

² Appellant's appeal also sought review of her claim in Office file number xxxxxxxx762. However, the claim file does establish that the Office issued a decision within 180 days of the filing of the appeal on August 3, 2010. The Board does not have jurisdiction over an Office decision in this claim file. See 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

On May 14, 2002 appellant, then a 40-year-old medical records clerk, experienced burning in her nasal passages after inhaling fumes from a stained door and perfume of employees at work. On September 24, 2003 the Office accepted temporary aggravation of chronic chemical irritant contact dermatitis.³ Appellant stopped work on the date of injury, May 14, 2002 and returned to work on May 16, 2002. On August 9, 2002 she stopped work and subsequently retired.

Appellant was initially treated by Dr. Billy J. Lance, a Board-certified family practitioner, from June 14, 2001 to June 20, 2002 for several toxic exposures at work. Dr. Lance noted treating her since March 27, 1989 for allergic rhinitis and asthma. On April 2, 2002 appellant presented with tightness in the chest and nausea, which she attributed to burning odors and strong perfumes at work. Dr. Lance diagnosed mild bronchial upper respiratory airway irritation from odors on the job, smoke and perfume. On April 16, 2002 he noted that appellant was no longer able to work as a radiology technician because of her work environment and was totally disabled. On June 10, 2002 appellant reported being exposed to a burning smell and staining fumes in the medical records department at work which caused chest tightness. On June 20, 2002 she presented with irritation of the upper and lower respiratory tract from toxic workplace chemical fumes. Dr. Lance noted that a biopsy of her tongue revealed chronic irritant lesion.

On April 9, 2002 appellant was treated by Dr. Mark J. Mayson, a Board-certified pulmonologist, for significant bronchospastic disease and mild obstructive process. Dr. Mayson noted exposure to aldehydes and sulfites produced bronchospasm. In a May 29, 2002 report, he treated appellant for burning in her nasal passages and her chest associated with shortness of breath. Dr. Mayson diagnosed chest discomfort of undetermined etiology. Appellant was seen by Dr. Allan D. Lieberman, Board-certified in occupational medicine, on October 21, 2002, for eye, ear and nose throat burning and chronic irritant dermatitis exacerbated by exposure to volatile chemicals. Dr. Lieberman noted that onset of complaints with toxic chemicals came in 1993 when working in the radiology department. He noted that chemicals used in x-ray processing and to which appellant was chronically exposed by dermal and inhalational routes caused skin and respiratory problems. Dr. Lieberman noted that appellant developed a heightened sensitivity to odors.

On August 1, 2002 the employing establishment offered appellant a permanent reassignment to the position of medical records clerk. Appellant accepted the position and returned to work. On August 9, 2002 she stopped work and later retired. She elected to receive wage-loss benefits from the Office.

In reports dated January 16 and October 10, 2006, Dr. Lance noted that appellant continued to have significant medical problems with regard to her workplace polyallergy or occupational exposure syndrome. He noted that her symptoms were manifested by chronic perennial allergic rhinitis symptoms, recurrent bronchospasms, polyarthritis in the joints and fatigue. Dr. Lance indicated that appellant was treated symptomatically and continued to be

³ The record also indicates that appellant filed previous claims for fume exposure at work.

totally disabled. Similarly, in reports dated September 27, 2007 and September 29, 2008, he noted appellant's significant problems with bronchospasms when exposed to irritating chemical with recurrent allergic rhinitis symptomology. Dr. Lance noted her condition significantly inhibited her ability to perform activities of daily living and her exposure to the outside environment was limited. He opined that appellant's residual symptoms resulted from workplace exposure to chemicals. Dr. Lance noted that she attempted to perform clerical work on prior occasions but was unsuccessful due to personal hygiene measures of coworkers, dust, fumes and other environmental irritants. He opined that appellant continued to remain totally disabled.

In a September 1, 2009 statement of accepted facts, the Office noted that appellant had five documented chemical exposure incidents: on May 22, 2001 she was exposed to noxious odors while the mammography room was painted; on December 13, 2001 she was exposed to chloroform from a spill in the employees work area; on April 2, 2002 she was exposed to odors related to the draining of a sprinkler system; on April 22, 2002 she was exposed to perfume fumes in her work area and on May 14, 2002 she was exposed to fumes from paint stain applied to a door in the medical records area.

On September 11, 2009 the Office referred appellant to Dr. David Amrol, a Board-certified pulmonologist, for a second opinion evaluation. In a report dated October 1, 2009, Dr. Amrol discussed appellant's work history. He noted symptoms of mild to moderate allergic rhinitis with no evidence of asthma or reactive airway dysfunction syndrome. Dr. Amrol noted that the methylcholine challenge was normal which excluded asthma and reactive airway dysfunction. He found no current active respiratory condition except for allergic rhinitis and no evidence of contact dermatitis. Dr. Amrol opined that appellant's contact dermatitis had ceased. He indicated that she was limited in occupation by her irritant rhinitis and noted that she would be unable to work in environments that had strong smells, irritants, tobacco smoke, perfume, ozone changes or abrupt temperature changes. Dr. Amrol opined that appellant's condition was due to her irritant rhinitis and was not the result of any form of reactive airway dysfunction syndrome. He opined that she could resume successful employment and should work in an environment in which there are no excessive irritant exposures and believed this would be feasible with a regimen of medical care. Dr. Amrol opined that appellant's diagnosed allergic rhinitis and nonallergic rhinitis caused her headaches, fatigue, burning nose, itchy eyes and congestion. He advised that her diagnoses should not prohibit her from pursuing active work.

