

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARJORIE M. CUNNINGHAM and DEPARTMENT OF VETERANS  
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Houston, Tex.

*Docket No. 96-1355; Submitted on the Record;  
Issued April 20, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 7, 1995 on the grounds that she had no further condition or disability after that date due to her accepted employment injury; and (2) whether the Office properly terminated appellant's authorization for medical treatment.

The Office accepted appellant's March 12, 1987 occupational disease claim for aggravation of preexisting asthma and major depressive disorder. The Office paid appellant the appropriate compensation for wage-loss disability.

On April 6, 1995 the Office referred appellant to Dr. Raymond Alexander, a Board-certified internist, and Dr. Grace Jameson, a Board-certified psychiatrist, for second opinion evaluations.

In a report dated May 3, 1995, Dr. Alexander diagnosed asthma and stated:

"Work-related exposure to irritants and allergens certainly caused a temporary aggravation of her asthma. There is no evidence that this caused her asthma or continues to aggravate her condition.... There is no evidence to suggest a permanent aggravation of her asthma as a result of the exposure to allergens and irritants at the [employing establishment]."

Dr. Alexander noted that appellant had normal pulmonary capacity between exacerbations of her asthma and found that she could return to work with restrictions on exposure to allergens, physical activity and high stress.

In a report dated May 4, 1995, Dr. Jameson opined that appellant had no current psychiatric condition or evidence of depression. She further indicated that appellant had no psychiatric restrictions which would prevent her from returning to her regular employment.

By notice dated June 21, 1995, the Office advised appellant that it proposed to terminate her compensation on the grounds that she no longer had any disability due to her accepted employment injury.

Appellant submitted a medical report dated December 12, 1994 from Dr. Robert E. Jackson, a Board-certified internist and her attending physician, who opined that she continued to have "marked restriction in her activity due to her reactive airway disease," continued to need medicine to control her asthma and could not return to her prior employment. In a report dated July 14, 1995, Dr. Jackson stated that he disagreed with the Office's proposed termination of appellant's benefits. He opined that appellant's exposure to allergens at the employing establishment caused her asthma.

The Office determined that a conflict in the medical evidence existed between Dr. Alexander and Dr. Jackson on the issue of whether appellant continued to suffer any disability from the employment-related aggravation of her preexisting asthma. The Office referred appellant, together with the case record and a statement of accepted facts to Dr. James Cooper, a Board-certified allergist, for an impartial medical examination.

In a report dated September 27, 1995, Dr. Cooper discussed appellant's medical and work history, findings on physical examination, and the results of objective testing. He found that appellant continued to experience symptoms of asthma but stated, "[I]t is clearly impossible that her exposure of eight years ago is currently influencing her asthma. I would characterize her past situation as one of temporary aggravation only." He found that appellant could return to work with minor restrictions regarding exposure to irritants.

By decision dated December 26, 1995, the Office terminated appellant's compensation effective January 7, 1995 on the grounds that she had no disability due to her employment after that date. The Office determined that the weight of the medical evidence rested with the opinion of Dr. Cooper, the impartial medical examiner. The Office further terminated appellant's authorization for further medical treatment.

The Board finds that the Office properly terminated appellant's compensation effective January 7, 1995 on the grounds that she had no further disability after that date due to her accepted employment injury.

Under the Federal Employees' Compensation Act,<sup>1</sup> when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>2</sup> However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.<sup>3</sup> Once the Office has accepted a claim, it has the burden of justifying termination or

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

<sup>3</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

modification of compensation benefits.<sup>4</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

In the present case, the medical evidence established that appellant had no further residuals of her accepted condition of major depression. The record revealed, however, a conflict in the medical opinion evidence between Dr. Jackson, a Board-certified internist and appellant's attending physician and Dr. Alexander, a Board-certified internist and Office referral physician, regarding whether appellant continued to have any disability due to her accepted condition of aggravation of preexisting asthma. The Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Cooper, a Board-certified allergist, for an impartial medical examination and opinion on the matter.<sup>7</sup>

In situations where there exists 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 upon a proper factual background, must be given special weight.<sup>8</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Cooper, the impartial medical specialist selected to resolve the conflict in the medical opinion evidence. The September 27, 1995 report of Dr. Cooper establishes that appellant has no further aggravation of her asthma due to her federal employment. Dr. Cooper's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement and accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Cooper provided a proper analysis of findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>9</sup> The Board finds that Dr. Cooper's opinion supports that appellant's accepted aggravation of her preexisting asthma had resolved by January 7, 1995, the date the Office terminated appellant's compensation benefits.

The Board further finds that the Office properly terminated appellant's authorization for medical treatment.

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<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>5</sup> *Id.*

<sup>6</sup> See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>7</sup> Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

<sup>8</sup> *Jack R. Smith*, 41 ECAB 691 (1990).

<sup>9</sup> See *Melvina Jackson*, 38 ECAB 443 (1987).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>10</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. The Office met this burden through the report of Dr. Cooper, who found that appellant had no residual condition caused by her temporary aggravation of preexisting asthma and the report of Dr. Jameson, who found that appellant had no residuals of her psychiatric condition.

The decision of the Office of Workers' Compensation Programs dated December 26, 1995 is hereby affirmed.

Dated, Washington, D.C.  
April 20, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).