United States Department of Labor
Employees' Compensation Appeals Board

SANDRA SUTTON, Appellant	)	
and	)	**Docket No. 03-1119**
	)	**Issued: May 13, 2004**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, North Suburban, IL, Employer	)	

Appearances:
Jennifer K. Soule, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 31, 2003 appellant, through her attorney, filed a timely appeal of a December 30, 2002 merit decision of the Office of Workers' Compensation Programs. 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 the Office properly terminated appellant's compensation effective July 15, 2000.

FACTUAL HISTORY

On September 17, 1991 appellant, then a 32-year-old central mark-up clerk, filed an occupational disease claim for an allergy to dust.[1] Appellant stated that on May 24, 1991 she had a rash on her legs, hand and face, that during the week of September 10, 1991 she had another rash on her left hand, and that on September 16, 1991 her face and eye were itching at work.

In a report dated October 1, 1989, Dr. Percy Conrad May, Jr., a family practitioner and internist, stated that physical examination of appellant in March and June 1989 revealed rhinorrhea, congested lungs and erythema of the nose and throat. Dr. May diagnosed an acute allergic reaction, treated appellant with antihistamines and antibiotics, and stated, "It is my feeling that this reaction was caused by substances the patient encountered while on the job. The basis for this is the temporal relationship between exposure to these substances and the onset of the disease process." In a report dated January 2, 1992, Dr. Abe L. Aaronson, an allergist and immunologist, noted that appellant had "no allergic rhinitis history" and no history of hay fever or asthma in her or her family. Dr. Aaronson stated, "Allergy skin testing was done showing reactions to dust, dust mites, cockroach dust, mixed molds, grass pollen, ragweed pollen, cat and dog danders, tree pollen and feathers." He concluded, "Because of [appellant's] persistent symptoms in her closed environment, I have advised that she be moved to an area free from dust, dust mites, paper mites and away from all odors associated with computer or other machine operated apparatus."

In a report dated January 8, 1992, Dr. May stated that appellant had been followed "since May 1991 for intermittent swelling of the face with breaking out of the skin of the face associated with red eyes, tearing of the eyes, running of the nose and sneezing." Dr. May stated that appellant "partially responds to treatment with antihistamines and steroids," and that it was his "feeling that the patient has been exposed to some allergic substance while working which has caused these symptoms." In a report dated February 5, 1992, Dr. May diagnosed allergic rhinoconjunctivitis. In a February 19, 1992 fitness-for-duty examination for the employing establishment, Drs. G. Wendell Richmond and Emmanuel U. Sarmiento, both Board-certified in allergy and immunology, noted that appellant was evaluated for recurrent hives "occurring almost every day while at work," that she "never had similar problems before," and that allergy skin testing was positive for several substances including dust. Drs. Richmond and Sarmiento concluded, "Because of [appellant's] persistent symptoms while at work, we feel that the urticaria/angioedema and rhinoconjunctivitis symptoms are related to the working area. It is necessary for her to be transferred to another working unit free from dust, dust mites, or other irritants that may exacerbate her symptoms."

[1] On October 4, 1989 appellant filed an occupational disease claim for illness attributed to problems with air and heat. The Office rejected this claim by decision dated April 10, 1990, but later doubled that claim with the one filed September 17, 1991.

On April 2, 1992 the Office accepted appellant's claim for rhinoconjunctivitis and allergic edema. The Office began payment of compensation for temporary total disability on April 22, 1992.[2]

In a report dated April 27, 1992, Dr. Sarmiento stated that appellant "had recurrence of hives/rhinitis symptoms while at work. She needs to be transferred to an office environment free of dust mites and irritants that may exacerbate her symptoms, ideally out of central mark-up unit."

