United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 09-2060**
	)	**Issued: July 23, 2010**
DEPARTMENT OF DEFENSE, DEPENDENT SCHOOL, Fort Campbell, KY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2009 appellant filed a timely appeal of a July 22, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation effective July 19, 2007; and (2) whether appellant met her burden of proof to establish that she had any continuing disability after July 19, 2007.

FACTUAL HISTORY

On August 10, 1971 appellant, then a 33-year-old secretary, filed an occupational disease claim alleging that she developed a rash on her arms and hands from exposure to printed inks while using a printing machine. She originally stopped work on August 3, 1971 and returned on October 15, 1971. Appellant's rash redeveloped on October 28, 1971 on which date she stopped work and did not return. The Office accepted her claim for contact dermatitis. It subsequently

expanded the claim to include asthma and allergic rhinitis. The Office paid appellant compensation benefits.

Dr. George Kurita, a Board-certified dermatologist, treated appellant several times following the acceptance of her claim. On October 16, 1979 he opined that her prognosis was good to excellent if she could strictly avoid printed material and inks. On May 2, 1980 Dr. Kurita noted that appellant's condition carried permanent residual disability such that she could not be reasonably expected to tolerate further exposure to printed materials without reactivation of her condition. He further noted that her condition was irreversible but that she could work if she avoided printed materials.

In a January 5, 1983 report, Dr. James P. Fields, Board-certified in dermatology and allergy and immunology and an Office referral physician, opined that appellant had continuing hand dermatitis on the grasping surfaces of her hands without employment therefore making it very likely that employment involving additional use of her hands would aggravate her condition. He advised that she could be employable if her employment did not involve use of her hands and would not bring her into contact with substances to which she was sensitized. Dr. Fields indicated that appellant's skin condition was permanently disabling and recommended avoiding local contact with primary irritants and all allergic substances.

On September 17, 2003 the Office referred appellant to Dr. Artis P. Truett, III, a Board-certified dermatologist, for a second opinion evaluation to determine her condition and disability for employment. In a June 15, 2004 report, Dr. Truett noted that she had latex and rubber allergies as well as respiratory problems. He also noted that appellant's work-related contact dermatitis had resolved and that there was no direct relationship between contact dermatitis and her respiratory symptoms. Dr. Truett opined that she could experience contact dermatitis if she returned to work due to her allergies.

On January 5, 2005 February 9 and October 6, 2006, the Office requested that appellant submit a medical report from her physician regarding the status of her employment-related conditions and her ability to work.

On November 16, 2006 the Office referred appellant with a statement of accepted facts to Dr. Kenneth Anderson, an internist Board-certified in pulmonary disease, and Dr. Stephen Smith, a Board-certified dermatologist, for second opinion evaluations to assess her work-related condition and to determine the extent of her disability.

In a December 19, 2006 report, Dr. Anderson stated that the pulmonary function testing (PFT) performed during examination revealed 83 percent forced vital capacity (FVC) and 79 percent forced expiratory volume in 1 second (FEV_1). This PFT revealed early/mild restricted lung defect with moderate decrease in diffusion capacity carbon monoxide, but it did not suggest an obstructive lung disease as the residual volume was low and the total lung capacity was also low normal. Dr. Anderson noted that a chest x-ray taken during examination did not demonstrate any definitive abnormalities. He advised that appellant reported worsening symptoms over the last five or six years and related this to her "asthma." Dr. Anderson noted, if this is "job related," possibilities could include subacute hypersensitivity pneumonitis or, alternatively and most likely, a reactive airway dysfunction syndrome and irritant-induced

asthma. He indicated that appellant's asthma could be subacute hypersensitivity pneumonitis or mostly likely reactive airway dysfunction syndrome and irritant-induced asthma. Dr. Anderson noted that the PFT during examination was abnormal, but without previous PFT results he could not ascertain whether this was a chronic problem related to abnormal PFTs such as residual reactive airway dysfunction syndrome or the development of new interstitial lung disease process. He opined that, based on appellant's history, she was physically capable of working as long as there were no significant exposures to the allergens identified by her allergist. Dr. Anderson also advised that her current limitations were permanent as they had been longstanding, but that previous PFT results would be beneficial to prove the stability of the present lung dysfunction. He also recommended a chest computerized tomography (CT) scan to rule out interstitial lung disease process. In a work capacity evaluation of the same date, Dr. Anderson indicated that appellant was not able to perform her usual job but that she could work full time with restrictions on her exposures.

