United States Department of Labor
Employees' Compensation Appeals Board

SHEILA L. ROSENTHAL, Appellant	)	
and	)	**Docket No. 06-352**
	)	**Issued: March 20, 2006**
ENVIRONMENTAL PROTECTION AGENCY, Washington, DC, Employer	)	

Appearances:
Sheila L. Rosenthal, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 30, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated August 25, 2005, terminating her compensation and medical benefits. 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 met its burden of proof to terminate appellant's compensation and medical benefits.

FACTUAL HISTORY

On May 15, 2000 appellant, then a 58-year-old environmental scientist, filed an occupational disease claim alleging that, after her agency relocated to the Ronald Reagan Building (hereinafter, the Reagan Building) on July 28, 1997 while it was still partially under construction, she experienced shortness of breath, coughing and other respiratory symptoms. She filed a claim for asthma, citing exposure to dust, construction fumes, construction pollutants,

stagnant air and perfumes. Appellant worked intermittently at home beginning August 7, 1997 and from November 1997 to September 1999, she worked at home most of the time. Her last exposure to the environment at the Reagan Building was in March 2000.

In reports dated October 29 and December 30, 1997, Dr. Gary H. Miller, an internist specializing in pulmonary disease, diagnosed asthma caused by environmental exposure at work. He stated that when the construction activities at appellant's workplace ceased, he would reevaluate whether she could return to that location.

In an April 4, 2000 report, Dr. Laura Welch, a physician specializing in occupational and environmental medicine, diagnosed asthma and opined that dust exposure at the Reagan Building was the initial precipitant of appellant's asthma in 1997. She noted that appellant had a preexisting history of allergies and allergic rhinitis, making her susceptible to the development of asthma with exposure to respiratory irritants.

On July 19, 2000 the Office accepted appellant's claim for allergic asthma.

In a June 17, 2002 report, Dr. Welch noted that she last saw appellant in April 2000, at which time the physician recommended that she work at home as an accommodation for her upper respiratory reaction to odorants involved in organic compounds. Dr. Welch stated:

> "You have been doing well since that time with no increase in asthma. You do, however, have recurrent upper respiratory symptoms with exposures to a range of odorants or irritants. Because of this, I would recommend you continue your current accommodations to work out of your home."

Effective October 24, 2002 appellant was placed on the periodic compensation rolls to receive compensation for temporary total disability.

In reports dated April 4 and May 20, 2004, Dr. Leonard Y. Cosmo, a Board-certified internist specializing in pulmonary disease and an Office referral physician, provided a history of appellant's condition and noted that she had a history of allergies to dusts and mold prior to her industrial exposure at the Reagan Building. He stated:

> "With regard to her restrictions, it is important to note that the restrictions are not related to any work[-]related injury or work[-]related condition. [Appellant] has no objective evidence to support any anatomical and/or functional changes in the cardiovascular or respiratory symptoms that preclude exposure. It is not unreasonable that she has simple avoidance measures of any extremes in temperature, airborne particles and/or gases/fumes.
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> "[Appellant] has no evidence for aggravation…. There is no material aggravation of any previously existing condition by any work[-]related injury. She has no evidence for aggravation as defined by precipitation, worsening or acceleration of condition."

On June 13, 2004 the Office proposed the termination of appellant's compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the

report of Dr. Cosmo, established that she had no continuing disability or medical condition causally related to her August 13, 1997 employment-related allergic asthma.

Appellant contested the proposed termination of her benefits and expressed her disagreement with the report of Dr. Cosmo.

The Office referred appellant to Dr. Deepak T. Patel, a Board-certified internist specializing in pulmonary disease, in order to resolve the conflict in the medical opinion evidence between Dr. Welch and Dr. Cosmo as to whether she had continuing residuals of her August 13, 1997 employment injury.

In a June 17, 2005 report, Dr. Patel provided a history of appellant's condition, describing her exposure to various irritants in the Reagan Building beginning in 1997 and her symptoms. He noted that she had a history of environmental allergies, including dust and molds, prior to her exposure at the Reagan Building. Dr. Patel indicated that the triggers for appellant's respiratory symptoms included perfumes, dust and dry-wall fumes, cleaning solutions, deodorizers, exhaust fumes and cold and humid weather. He provided findings on physical examination and the results of a chest x-ray and diagnosed mild asthmatic bronchitis revealed by a pulmonary function test in 2004 and multiple environmental allergies. Dr. Patel stated:

