

File Number:
HR10-D-H

RECEIVED JUN 18 2010

U S DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

JUN 09 2010

Date of Injury:
Employee:

Dear Mr. _____ :

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 03/29/2010. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



Carol E Adams
Hearing Representative

DEPARTMENT OF THE NAVY
MARINE CORPS-STATIONS BASES
HRO-MARINE CORPS LOGISTICS BASE
814 RADFORD BOULEVARD, SUITE 20319
ALBANY, GA 31704

PAUL H FELSER
FELSER LAW FIRM PC
P O BOX 10267
SAVANNAH, GA 31412

U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Claimant; Employed by the Department of the Navy; Case number A
hearing was held on March 29, 2010.

The issue for determination is whether the claimant has met his burden to establish he was injured as the result of his Federal employment.

is employed with the Department of the Navy as a sandblaster. He filed a traumatic claim of injury, alleging that on September 1, 2009, he was exposed to fumes at work that caused him severe shortness in breath.

The Office reviewed the case file and determined there was insufficient factual and medical evidence. Therefore, by development letter dated September 18, 2009, the claimant was asked to provide a detailed description of his exposure to fumes and information regarding any previous respiratory illnesses. He was also asked to provide a detailed medical report, explaining how his diagnosed condition was due to his work.

By decision dated November 4, 2009, the Office denied the claim on the basis that fact of injury had not been established. The Office found that the claimant had provided additional medical evidence but he did not provide a factual statement, describing his work exposure to fumes or previous respiratory conditions. Also, the Office noted that the medical evidence received did not contain an opinion as to whether and how the claimant's diagnosed condition was due to his exposure to fumes on September 1, 2009.

The claimant disagreed with the decision and requested a hearing before an OWCP representative.

A hearing was held on March 29, 2010, at which the claimant was represented by Attorney Paul Felser. Attorney Felser contended, since the Office's decision, that additional evidence had been submitted, which supported a prima facie case. Attorney Felser requested the case record remain open for thirty days in order for additional evidence to be submitted. His request was granted.

The employing agency was sent a copy of the transcript and provided twenty days to submit comment or evidence. No additional information was received, and all time allotted for this purpose has now past.

By letter dated October 19, 2009, the employing agency provided comments regarding the events that took place from September 1, 2009, to September 3, 2009. The employer stated that coworkers were steam cleaning a vehicle "next door" to where the claimant was sitting approximately twenty-five feet away. The claimant had placed some component parts on a Table Blaster, which automatically performs a sandblast cleaning lasting about twenty minutes. The claimant went outside the room to sit and rest. The employer stated that between his co-

workers who were cleaning vehicles and the claimant was a large portable cooling fan pointing towards where the claimant was sitting. The employer noted that the claimant alleged that the fan blew chemicals in his direction. The employer indicated that the claimant did not report the incident until the following day. On the next day September 2, 2009, the claimant advised his supervisor he was having trouble breathing from the exposure to chemicals and asked to go to the emergency room. The claimant went to the emergency room and was released on September 3, 2009. The claimant went to a pharmacy for medication but suffered additional respiratory problems and was transported to the hospital by ambulance for additional treatment. Also, the agency contended that the claimant had been exposed to the same cleaning substance since 2003 and had not had a reaction to it. The employer identified the substance to which the claimant was exposed as Citridet.

Also, the Material Safety Data Sheet on Citridet was received. It contained the following information:

CHEMICAL COMPONENTS:

Hexylene glycol, Tripropylene glycol methyl ether and other indigents

SAFETY PRECAUTIONS:

Eye protection safety glasses with side-shields

Hand protection

Impervious gloves

Respiratory protection - No personal respiratory protective equipment normally required.

In case of insufficient ventilation wear suitable respiratory equipment.

HYGIENE MEASURES:

Avoid contact with eyes

Wear suitable gloves and eye/face protection

Wear suitable protective clothing

Wash-hands before breaks and immediately after handling the product

Provide adequate ventilation

Do not inhale fumes

Keep away from heat and flame.

Keep away from food and drink

PHYSICAL AND CHEMICAL PROPERTIES:

pH: 9.1

Bulk density: 84 lb/gal

Water solubility: completely soluble

Percent of Volatile by Weight: excluding water 22.2

Relative density: 1.011

Evaporation rate: (Butyl Acetate=1) Less than 1

Material Safety Data Sheet on Citridet continued from page 2.

STABILITY AND REACTIVITY

Conditions to avoid:

Heat, flames and sparks.

