

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

D.P., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Houston, TX, Employer**

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**Docket No. 09-2065
Issued: August 4, 2010**

Appearances:

*Caesar Parker, Jr., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2009 appellant filed a timely appeal from a May 12, 2009 merit decision of the Office of Workers' Compensation Programs terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective November 23, 2008.

FACTUAL HISTORY

On August 21, 2006 appellant, then a 52-year-old information receptionist, sustained injury following exposure to gasoline fumes which came through the air vents at work.¹ The

¹ The record reflects appellant was placed in a modified clerk position as a receptionist answering the telephone due to an accepted right wrist condition under file number xxxxx295. That claim is not before the Board on the present appeal.

Office accepted the claim for chronic allergic conjunctivitis, allergic rhinitis, toxic effect of other hydrocarbon gas, epistaxis and stomatitis. Appellant continued to work with restrictions on talking. She stopped work on December 18, 2006 and received wage-loss compensation.

Dr. Maritza I. Homs, a Board-certified otolaryngologist, treated appellant for chronic hoarseness, spasms and cough following her work-related exposure. She recommended total disability to allow appellant's vocal cords to rest. Appellant came under the care of Dr. Michael L. Eisemann, a Board-certified otolaryngologist. On May 10, 2007 Dr. Eisemann noted that examination of the nose and throat was unremarkable and no vocal cord lesions were noted on indirect mirror examination. A fiberoptic laryngoscopy revealed no evidence of a mass lesion. Dr. Eisemann recommended a return to work with restrictions on talking up to two hours a day. He advised that appellant might have some spastic swelling in the throat and recommended she be seen by a speech pathologist.²

The Office determined a second opinion examination was necessary and referred appellant, together with a statement of accepted facts, a list of questions and the medical record, to Dr. Larry Conrad, a Board-certified otolaryngologist. In a July 17, 2007 report, Dr. Conrad noted appellant's work-related history and treatment, presented findings on examination, which were essentially normal and diagnosed dysphonia. He found no objective findings of a speech or vocal condition. Dr. Conrad noted that the fiber optic laryngoscopy he performed as well as a prior procedure performed on May 10, 2007 by Dr. Eisemann were normal. He recommended continued speech therapy. Dr. Conrad advised that appellant was capable of returning to her position preferable to a position requiring less talking. He estimated that she would achieve full recovery by September 1, 2007.

On July 27, 2007 the Office sent Dr. Conrad's report to Dr. Eisemann for review. In a July 27, 2007 note, Dr. Eisemann stated that appellant had spastic dysphonia and required extended voice rest. A June 20, 2007 computerized tomography (CT) scan of the neck revealed no significant abnormality to account for dysphonia identified. A June 20, 2007 brain CT scan was reported as normal.

The Office found a conflict in medical opinion between Dr. Eisemann and Dr. Conrad. I referred appellant to Dr. Marc T. Taylor, a Board-certified otolaryngologist, for an impartial medical evaluation. In a September 20, 2007 report, Dr. Taylor reviewed the history of the injury and appellant's treatment and noted findings on examination. The only objective findings of a speech condition were appellant's audible hoarseness and coughing during the examination. Dr. Taylor was unable to visualize appellant's vocal cords, but stated the prior multiple evaluations of the vocal cords documented in the record were normal. He found no evidence of chronic allergic conjunctivitis, allergic rhinitis, epistaxis or stomatitis. Dr. Taylor stated that there was no objective physical abnormality in the upper or lower airway consistent with any permanent effect from the exposure to hydrocarbon gas. He found no objective medical evidence in the record or on examination of any work-related disease process or underlying medical condition in the head and neck regions to establish that her hoarseness and coughing

² Appellant did not return to work. She claimed the modified clerk light-duty assignment offered was not in compliance with work limitations for her accepted right wrist condition.

were related to the August 21, 2006 incident. Dr. Taylor opined that any temporary inflammation from inhaling exhaust or smoke from gasoline combustion would have resolved completely within 5 to 10 days. Based on the medical record, the effects of appellant's work exposure ceased by February 16, 2007, the day she had a normal ENT examination and normal video stroboscopic assessment of the vocal cords. Dr. Taylor concluded that there were no objective abnormalities or medical conditions as a result of the August 21, 2006 event. He noted, however, that, due to hoarseness, coughing and time away from work, it was unlikely appellant would return to her duties. In a September 20, 2007 work capacity evaluation form, Dr. Taylor found that appellant was capable of work since February 15, 2007 but was unable to perform her regular job. Appellant could work eight hours a day with restrictions. The Office subsequently requested clarification about her restrictions. In an October 4, 2007 report, Dr. Taylor stated there was no medical reason for appellant not returning to work. The examination was normal and there was no medical reason or ongoing work-related condition which prevented her from returning to work.

On October 29, 2007 the Office proposed to terminate appellant's compensation benefits based on Dr. Taylor's reports.

Appellant submitted copies of work capacity evaluation forms from Dr. Homs and Dr. Eisemann, voice therapy sessions, and a February 6, 2007 sinus CT, which was reported as being normal with a right deviation of the septum.