In a report dated December 11, 1992, Dr. May noted that, on examination on "a number of occasions," appellant had "a severe facial allergic reaction with edema and hives of the face. She has also been noted to have hair loss, nasal congestion and conjunctivitis." Dr. May diagnosed "severe allergic rhinoconjunctivitis, secondary to work environmental contact," and concluded:

> "It is my opinion this condition was caused and is being aggravated by the work situation. This is proven by the reoccurrence of symptoms when the patient enters the work environment. She is suffering from industrial introduced/caused-related allergies. We are certifying her as being totally disabled from February 17, 1992 to present.
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> "Because of [appellant's] persistent symptoms in her enclosed environment, I have advised that she be moved to an area free from dust, dust mites, paper mites and away from all odors associated with computer or other machine operated apparatus."

In a report dated December 15, 1995, Dr. May stated that appellant continued to have boggy nasal mucosa with swollen turbinates, scattered lung wheezes and persistent congestion of the lungs when seen on December 9, 1995. Dr. May stated that appellant's "condition has continued unchanged over the past year with no significant improvement," that her "condition continues to be related to the patient's employment and to dust and other items in the work environment," that she was unable to work, and that her restrictions were permanent.

On September 5, 1996 the Office referred appellant, her medical records and a statement of accepted facts to Dr. Baltazar Espiritu, who is Board-certified in allergy and immunology, for a second opinion on her condition and its relation to her employment. In a report dated September 26, 1996, Dr. Espiritu set forth the history of appellant's symptoms, the results of her allergy skin tests and her findings on examination, which showed normal skin findings and slightly congested nasal mucosa. Dr. Espiritu noted that appellant's past medical history revealed no history of allergic rhinitis before 1989 and no family history of allergic rhinitis or asthma. Dr. Espiritu concluded:

> "Based on [appellant's] history and previous evaluation, it is my impression that she has allergic rhinitis and allergic conjunctivitis. She also suffered from

[2] The Office also paid compensation for earlier intermittent periods of disability beginning May 14, 1991.

urticaria and angioedema that was precipitated by her work environment from 1989 to 1992.

> "In reference to the questions posed, [appellant] has continued to suffer from residuals of the condition caused by past employment with the U.S. Postal Service from 1989 to 1992. It is not at all unusual for a person to have no prior history of allergic reactions, to suddenly develop signs and symptoms of an allergic reaction such as allergic rhinitis and conjunctivitis, urticaria and angioedema. Most of these episodes can be directly related to constant or recurrent exposure to aggravating factors such as allergens. Exposure to the allergens can occur either by contact through airborne particles or through direct contact with the skin. The positive skin tests that [appellant] exhibited to allergens verifies the allergic nature of [appellant's] condition. The persistence of her symptoms after this date suggests that the aggravation of her condition is permanent. The constant exposure that occurred from 1989 to 1991 most likely is responsible for the changes that occurred that altered the course of her underlying condition.
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> "Currently, [appellant's] ability to work will only be limited by the symptoms that she might experience in the work environment."

By letter dated July 8, 1997, the Office requested Dr. May's opinion of whether appellant continued to have objective findings of rhinoconjunctivitis; and, if so, whether her condition could still be attributed to her employment, given that she had been away from the work environment since April 1992; and, if her condition was still "directly related" to her employment, whether this condition, "in and of itself," prevented her from returning to her position as a central mark-up clerk.

In a report dated August 11, 1997, Dr. May stated:

> "[Appellant's] rhinoconjunctivitis is not active because she is not working. There are no objective findings indicative of the condition. A dust-free environment is the only solution to [appellant's] rhinoconjunctivitis."

On July 16, 1999 the Office referred appellant, the case record and a statement of accepted facts to Dr. Edward Lisberg, who is Board-certified in allergy and immunology. The Office advised appellant that the purpose of this referral was to resolve a conflict of medical opinion between her attending physician, Dr. May, and the second opinion specialist, Dr. Espiritu, "regarding continuing disability as causally related to your employment." The Office advised Dr. Lisberg: "The conflict that needs to be resolved at this time is whether there are any residuals present from the work-related condition and whether [appellant] is capable of returning to gainful employment."