Materials to avoid:

strong acids, strong oxidizing agents

Hazardous decomposition products:

carbon dioxide (CO₂), carbon monoxide, nitrogen oxides (NO_x), sulphur oxides

TOXICOLOGICAL INFORMATION

Toxicity: Mixture: Not Determined.

Acute oral toxicity:

Kexylene glycol: LD50, rat

Dose: 3.700 mg/kg

Tripropylene glycol methyl ether: L050, rat

Dose: 3,200 mg/kg

By letter dated March 24, 2010, the claimant provided comments to the employing agency's letter of October 19, 2009. The claimant noted that he was sitting two feet from the blowing fan not twenty-five feet. The claimant also noted that Citridet was not the only cleaning agent that was used in cleaning. He noted it was common knowledge that degreaser M-99 and chlorine were used to speed up the cleaning process of the vehicles. He also stated that the fan he was sitting near was cleaned with bleach to get rid of a foul smell. He stated he did not report his problems the first day because he thought he was getting a sick. He stated when he returned to work the next day and he saw that when the vehicles were steamed that some of the soap got in the fan and mixed with the chlorine on the fan which he believed caused his respiratory problems. He stated he advised his supervisor that it was the fan that was the problem and his supervisor removed the fan immediately. The claimant stated he was having breathing problems and asked to go to the emergency room which was approved. The claimant pointed out that it was not true that he had worked in the area around the chemical for three years. He stated he had not worked in the area for approximately seven to eight months; therefore, he had not been exposed to the chemicals for some time.

The case record contains a label from the M-99 degreaser agent. The following information was on the label: "**INHALATION:** IF AFFECTED BY VAPORS, GET TO FRESH AIR. IF BREATHING IS DIFFICULT, SEE PHYSICIAN- ASPIRATION OF SUBSTANTIAL AMOUNT OF IRRITANT LIQUIDS INTO THE LUNGS CAN BE FATAL GET IMMEDIATE MEDICAL ATTENTION."

Additional medical evidence was also submitted since the hearing. In a report dated March 30, 2010, Dr. Jyothr Mehta provided a history of the injury. The doctor stated that the claimant was working in an area where a fan was directed towards him. The doctor stated the fan was cleaned with bleach solution by another employee proximal to him and there was chemical d-limonene which is also known as "N[M] 99" decreasing solution. The doctor stated the mixing of d-limonene and chlorine caused a phosgene gas, which was directly blown towards the claimant. The doctor stated that the claimant's exposure to phosgene gas caused reactive airway disease, severe bronchospasms and cough. The doctor perform additional respiratory tests and concluded that the claimant's decrease in diffuse capacity was most likely secondary to bronchospasm indicating he had developed a bronchial asthma secondary to the exposure to "N[M]99" chemical and phosgene gas inhalation, indicating occupational asthma which lead to reactive airway disease.

After review of the evidence, I find, although the original decision of the Office was correct, that since the hearing new factual evidence from the claimant has been received. Therefore, the decision of the Office must be set aside and the case remanded for additional development.

The claimant in his statement dated March 24, 2010, indicated he disagreed with the agency's October 19, 2009, statements. The claimant stated he was exposed to more than the cleaning agent of Citridet. He noted he was exposed to the mixture of M-99 degreaser and chlorine which caused fumes and his resulting breathing problems.

The employing agency must be provided an opportunity to respond to the claimant's allegations. Therefore, upon remand a copy of the new evidence submitted by the claimant should be sent to the employer. The employer should be asked to investigate the claimant's allegations and provide a response as to whether the claimant was exposed to chlorine, M-99 degreaser and or Citridet either by the direct mixing of the agents or by accidental mixing when the agents came in contact with the fan, which was reported to have been cleaned with bleach. Also, the agency should be asked to provide statements from its employees working near the claimant as to whether bleach was used to clean the fan or was mixed with M-99 or any other cleaning agent to clean the vehicles in the area.¹

In addition, the claimant should also be advised to submit witness statements from co-workers to support his allegations.


Upon completion of the aforementioned development and after any other develop the Office deems necessary, a new decision should be issued.

¹ FECA Procedure Manual, 2-0800-6 c

In accordance with the above findings, the decision of the Office of November 4, 2009, is set aside and the case **remanded**.

Date: JUN 09 2010

Washington, D.C.


Carol E. Adams
Hearing Representative
for
Director, Office of Workers'
Compensation Programs