

she was exposed to toxic fumes. On April 10, 1989 appellant filed an occupational disease claim, attributing her bronchial spasms and inflamed lungs to inhalation of toxic fumes.

By letter dated August 7, 1989, the Office advised appellant that it had accepted that she sustained toxic fume inhalation with bronchospasm. The Office paid compensation for temporary total disability beginning September 5, 1989, when appellant stopped work.¹

By decision dated June 22, 1990, the Office terminated appellant's compensation effective July 29, 1990 on the basis that she refused the employing establishment's offer of suitable work. Appellant returned to work on July 30, 1990 at another location, but thereafter, beginning August 6, 1990, missed intermittent periods of work for medical treatment and for difficulty breathing, for which she claimed compensation. By decision dated March 11, 1991, an Office hearing representative affirmed the termination of appellant's compensation for refusing suitable work.

By decision dated September 25, 1991, the Office terminated appellant's compensation on the basis that all impairment from her January 10, 1989 injury had resolved. Appellant requested a hearing, and an Office hearing representative, in an April 6, 1992 decision, found that there was a conflict of medical opinion whether appellant had recovered from the employment injury. The Office referred appellant to Dr. Eric Finkenstadt, who is Board-certified in pulmonary diseases, to resolve this conflict, and after receipt of his report, accepted the additional condition of occupational asthma.

Meanwhile, appellant had continued to miss intermittent periods of work, for which she filed claims for compensation for recurrences of disability or for new traumatic injuries related to exposure to dust, fumes and other irritants at work. Appellant last worked on September 19, 1994, and filed a claim for compensation beginning September 20, 1994. The Office resumed payment of compensation for temporary total disability on September 20, 1994.

By decision dated November 18, 1998, the Office terminated appellant's compensation on the basis that the weight of the medical evidence, represented by the June 25, 1998 report of a second opinion specialist, established that she had no continuing disability as a result of her January 10, 1989 employment injury. Appellant requested a hearing, which was held on April 21, 1999. By decision dated August 3, 1999, an Office hearing representative affirmed this decision, but remanded the case to the Office for issuance of a decision on appellant's entitlement to compensation before September 20, 1994. Appellant's August 2, 2000 request for reconsideration was denied in a November 14, 2000 merit decision. Her January 12 and November 13, 2001 requests for reconsideration were denied in nonmerit decisions on February 12, 2001 and February 22, 2002. By decision and order dated May 2, 2003, the Board found that the Office acted within its discretion by refusing to conduct a review of the merits of appellant's claim.²

¹ Appellant had intermittent absences from work before September 5, 1989, but it is not clear whether compensation was paid for these absences.

² Docket No. 02-1656 (issued May 2, 2003).

By decision dated August 8, 2003, the Office found: “Medical evidence of record is not sufficient to establish that you were disabled due to your accepted condition from July 29, 1990 through December 29, 1992 or from February 24, 1993 through September 19, 1994.” The Office noted that it had previously notified appellant that she was entitled to payment of wage-loss compensation from December 30, 1992 through February 23, 1993 on submission of a properly completed Form CA-7, but that it had not yet received such a form and therefore had not been able to process the compensation due appellant.

LEGAL PRECEDENT

Office decisions shall contain findings of fact and a statement of reasons.³

ANALYSIS

The Office’s August 8, 2003 decision is inadequate with regard to both findings of fact and a statement of reasons. The decision fails to acknowledge that appellant’s claims for compensation during the periods in question -- July 29, 1990 through December 29, 1992 and February 24, 1993 through September 19, 1994 -- were for intermittent periods, many of which were related to absences for medical treatment authorized by the Office. The decision also fails to address any specific medical evidence, including the reports of appellant’s attending physician, Dr. George Ciechanowski, who is Board-certified in pulmonary diseases, addressing her ability to work, such as his February 28, 1994 report stating that appellant cannot work due to an exacerbation of her bronchial asthma. This report is markedly similar to the reports from Dr. Ciechanowski that were the basis of the Office’s findings that appellant was entitled to compensation for disability from December 30, 1992 to February 23, 1993 and beginning September 20, 1994.

By failing to address the specific periods claimed by appellant, the Office has precluded the Board from making an informed decision on appellant’s entitlement to compensation during the periods in question.

CONCLUSION

The case is not in posture for a decision by the Board due to the Office’s failure to issue a proper decision. The case will be remanded to the Office for adjudication of specific dates of compensation claimed during the periods from July 30, 1990 to December 29, 1992 and from February 24, 1993 to September 19, 1994. Payment should be made for time lost from work for medical treatment authorized by the Office.⁴ For each specific period claimed but denied by the Office, the Office shall provide a statement of reasons.

³ 20 C.F.R. § 10.126.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (December 1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 8, 2003 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: June 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member