In a report dated August 4, 1999, Dr. Lisberg diagnosed chronic nonallergic rhinoconjunctivitis and vasomotor migraine syndrome. Dr. Lisberg stated that appellant had "continuing, intermittent sinus congestion, rhinorrhea due to nonallergic, environmental irritants and other nonallergic ambient condition changes and exposures." Dr. Lisberg stated that

appellant's prior multiple positive skin test reactivity was of "unknown clinical significance," as the records indicated a "poor correlation between allergen exposure and symptom occurrence" and the work-related "symptom occurrence/worsening [was] indicative of nonallergic, irritant effects," as was the occurrence of severe acute symptoms "at hair dresser, after dusting, and upon exposure to cleaning solutions…." Dr. Lisberg stated:

> "[I]f one were to entirely attribute [appellant's] rhinoconjunctivitis to the aeroallergen identified on her 1991 testing by Dr. Aaronson, it would not be consistent for her only to have experienced symptoms at her work environment. These allergens are present in numerous nonwork environments and [appellant] would not have had relief upon leaving her work."

By letter dated October 21, 1999, the Office requested Dr. Lisberg's opinion on what clinical findings showed that appellant's rhinoconjunctivitis was still active, whether her current condition was causally related to her employment, and whether she could return to work.

By letter dated October 21, 1999, the Office requested Dr. Lisberg's opinion on what clinical findings showed that appellant's rhinoconjunctivitis was still active, whether her current condition was causally related to her employment, and whether she could return to work. In a report dated January 3, 2000, Dr. Lisberg stated:

> "With regard to the statement of accepted facts and work-related causation, any environment with aerosolized dust or other particulate matter may act to trigger the symptoms associated with [appellant's] condition (both work and nonwork environments). As this evaluation was performed well after her last work-related exposure, it is not possible to comment on the nature of her current sensitivity and potential intolerance to such exposure. A review of her medical records made available to me indicated a high likelihood of a work-related causation and sensitivity to her specific past work environment. The duration of the sensitivity is variable and once initiated may persist for an unpredictable length of time and with recent reexposure I cannot comment with certainty regarding the nature of her current sensitivity.
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> "As demonstrated at the time of this evaluation, clinical findings may be minimal in the absence of environmental irritant exposure. Depending upon the degree of her current sensitivity, exposure to environments that in the past she has been unable to tolerate may again cause similar medical problems. Avoidance of such environments would be preventative in nature towards avoiding the recurrence of acute rhinoconjunctivitis and headaches."

By letter dated March 31, 2000, the Office advised Dr. Lisberg that prophylactic restrictions could not be included, and requested his opinion on whether appellant could perform

her clerk duties based solely on her present condition and how her exposure before May 24, 1991 continued to affect her. In a report dated April 19, 2000, Dr. Lisberg stated:

> "Based solely upon physical examination findings at the time of my original assessment of this individual, there were no objective findings to indicate that she would be incapable of performing her normal duties. As noted in my report, her examination demonstrated conjunctival inflammation which may have been a sign of prior or current environmental irritant exposure but this finding was not severe nor limiting.
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> "Individuals who suffer from nonallergic rhinitis may continue to experience signs and symptoms for an indefinite period of time following triggering events. Once initiated, exposure to other environments with changes in air quality may further promote symptoms occurrence. It is impossible for me to definitely state how the exposure which [appellant] experienced at work on May 24, 1991 continues to affect her today, not having examined [appellant] since August 4, 1999. It is highly likely that, since her original complaints and since my examination, other environmental exposures and irritant triggers have occurred, which factor into whatever current symptoms, if any, she continues to experience."

On May 24, 2000 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence showed she was no longer disabled from the job she held on the date of injury.

Appellant objected to the proposed termination of her compensation, and submitted a report dated June 19, 2000 from Dr. Marsha Vetter, a physiatrist, who stated:

> "She brought with her to her appointment [on June 13, 2000] a videotape dramatically documenting that she is still having significantly disabling symptoms because of her injury-related condition of rhinoconjunctivitis. The symptoms demonstrated included nasal congestion, conjunctivitis, facial swelling and skin rash. She reports that she is still experiencing these symptoms, as well as others including severe headaches, when exposed to many environmental triggers.
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> "We have dealt with many patients such as [appellant], and in our experience, once individual susceptibility to environmental incitants develops, it tends to persist and spread until it may involve a wide variety of substances in the environment (ordinarily tolerated before) which can now trigger symptoms similar to those of the original exposure. Sometimes only minute exposures are enough to trigger major symptoms in a susceptible person. Sustained avoidance of as many inciting agents as possible, particularly those to which the patient is acutely susceptible, is necessary to avoid potentially life-threatening consequences.