In an August 27, 2007 report, Dr. Charles Richard Stasney, a Board-certified otolaryngologist noted the history of injury. He advised the video stroboscopic laryngeal examination revealed anterior-posterior compression and subglottic edema and hyperemia. Dr. Stasney opined that appellant probably had a muscle tension disorder rather than adductor spasmodic dysphonia.

In a December 7, 2007 decision, the Office terminated appellant's compensation benefits effective December 23, 2007. It gave weight to Dr. Taylor's impartial medical opinion.

On December 27, 2007 appellant requested an oral hearing. In a December 17, 2007 Form CA-20, Dr. Eisemann noted with a check mark "yes" that her spastic dysphonia was caused or aggravated by her employment. He advised that appellant could return to suitable regular work.

In a May 21, 2008 decision, an Office hearing representative set aside the December 7, 2007 decision finding that the Office did not consider Dr. Stasney's August 27, 2007 report before terminating benefits. The hearing representative remanded the case to the Office to obtain a supplemental report from Dr. Taylor to address whether Dr. Stasney's laryngeal examination demonstrated any current findings/diagnoses due to the August 21, 2006 exposure.

In a July 10, 2008 report, Dr. Taylor reviewed the medical record and advised that Dr. Stasney's report did not change his previous opinion. He noted that Dr. Stasney's impression was probably muscle tension disorder rather than adductor spasmodic dysphonia. Dr. Taylor reiterated that appellant did not have spastic dysphonia and noted that muscle tension was not a disorder resulting from an event such as that described on August 21, 2006. The edema and

hyperemia Dr. Stasney described on examination was the result of abnormal muscle tension that could be from multiple etiologies, including voluntary or involuntary tensing of the muscles. Dr. Taylor found that Dr. Stasney's examination was not specific for any type of toxic chemical exposure or disease process and represented clinical findings found in multiple situations. The fact that there was some subglottic edema and hyperemia present was not indicative of any residual or ongoing work-related disease. Dr. Taylor stated that the multiple previous normal examinations and Dr. Stasney's diagnosis of a muscle tension disorder, demonstrated that there was no work-related disease or pathology. He advised that appellant had no condition directly or indirectly related to the August 21, 2006 work injury. Dr. Taylor found no evidence of a muscle tension disorder developing as a result of the August 21, 2006 work incident and noted that the medical literature did not support or demonstrate a muscle tension disorder developing from this type of reported event. He concluded that there was no objective evidence of any medical abnormality, pathology, or ongoing work-related disease process that would preclude appellant from returning to her usual job.

A May 22, 2007 prescription note and December 17, 2007 billing note from Dr. Eisemann diagnosed spastic dysphonia and referred appellant to speech therapy. Copies of progress notes and October and November 2007 letters from Nesreen H. Alawami, a speech language pathologist, were received.

On October 3, 2008 the Office proposed to terminate appellant's compensation benefits finding that the weight of the medical evidence rested with Dr. Taylor's impartial medical opinions. Appellant was accorded 30 days within which to provide additional evidence or argument. No additional evidence was received.

In a November 3, 2008 decision, the Office terminated appellant's compensation benefits effective November 23, 2008 based on the report of Dr. Taylor.

On November 10, 2008 appellant requested a hearing that was held on March 19, 2009. She submitted several statements discussing her case and copies of previously submitted evidence. In a November 20, 2007 report, Dr. Stasney noted the video stroboscopic examination revealed adequate vocal fold closure during singing but incomplete vocal fold closure along the entire length of the vibrating margin when speaking. He recommended continued treatment.

By decision dated May 12, 2009, an Office hearing representative affirmed the November 3, 2008 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.³ After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴

³ A.W., 59 ECAB ____ (Docket No. 08-306, issued July 1, 2008).

⁴ J.M., 58 ECAB 419 (2007).

The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁶

ANALYSIS

The Office accepted that appellant sustained chronic allergic conjunctivitis, allergic rhinitis, toxic effect of other hydrocarbon gas, epistaxis and stomatitis as a result of exposure to gasoline fumes at work on August 21, 2006. It found a conflict in the medical opinion between Dr. Eisemann, her attending physician, and Dr. Conrad, the Office's second opinion physician, regarding the extent of appellant's continuing employment-related residuals and disability. Dr. Eisemann opined that appellant had continuing employment-related residuals and was unable to perform her regular duties while Dr. Conrad concluded that appellant no longer had any objective findings of any residual injury from the work incident. The Board notes that the Office properly found a conflict in medical opinion and referred appellant to Dr. Taylor to resolve the conflict.⁷

In a September 20, 2007 report, Dr. Taylor provided a complete medical and factual history as well as detailed examination findings. He found no evidence of chronic allergic conjunctivitis, allergic rhinitis, epistaxis, or stomatitis or any objective evidence in the upper or lower airway consistent with any permanent effect of the exposure to hydrocarbon gas. Dr. Taylor advised that appellant's hoarseness and coughing were not related to any continued work-related diseases process or underlying medical condition related to the August 21, 2006 work exposure. Any temporary inflammation from the August 21, 2006 incident resolved within 5 to 10 days and the effects of the work-related exposure ceased by February 16, 2007, when appellant had a normal ENT examination and normal video stroboscopic assessment of the vocal cords. Although it was unlikely that appellant would return to work due to hoarseness and coughing, he noted that these symptoms were not due to the work injury. In a supplemental October 4, 2007 report, Dr. Taylor reiterated that there was no medical reason for appellant not to return to work.⁸ He again stated that her medical examination was normal and there was no medical evidence of any ongoing work-related condition which prevented appellant from returning to work.