Appellant submitted a September 18, 2009 report from Dr. Lance who noted that her history was significant for working 13 years as a radiology technician with daily exposures to the darkroom, chemicals and other cleaning agents used in the hospital. Dr. Lance noted that she continued to have significant problems with bronchospasms when exposed to irritating chemicals with recurrent allergic rhinitis symptomology. He noted that inflammation inhibited appellant's ability to perform activities of daily living and her exposure to the outside environment is limited. Dr. Lance opined that her residual symptoms resulted from exposure to chemical in the workplace. He noted that appellant continued to have problems with respiratory inflammations and was unable to perform her work because of exposures causing eye, ear, nose and throat irritation, chronic irritant dermatitis, reactive airway dysfunction. Dr. Lance noted that she attempted to perform clerical work; however, this was not successful due to the personal hygiene measures used by other workers in the workplace, plus dust, fumes and other environmental

irritants to which she was exposed. He opined that the sequelae of appellant's injury remained present and unless she could work in a temperature controlled, isolated environment without chemical or environmental irritants, she was unable to work. Dr. Lance opined that she remained totally disabled.

On December 10, 2009 the Office proposed to terminate compensation benefits for appellant's accepted temporary aggravation of chronic chemical irritant contact dermatitis based on Dr. Amrol's October 1, 2009 report.

Appellant disagreed with the proposed action and submitted a July 31, 2001 report from Dr. Lissy Menachery, a family practitioner, who treated appellant for work-related respiratory exposure. Other reports from Dr. Edward Shumes, a Board-certified dermatologist, dated March 7 and May 20, 2002, noted treatment for work-related contact dermatitis caused from exposure to chemicals including glutaraldehyde. Appellant submitted an April 16, 2002 report from Dr. Lance and reports from Dr. Lieberman dated October 21, 2002 and June 25 and October 17, 2003, previously of record. She submitted a January 12, 2005 report from Dr. R. Douglas Markham, Board-certified in allergy and immunology, who diagnosed significant allergic rhinitis with recurrent sinusitis. Dr. Markham opined that exposure to various chemicals as an x-ray technician and to other chemicals while working as a medical records technician caused the onset of allergic rhinitis. Appellant submitted literature on glutaraldehyde.

By decision dated February 5, 2010, the Office terminated appellant's compensation benefits effective February 13, 2010.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ 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.⁵ 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, which requires further medical treatment.⁶

ANALYSIS

The Office accepted that appellant developed a temporary aggravation of chronic chemical irritant contact dermatitis. Appellant stopped work on the date of injury, May 14, 2002 and returned to work on May 16, 2002. On August 9, 2002 she stopped work and subsequently retired. The Office terminated appellant's compensation effective February 13, 2010, based on

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁶ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

Dr. Amrol's report. The Board finds, however, that there is a conflict in medical opinion between Dr. Amrol, the Office referral physician and Dr. Lance, appellant's treating physicians.

In an October 1, 2009 report, Dr. Amrol opined that appellant did not have residuals of her accepted condition. He found no current active respiratory condition except for allergic rhinitis and no evidence of contact dermatitis which resolved. Dr. Amrol opined that appellant could resume successful employment and should work in any environment in which there are no excessive irritant exposures and believed this would be feasible with a regimen of medical care. In contrast, Dr. Lance noted that she continued to have significant residuals of her work-related injury with bronchospasms and recurrent allergic rhinitis symptomology. He opined that appellant's residual symptoms resulted from exposure to chemicals in the workplace and the sequelae of her injury was still present and she remained totally disabled. Dr. Lance consistently supported work-related disability related to her temporary aggravation of chronic chemical irritant contact dermatitis. The Board, therefore, finds that a conflict in medical opinion has been created.

Section 8123 of the Act⁷ provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁸ The Board finds that, because the Office relied on Dr. Amrol's opinion to terminate appellant's compensation without having resolved the existing conflict,⁹ the Office has failed to meet its burden of proof in terminating medical and compensation benefits on the grounds that disability had ceased.¹⁰

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's benefits.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Id.* at § 8123(a); *Shirley L. Steib*, 46 ECAB 39 (1994).

⁹ *See Craig M. Crenshaw, Jr.*, 40 ECAB 919, 923 (1989) (finding that the Office failed to meet its burden of proof because a conflict in the medical evidence was unresolved).

¹⁰ Upon return of the case record, the Office shall combine all claim files pertaining to appellant's exposure to fumes. Office procedures provide for doubling case files where there is more than one claim involving similar conditions or parts of the body. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 5, 2010 is reversed.

Issued: July 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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