> "I doubt that [the] underlying asthmatic bronchitis is related to [appellant's] work-related injury. [She] is known to have triggers, which are also present outside her working area. In fact, [appellant] gets similar respiratory symptoms[,] which she used to get while working [at the Reagan Building,] whenever she has exposure to her known precipitating triggers. Before exposure she reports herself to be [in] normal health and denies respiratory symptoms. Her activity tolerance cannot be decided as she does not do regular exercise[,] [t]hough she does not report difficulty breathing on routine daily activity in between triggers.
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> "[Appellant] has prolonged expiratory breath sound and forced expiratory time more than [six] seconds and wheezing on forced expiration. These findings are consistent with diagnosis of obstructive lung disease like asthmatic bronchitis. Asthmatic bronchitis is many times precipitated by various environmental allergens and irritants. Pertinent irritants in this case include dust, perfumes, fumes and molds…. [T]hese agents are not limited to her workplace…. [Appellant's] subjective complaints of shortness of breath, chest tightness and chronic hoarseness of voice are consistent with exacerbation of sinusitis, rhinitis and asthmatic bronchitis with various allergens and irritants…. [Appellant] should be able to return to work … as long as there are no known allerg[ens] or precipitant[s] in the [work]place."
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> "In summary: [Appellant] … developed asthma while working [at the Reagan Building in] July 1997. This seems to be coincidence rather than a causative factor. It is very difficult to associate [appellant's] present asthma symptoms to work at the [Reagan Building]. Many times exacerbation of symptoms are related

to continued or recurrent exposure to triggers. In her case, these triggers are present also outside the [Reagan Building]. Exacerbation of asthma mediated by triggers usually lasts for days to weeks until exposure is terminated."

On June 18, 2005 the Office proposed to terminate appellant's compensation and medical benefits on the grounds that Dr. Patel's report established that appellant's allergic asthma was no longer causally related to her employment.

Appellant stated her disagreement with the report of Dr. Patel. She submitted clinical notes and a report dated September 14, 2004 in which Dr. Hugh H. Windom, a Board-certified internist specializing in allergies and immunology, provided a history of her work-related and nonwork-related respiratory conditions and findings on physical examination. He did not provide an opinion as to whether appellant had any disability or medical condition causally related to her August 13, 1997 work-related allergic asthma.

By decision dated August 25, 2005, the Office finalized its decision to terminate appellant's compensation and medical benefits.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.[2] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.[4]

Section 8123(a) of the Federal Employees' Compensation Act provides that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."[5] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[6]

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[1] *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

[2] *Id.*

[3] *See Del K. Rykert*, 40 ECAB 284 (1988).

[4] *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

[5] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan* (*Henry Lusignan*), 45 ECAB 207 (1993).

[6] *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

ANALYSIS

The Office accepted appellant's claim for allergic asthma. Effective August 25, 2005, the Office finalized its termination of appellant's compensation and medical benefits on the grounds that the accepted condition had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.[7]

Dr. Welch, appellant's attending physician, indicated in her June 17, 2002 report that appellant should continue working at home. Dr. Cosmo opined that appellant had no residuals of her employment-related allergic asthma.

Due to the conflict in the medical opinion evidence between Dr. Welch and Dr. Cosmo, the Office properly referred appellant to Dr. Patel.

Dr. Patel reviewed a history of appellant's condition and described her exposure to various irritants in the Reagan Building beginning in 1997. He noted that she had a history of environmental allergies prior to her exposure at the Reagan Building. Dr. Patel indicated that the triggers for appellant's respiratory symptoms included perfumes, dust and dry-wall fumes, cleaning solutions, deodorizers, exhaust fumes and cold and humid weather. He provided findings on physical examination and diagnosed appellant's current respiratory conditions as mild asthmatic bronchitis and multiple environmental allergies. Dr. Patel stated: "I doubt that [the] underlying asthmatic bronchitis is related to [appellant's] work-related injury," noting that she had various nonwork-related allergens and irritants which were triggers for her respiratory symptoms. He indicated that she reported herself to be in normal health and denied respiratory symptoms unless she was exposed to the respiratory triggers. Asthmatic bronchitis is many times precipitated by various environmental allergens and irritants. Dr. Patel stated that appellant's current respiratory problems were not related to her exposure in the Reagan Building because she was no longer working there and her current exposure to irritants was in a nonwork setting. He noted that exacerbation of asthma symptoms usually lasted for days to weeks until the exposure was terminated.

The Board finds that the thorough and well rationalized report of Dr. Patel is entitled to special weight and establishes that appellant has no continuing disability or medical condition causally related to her 1997 work-related allergic asthma. Therefore, the Office met its burden of proof in terminating appellant's compensation and medical benefits based on Dr. Patel's report.

The September 14, 2004 report from Dr. Windom, is not sufficient to outweigh or create a new conflict with the report of Dr. Patel because Dr. Windom did not address the issue as to whether appellant had any disability or medical condition causally related to her August 13, 1997 work-related allergic asthma.

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[7] *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004).

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2005 is affirmed.

Issued: March 20, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board