In a December 28, 2006 report, Dr. Smith noted that examination of appellant's hands revealed normal skin without any dermatological disease or abnormal findings. He opined that her dermatitis has resolved without residuals. Dr. Smith opined that there were no objective findings to support disability from the work injury. He explained that appellant had a history of exposure to printing ink and cleaning fluids from a mulilith 86 printing machine, but that such machine was no longer in use. Dr. Smith noted that the only recorded patch test was performed in 1974 and revealed a nickel allergy. He stated that other subsequent testing was for respiratory allergens but that there was no recorded testing for printing materials. Dr. Smith indicated that appellant's history of multiple respiratory allergies, upper respiratory symptoms and sensitive skin were consistent with a diagnosis of atopy. He opined that exposure to a secretarial work environment would not include any exposure to printing inks or fluids as current printers used ink within cartridges. Dr. Smith explained that appellant's problem with ink in 1970 was most likely an irritant contact dermatitis typical for atopic patients and would not occur in the current workplace. He advised that she had complete work capacity. Dr. Smith noted that appellant might encounter workplace irritants that could exacerbate her hands but that these items could be tested on her skin. He opined that there were no objective dermatologic findings, no limitations on her work and no demonstrable permanent disability. In a work capacity evaluation of the same date, Dr. Smith diagnosed dermatitis and indicated that appellant was able to perform her usual job within restrictions to airborne particles and fumes. He indicated that her restrictions were only given to prevent a possible future injury.

On January 11, 2007 the Office requested an addendum report from Dr. Anderson upon reviewing previous PFT and CT scan results.

In a February 23, 2007 supplemental report, Dr. Anderson noted that review of a September 29, 2000 PFT report revealed 73 percent FVC and 80 percent FEV_1 and an October 8, 2001 report revealed 79 percent FVC and 75 percent FEV_1. He indicated that these results were comparable to the PFT performed during his December 19, 2006 evaluation, which demonstrated overall stability of lung dysfunction. Dr. Anderson opined that appellant's current limitations were permanent. He also reviewed a January 29, 2007 chest CT scan that revealed mild emphysematous changes in the upper lung zones and no evidence of interstitial lung disease. Dr. Anderson opined that appellant was not developing a new interstitial lung disease process.

He also reiterated that she had the physical capability to work as long as no significant exposures to allergens were reported by her allergist.

On March 13, 2007 the Office requested a supplemental report from Dr. Anderson regarding appellant's work-related residuals and work capacity.

In a May 31, 2007 supplemental report, Dr. Anderson noted that he outlined appellant's respiratory history in his previous report and related it to her present work up. He reiterated that she has the physical capability to work as a secretary from a respiratory standpoint, but should have no significant exposures. Dr. Anderson further indicated that, if appellant could prevent exposures, she would not worsen her respiratory condition. He noted that he could not comment on her dermatitis condition but that she had maintained maximum medical therapy and adequate lung function.

On June 15, 2007 the Office proposed to terminate appellant's wage-loss benefits finding that Drs. Smith and Anderson represented the weight of the medical evidence establishing that she was no longer disabled from work due to her accepted condition.

In a July 9, 2007 statement, appellant asserted that the reports from her treating physician Dr. Ha Le, a Board-certified allergist and immunologist, and Dr. Anderson supported that she remained disabled. She requested that the Office make her disability permanent as her condition had not significantly changed over the years. Appellant indicated that there was no employment situation for her given her limitations. She also submitted a June 19, 2007 letter to Dr. Le requesting that he respond to the Office's request for a medical report.

In a July 9, 2007 report, Dr. Le, a Board-certified allergist and immunologist, noted treating appellant since October 2001 for contact dermatitis, urticaria, allergic rhinosinusitis and allergic bronchitis. He noted her long history of frequent skin breaking out, itching, hand rash, congestion, chest tightness and shortness of breath. Dr. Le opined that appellant's respiratory and skin condition was much better overall but that she still complained of symptoms when in certain areas or outside.

In a July 19, 2007 decision, the Office terminated appellant's wage-loss benefits effective that day. It noted that she remained entitled to medical benefits.

On August 16, 2007 appellant requested an oral hearing, which was held on February 26, 2008. In a July 30, 2007 treatment note, a physician's assistant diagnosed allergic dermatitis and noted her complaint of swollen eyes and itching forehand secondary to allergies.