> "The 'active residual' from her injury, therefore, is the sensitization which now makes it impossible for her to be employed in any conceivable present day work environment because when she is exposed to inciting agents, her rhinoconjunctivitis, as well as other symptoms, are triggered. She did not have such severe symptoms in response to such a wide variety of inciting agents prior to the work-related exposures which led to her 'injury.'"

By decision dated July 6, 2000, the Office terminated appellant's wage-loss compensation for disability effective July 15, 2000 on the basis that the report of Dr. Vetter was unrationalized and that the report of Dr. Lisberg, the impartial medical specialist resolving a conflict of medical opinion, continued to represent the weight of the medical evidence. The Office continued appellant's authorization for conservative treatment of rhinoconjunctivitis.

Appellant requested a hearing, which was held on May 25, 2001, and submitted additional medical evidence. In a report dated June 23, 2001, Dr. May stated that appellant remained "unable to work as a result of continuing swelling, headaches and rhinoconjunctivitis that occur when exposed to dust and fumes."

By decision dated October 5, 2001, an Office hearing representative found that Dr. Lisberg was a second opinion evaluator rather than an impartial medical specialist resolving a conflict of medical opinion, but that his opinion represented the weight of the medical evidence and established that appellant was capable of performing the duties of a mark-up clerk.

By letter dated October 5, 2001, an Office hearing representative found that Dr. Lisberg was a second opinion evaluator rather than an impartial medical specialist resolving a conflict of administrative separation from the weight of the reason for separation as "unable to perform the duties of a mark-up clerk."

By letter dated October 3, 2002, appellant requested reconsideration, and submitted a November 16, 2001 notice of administrative separation from the employing establishment.

In a report dated April 22, 2002, Dr. May stated:

> "[Appellant] continues to have symptoms related to her exposure to particulate matter in the job environment. This particular matter consists of paper dust, ink dust and dust from the building itself, which caused her to have continuing rhinoconjunctivitis. It should be noted that [appellant] is asymptomatic to a large degree outside the work environment; however, there is a recurrence of symptoms when exposed to the particular matter. [Appellant's] condition is permanent in a sense that exposure to the matters, causing her condition, will continue to be aggravated while working on her job. The work environment is more endangering than the nonwork environment because [appellant] is not exposed to the work allergens. Therefore, there is less likelihood of symptomatology. In other words, there is a greater likelihood of the presence of irritants at work, paper mites, HVAC mold, cleaning agents, solvents, co-worker perfume, etc. than when not at work.

"We are aware that when [appellant] works at the [employing establishment], she is continually around all of the previous mentioned irritants. Further exposure to the employment factors will constitute a specific situation where her symptoms of rhinoconjunctivitis would become graver as the exposure is graver."

In a report dated May 30, 2002, Dr. Vetter set forth appellant's history and findings on initial evaluation on October 23, 1997, and noted the positive results of allergy skin testing on January 2, 1992. Dr. Vetter reported that Dr. May "mentions severe rhinoconjunctivitis but she has also developed an intolerance to many common chemicals that limits her ability to work in most environments." Dr. Vetter continued:

"[Appellant's] exposure at work has caused her to be disabled because she now reacts to many common environmental chemicals and inhalants such as colognes and other scented products, cleaning agents, molds, dust and dust mites, which were previously tolerated. The symptoms caused by these exposures can be seriously debilitating and interfere with her ability to perform work-related activities, and they include angioedema, conjunctivitis, rhinitis, migraines and other severe headaches, urticaria and dermatitis. Her condition was initiated by her exposure at work and continues to exist even though there has been a long period since her last work exposure."

