2003, the Office denied modification of its previous decision finding that the evidence did not establish that appellant's tachycardia condition was caused or aggravated by his employment.

In a letter dated September 4, 2003, appellant requested reconsideration of the Office's August 29, 2003 decision. He argued that, despite the employing establishment's assertions, he worked 10 feet and 27 feet from the chemical vat area and he was exposed to the fumes from the chemicals 9 hours a day 5 days a week. He further mentioned that testing was done on the chemical. In support of his reconsideration request, appellant submitted various documents along with a September 4, 2003 report from Dr. Glover who noted that, when appellant went to the emergency room on June 8, 2003, he was diagnosed with supraventricular tachycardia, formally known as atrial tachycardia. Dr. Glover advised that appellant was on long-term treatment for this condition and exposure to noxious stimuli, such as chemical irritants, could precipitate those episodes.

By decision dated November 26, 2003, the Office denied modification of its previous decision finding that the medical evidence failed to show that appellant's cardiac condition was caused or aggravated by his federal duties as alleged.

On January 11 and 29, March 10 and November 5, 2004, appellant requested reconsideration of the Office's November 26, 2003 decision. Various documents were submitted, including chemical sampling information on formic acid, two spasticity watch articles pertaining to noxious stimuli, information pertaining to appellant's contemplated removal by the employing establishment and appellant's responses, an article from Penn State Applied Research Lab along with medical evidence. In a January 8, 2004 report, Dr. Glover stated that he had previously advised that appellant's sinus tachycardia, not atrial tachycardia, was documented when he was in the work environment. He opined that this proved that appellant reacted physically to this chemical if indeed he was in this work environment at those times. Dr. Glover further stated that this did not prove that the chemical exacerbated or worsened his atrial tachycardia. In a March 2, 2004 report, he clarified that the terms noxious stimuli/chemical irritants he had previously referred to meant strong acids/bases and strong preservatives like formaldehydes and not general dusts, gases, greases and oils. In an April 6, 2004 letter to the employing establishment, Dr. Glover advised that he reviewed the "product/chemical list" and, based on this, appellant could return to his position as a heavy mobile equipment mechanic. He noted that he did not see the chemical "Turco 6776 Thin" on the list.

By decision dated July 13, 2004, the Office denied modification of its previous decision finding that the medical evidence submitted was insufficient to support that appellant's cardiac condition was causally related to the claimed chemical exposure.

### **LEGAL PRECEDENT**

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 period 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 the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS**

In the instant case, appellant alleged that his exposure to the fumes and gases of the chemical "Turco 6776 Thin" had either caused or aggravated his cardiac conditions of sinus tachycardia and atrial tachycardia. The employing establishment questioned the extent of appellant's exposure and the toxicity of the substance and submitted an investigative report and associated documents in support of its contentions. The Office denied the claim finding that the medical evidence did not establish that any exposure caused or aggravated a particular condition.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The Board finds that, although appellant has a documented cardiac condition, he did not submit evidence sufficient to meet the requirements to establish that he sustained an injury in the performance of duty. The relevant medical evidence of record includes the reports from Dr. Glover, a cardiologist and appellant's treating physician. In his February 11, 2003 report, he noted that appellant had preexisting atrial tachycardia but diagnosed his current cardiac condition as that of sinus tachycardia, which was the "normal" kind of racing, and opined that "if it could be proven that the chemical exposure caused appellant's heart to race in any way, then he must be removed from that environment." In his January 8, 2004 report, Dr. Glover stated that appellant's sinus tachycardia was documented when he was in the work environment and opined that this proved that appellant reacted physically to this chemical "if indeed he was in this work environment at those times." In his September 4, 2003 report, he further stated that appellant was diagnosed with supraventricular tachycardia, formally known as atrial tachycardia, during an emergency room visit on June 8, 2003 and opined that exposure to noxious stimuli such as chemical irritants "could precipitate" these episodes. Dr. Glover's opinions, however, are insufficient to meet appellant's burden. While a medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty; such opinion should not be speculative or equivocal.<sup>8</sup> Moreover, as stated above, the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>9</sup> Likewise, medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.<sup>10</sup> Although Dr. Glover attributed appellant's diagnosed cardiac conditions to his workplace and opined that appellant could have reacted to "this chemical," he did not specify any chemicals in "Turco 6776 Thin," cite any studies which would implicate the chemicals in Turco 6776 Thin to cause or aggravate either of appellant's diagnosed cardiac conditions, or explain the process by which any chemicals in the solution could cause or aggravate such cardiac conditions which would result in either of appellant's diagnosis or exacerbations of his diagnosed cardiac conditions. Dr. Glover also does not indicate that he reviewed any of the employing establishment's studies of appellant's work site, which noted the chemicals within Turco 6776 Thin, nor did he attempt to explain how any chemicals within the product would cause appellant's heart symptoms. Therefore, Dr. Glover's opinions are not sufficient to meet appellant's burden of proof in establishing that his cardiac conditions were caused or aggravated as a result of the alleged chemical exposure in his federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused by employment.<sup>11</sup> As part of this burden, he must present rationalized medical opinion evidence showing causal relationship.<sup>12</sup> He did not do so in this case. Appellant therefore did not meet his burden to establish that his cardiac conditions were causally related to alleged chemical exposure in his federal employment.

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<sup>8</sup> *Samuel Senkow*, 50 ECAB 370 (1999).

<sup>9</sup> *Ernest St. Pierre*, 51 ECAB 628 (2000).

<sup>10</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>11</sup> *Ernest St. Pierre*, *supra* note 9.

<sup>12</sup> *Solomon Polen*, 51 ECAB 341 (2000).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that his cardiac conditions were causally related to his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 13, 2004 and November 26 and August 29, 2003 be affirmed.

Issued: February 14, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member