A February 28, 2008 statement from an employment counselor noted that she reviewed appellant's medical history but did not find work that appellant was able to do. The employment counselor opined that appellant was not employable as she needed to work in a controlled environment and did not have the required skills. She further noted that she could not find a workplace with a controlled environment that could hire appellant based on the skills appellant possessed. Appellant also submitted a 1994 and a 2000 treatment record, several articles on various allergens as well as witness statement from people aware of her allergy.

In a report dated October 23, 2001, Dr. Le noted that appellant had an allergy evaluation in 1970 but that her respiratory congestion had worsened in the last five years. He diagnosed latex allergy by history, contact urticaria, hand dermatitis, allergic sinusitis, allergic bronchitis, severe seasonal perennial allergic rhinitis and drug adverse reaction to penicillin and sulfa. In a February 11, 2008 report, Dr. Le reiterated his opinion that appellant's skin and respiratory condition was better overall but that she still complained of symptoms.

On March 17, 2008 Dr. Carol Worrill, an osteopath specializing in family medicine, reviewed appellant's medical record, noting the 1971 injury and reports from Drs. Le and Anderson who noted that appellant could not work where she had significant exposures. She opined that appellant continued to suffer from her original work-related injury and was unable to work.

In a June 9, 2008 decision, an Office hearing representative affirmed the July 19, 2007 decision.

On May 14, 2009 appellant requested reconsideration based on an April 24, 2009 report from Dr. Chris Godfrey, a Board-certified internist. On April 24, 2009 Dr. Godfrey indicated that she had been his patient for the past year. He noted that chemical exposure in 1971 led to permanent conditions including dermatitis, asthma, allergic rhinitis and urticaria. Dr. Godfrey also noted that appellant's compensation had been halted due to a lapse in paperwork. He indicated that she had avoided allergens that could trigger her condition and therefore was unable to work as she would be unable to control a workplace environment. Dr. Godfrey noted that appellant developed asthma, urticaria and laryngeal edema if exposed to certain types of environmental triggers. He opined that she still had the same injuries that she sustained on the job and that she would not ever be able to be employed in a public workplace due to her condition.

In a July 22, 2009 decision, the Office denied modification of its June 9, 2008 decision finding the new evidence insufficient to establish that appellant continued to be disabled from her accepted work injury.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] After it has determined that, an employee has disability causally related to his 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.[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]

[1] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

[2] *Vivien L. Minor*, 37 ECAB 541 (1986).

[3] *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

ANALYSIS -- ISSUE 1

The Office accepted that appellant's work injury caused contact dermatitis, asthma and allergic rhinitis. It paid her compensation before terminating her wage-loss compensation effective July 19, 2007 based on the opinions of second opinion physicians Drs. Smith and Anderson. The Board finds that the Office met its burden to establish that appellant was no longer disabled from her job effective July 19, 2007.

In a December 28, 2006 report, Dr. Smith opined that appellant's dermatitis resolved without residuals as his examination of her hands revealed normal skin without dermatological disease or abnormal findings. He further opined that there were no objectionable findings to support continued disability as the work injury was due to exposure to printing inks from a printing machine that was currently obsolete. Dr. Smith explained that current secretarial work environments did not contain exposure to printing ink as current printers store ink inside cartridges and therefore current work environments would not cause irritant contact dermatitis as it did at the time of appellant's original work injury. He explained that her problem with ink in 1970 was likely an irritant contact dermatitis typical for atopic patients and would not occur in current workplaces. Dr. Smith opined that appellant had no objective dermatologic findings, no limitations on her work and no demonstrable permanent disability. After reviewing appellant's record and conducting his own examination, he was able to conclude that she had no continued disability related to her accepted work injury and that she was able to work without restrictions.