⁵ See *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁷ The Act, at 5 U.S.C. § 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

⁸ See *Nancy Keenan*, 56 ECAB 687 (2005). The Office has the responsibility to secure a supplemental report from an impartial medical specialist for the purpose of correcting a defect in the original report.

On July 10, 2008 Dr. Taylor reviewed Dr. Stasney's August 27, 2007 report and the medical record. He stated that appellant did not have spastic dysphonia and noted that muscle tension was not a disorder which results from the exposure to gas fumes on August 21, 2006. Dr. Taylor stated that the edema and hyperemia Dr. Stasney described as due to abnormal muscle tension could be from multiple etiologies, including voluntary or involuntary tensing of the muscles. Dr. Stasney's findings were not specific for any type of toxic chemical exposure or disease process and represented these found in multiple clinical situations. The fact that there was some subglottic edema and hyperemia present was not indicative of any residual or ongoing work-related disease. He reiterated that appellant had no condition directly or indirectly related to the August 21, 2006 work incident. Dr. Taylor found that there was no evidence of a muscle tension disorder developing as a result of the August 21, 2006 work incident and that the medical literature did not establish a muscle tension disorder developing from exposure to gas fumes. He found no objective evidence on examination of any medical abnormality, pathology or ongoing work-related disease process that would preclude appellant from returning to her usual job.

When a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based on a proper background, must be given special weight.⁹ Dr. Taylor's opinion is well-rationalized and based on proper factual and medical background. Thus, Dr. Taylor's opinion represents the weight of the medical evidence on the issue of whether appellant continues to have any work-related condition or residuals of the August 21, 2006 work incident.

The Board finds that the reports from Dr. Stasney and Dr. Eisemann are insufficient to overcome the weight accorded to Dr. Taylor or to create a new conflict in medical opinion. On August 27, 2007 Dr. Stasney opined that appellant probably had muscle tension disorder. The Board has held that medical opinions which are speculative or equivocal in character are of diminished probative value.¹⁰ Dr. Stasney failed to provide a firm medical diagnosis or to causally relate appellant's condition to her employment or the August 21, 2006 work incident. Dr. Stasney's report of November 20, 2007 which recommended continued treatment is of reduced probative value as he did not address causation.¹¹ Dr. Eisemann advised that appellant had spastic dysphonia, but failed to causally relate the condition to the accepted employment incident. On December 17, 2007 Dr. Eisemann noted with a check mark "yes" that appellant's spastic dysphonia was caused or aggravated by her employment. The Board has held that marking a form report question "yes" as to whether an injury was caused by the employment activity is insufficient without further explanation or rationale to establish causation.¹² The

⁹ *Kathryn Haggerty*, 45 ECAB 383 (1994).

¹⁰ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹¹ Medical opinion, which does not offer any opinion regarding the cause of an employee's condition, is of limited probative value. See *A.F.*, 59 ECAB ____ (Docket No. 08-977, issued September 12, 2008); *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *Anna C. Leanza*, 48 ECAB 115 (1996).

reports from speech pathologist Alawami are of no probative medical value as a speech pathologist is not a physician as defined by section 8102(2) of the Act.¹³

On appeal, appellant contends that Dr. Taylor's reports are deficient because he failed to perform any medical tests or procedures to disprove any residual effects of appellant's August 21, 2006 work exposure; acknowledged that he was not able to visualize appellant's vocal cords and because she underwent additional test procedures on her vocal cords and larynx after Dr. Taylor's October 4, 2007 evaluation. As noted, Dr. Taylor was provided with the medical evidence of record, which included an accurate statement of accepted facts and Dr. Stasney's August 27, 2007 report. The issue for resolution by Dr. Taylor was whether appellant's accepted conditions had resolved or whether there were residuals of the August 21, 2006 work exposure. Dr. Taylor's opinion was based on his review of the medical record and the findings on examination. Dr. Taylor reviewed the test procedures of record, noting they did not support by any significant abnormality or any condition that could be attributed to the accepted exposure to gas fumes. The other visualizations of appellant's vocal cords had been normal and the physician found no evidence of ongoing residuals of the accepted conditions.

Dr. Taylor's well-rationalized opinion represents the special weight of the medical evidence. It establishes that appellant no longer has residuals of the accepted conditions. The Board finds that the Office met its burden of proof to terminate her compensation benefits as of November 23, 2008.

CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits on the grounds that she had no residuals or disability related to her accepted employment injury.

¹³ See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 12, 2009 is affirmed.

Issued: August 4, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board