* * *

"Because the kinds of substances noted above are impossible to avoid, these exposures necessarily affect her as she pursues her activities of daily living. However, when exposures occur during the course of her daily activities, she is at least able to remove herself from the inciting agent(s) and retreat to an environment that is safe for her. At work she cannot control her environment and would not be able to leave if something was affecting her.

"As she was not significantly reacting on the few occasions when I saw her, she provided videotapes documenting her responses after exposure to a variety of environmental incitants. The reactions included nasal congestion, sneezing, difficulty breathing, conjunctivitis, facial swelling, hives, and skin rash. The videotapes are from August 13 and 14 and November 3, 2000, June 5, 10, 12, 14 and 21, 2001, February 15 and 22, 2002, March 29 and 31, 2002 and April 5, 2002, thus demonstrating that her problems are ongoing.

"While I realize that the possibility of a recurrence is not the basis for payment of compensation, she is demonstrating that the recurrences are ongoing, making it a certainty that she will eventually react in any but the most 'clean air' environments.

"As I have stated in previous letters, in our experience once individual susceptibility to chemicals develops, it tends to persist and spread until it may

involve a wide variety of chemicals commonly found in the environment which were previously tolerated. This has occurred in [appellant's] case. Persons with a high degree of susceptibility to environmental chemicals tend to have a lifelong problem with this illness.

"[Appellant] suffered a work-related injury which resulted in permanent residuals. The permanent residual, in her case is the sensitization, which now makes it difficult for her to be employed in any conceivable present day work environment. Unless she is able to control her environment or remove herself from her environment when she begins reacting, she is going to be in a situation where she will react, thus further endangering her health. She is disabled because additional exposure to the implicated work conditions would further endanger her health, although the residuals of the accepted condition (rhinoconjunctivitis) alone might not be disabling."

By decision dated December 30, 2002, the Office reviewed the merits of appellant's claim and found that the employing establishment's termination of her employment did not entitle her to wage-loss compensation.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3]

Under the Federal Employees' Compensation Act, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.[4]

ANALYSIS

The Office accepted appellant's claim for rhinoconjunctivitis and allergic edema, to dust in the workplace and paid compensation beginning April 22, 1992. In an August 11, 1997 report, appellant's attending physician, Dr. May, stated that appellant's rhinoconjunctivitis was no longer active and that there were "no objective findings indicative of the condition." Similarly, in an April 22, 2002 report, Dr. May stated that appellant was "asymptomatic." Dr. Lisberg, an Office referral physician, stated in an April 19, 2000 report that, based on his

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[3] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[4] *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

physical examination of appellant on August 4, 1999, "there were no objective findings to indicate that she would be incapable of performing her normal duties." He indicated that any work exposure had ceased and that any work-related aggravation was temporary in nature. He noted her skin reaction testing was of unknown clinical significance as it was determined after her last employment exposure. Dr. Vetter, appellant's attending physiatrist, acknowledged in a May 30, 2002 report that the residuals of the accepted rhinoconjunctivitis condition were not disabling, indicating sensitization to inciting agents." These reports are sufficient to establish that appellant's accepted condition of rhinoconjunctivitis caused by her exposure to dust at work was a temporary aggravation which resolved by July 15, 2000, the date the Office terminated appellant's compensation.[5]

Much of the evidence submitted by appellant related to her contention that exposure to other allergens or irritants at work caused an increased and heightened sensitivity to a wide range of allergens or irritants. However, this was not the issue decided by the Office and therefore not the issue on appeal before the Board.[6]

CONCLUSION

The Office has established that appellant's accepted condition related directly to her exposure to irritants or allergens at work resolved by July 15, 2000.

[5] The evidence also indicates that the edema directly caused by appellant's employment also resolved, in that Dr. May did not report this finding on a December 9, 1995 examination, and Dr. Espiritu, an Office referral physician, reported normal skin findings in a September 26, 1996 report.

[6] The Board's jurisdiction is limited to review of final decisions of the Office. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member