In a December 19, 2006 report, Dr. Anderson determined that, based on appellant's medical history, she was able to work full time as a secretary with restrictions on exposure to her allergens. He indicated that her restrictions were only to prevent a possible future injury. Dr. Anderson further supported his conclusion with his finding that the PFT conducted on examination revealed early/mild lung defect but did not suggest an obstructive lung disease and also the chest x-ray during examination revealed no definitive abnormalities. On February 23, 2007 he reiterated that appellant could work full time without significant exposure to her allergens. Dr. Anderson explained that, after comparing previous PFT reports with his December 19, 2006 PFT findings, he determined that appellant had stable lung dysfunction. Also, his review of a previous chest CT scan supported that appellant did not develop new interstitial lung disease process. In a May 31, 2007 report, Dr. Anderson opined that, as she had adequate lung function and had maintained maximum medical therapy, she was able to work full time from a respiratory standpoint, in spite of permanent limitations posed by exposure to allergens identified by her allergist. The Board notes that, while he noted restrictions on exposure to fumes and airborne particles, he indicated that this was only to prevent a possible future injury. Dr. Anderson's restrictions appear to be prophylactic in nature. However, the possibility of future injury does not constitute a basis for the payment of compensation under the Federal Employees' Compensation Act.[4]

The Board finds that Drs. Smith and Anderson's reports represent the weight of the medical evidence and that the Office properly relied on their reports in the termination of appellant's wage-loss benefits. The opinions of Drs. Smith and Anderson are based on proper

[4] *See I.J., supra* note 1.

factual and medical history as they had a statement of accepted facts and were provided with her medical record. Moreover, they analyzed this information in addition to their own findings on examination to reach a reasoned conclusion regarding appellant's condition.[5]

While the record contains medical evidence providing some support for causal relationship, this evidence is insufficient to create a conflict or overcome the reports of Drs. Smith and Anderson. Dr. Le's reports dated July 9, 2007 and February 22, 2008, opined that appellant's skin and respiratory conditions were better overall but that she still complained of symptoms. He did not address whether she had any continued disability from work due to her accepted work injury.[6] Similarly, Dr. Le's October 23, 2001 report diagnosed appellant's condition without providing any opinion on causal relationship. Additionally, Dr. Worrill's March 17, 2008 report generally concluded that, based on appellant's record, she had continued disability and residuals due to the accepted work injury. She did not provide a reasoned medical explanation regarding the basis of her conclusion. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[7] The record also contains treatment notes that predate the period of the termination of compensation. Also submitted was a July 30, 2007 physician's assistant report, which has no probative value as physician's assistants are not considered physicians under the Act.[8] Likewise, a statement from an employment counselor is of no probative value regarding appellant's ability to work since the issue of disability for work is an issue that must be resolved by competent medical evidence.[9]

Consequently, the Board finds that the weight of the medical evidence properly rests with Drs. Smith and Anderson and establishes that appellant's disability for work ended by July 19, 2009.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence

[5] *See Naomi Lilly*, 10 ECAB 560 (1959) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are factors which enter into the weight of an evaluation).

[6] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[7] *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009).

[8] *See George H. Clark*, 56 ECAB 162 (2004) (the Board has noted a physician's assistant is not a physician as defined under the statute and therefore any report from such individual does not constitute competent medical evidence which, in general, can only be given by a qualified physician); *see also* 5 U.S.C. § 8101(2).

[9] *R.C.*, 59 ECAB ___ (Docket No. 07-2042, issued June 3, 2008).

that she had an employment-related disability, which continued after termination of compensation benefits.[10]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[11]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continued disability related to her accepted employment injury. The medical evidence submitted after the hearing representative's June 9, 2008 decision, affirming the termination of wage-loss benefits, does not establish that she had any continued disability from her work injury.

In an April 24, 2009 report, Dr. Godfrey opined that appellant still experienced the 1971 work injury and would never be able to work in a public place, as she would be unable to control her workplace environment to avoid allergens. However, in this broad statement, he failed to identify specific environmental conditions that still rendered her disabled and he did not explain how such conditions related to the accepted conditions. As noted, appellant's burden requires submitting rationalized medical evidence that supports causal relationship.[12] Furthermore, Dr. Godfrey indicated that her work would result in allergen exposure and would cause symptoms. Board case law reflects that a fear of future injury is not compensable.[13] Dr. Godfrey did not provide a reasoned explanation regarding why particular exposures in the workplace would cause disability due to an accepted condition. Consequently, appellant did not establish that she had continuing disability after July 19, 2007 causally related to her employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss benefits effective July 19, 2007. The Board also finds that she did not meet her burden of proof to establish that she had any continuing condition or disability after July 19, 2007.

[10] *See supra* note 4.

[11] *Id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value. *See T.M.*, *supra* note 7.

[13] *See supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 22, 2009 is affirmed.

Issued: July 23, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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