

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA L. WILLIAMS-THOMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Bethesda, Md.

*Docket No. 97-756; Submitted on the Record;
Issued February 9, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits, effective January 7, 1996.

The Board has duly reviewed the case record and concludes that the Office met its burden of proof to terminate compensation benefits.

The Office accepted appellant's claim for aggravation of chronic rhinitis, sinusitis, allergic conjunctivitis and asthma. Appellant began receiving temporary total disability benefits. The Office terminated appellant's compensation benefits, by decision dated January 23, 1996, on the grounds that the evidence of record established that her disability due to her accepted condition had ceased. On February 4, 1996 appellant requested an oral hearing before an Office hearing representative, which was held on September 9, 1996.

By decision dated November 8, 1996, the Office hearing representative affirmed the Office's decision.

Once the office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

¹ *Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In terminating appellant's compensation benefits, the Office relied on the opinion of an impartial medical specialist, Dr. Norton A. Elson, a Board-certified internist with a specialty in pulmonary diseases. In his report dated June 27, 1995, Dr. Elson considered appellant's history of injury, performed a physical examination and reviewed pulmonary function tests which were normal. He stated:

"Appellant is sensitive to multiple environmental irritants and allergens and was temporarily exacerbated by her work environment. I believe these aggravations were temporary based on her history and her current pulmonary physiology and have now resolved. A recent exacerbation was probably related more to her skin test than to her environmental exposure."

Dr. Elson stated that appellant's aggravation "probably resolved" soon after her removal from the work space at the Bethesda Annex at the employing establishment. He stated that appellant should avoid those environmental triggers, to which she had been sensitive in the past. Dr. Elson also stated that "it [was] clear that [appellant's] major precipitant was the chronic postnasal drip."

The Office had referred appellant to Dr. Elson for an evaluation to resolve the conflict between the opinions of appellant's treating physician, Dr. Denise Chevalier Hamilton, an allergist and an immunologist, who opined that appellant could return to work provided her work environment was free of dust, mold, exhaust, smoke, chemicals, and other irritants or allergens and the opinion of the referral physician, Dr. Jerome S. Putnam, a Board-certified internist with a specialty in pulmonary diseases, who opined that appellant had no work-related medical problem. In her June 23, 1994 report, Dr. Hamilton considered appellant's history of injury, performed a physical examination and stated that appellant's ongoing exposure to allergens and irritants in her work environment were highly probably triggers for her ongoing allergy and asthma symptoms. She recommended strict control of appellant's home and work environment to avoid ongoing exposure to dust and irritants. In her November 20, 1994 report, she stated that appellant's condition was subject to exacerbations and remissions and that when appellant was removed from her polluted work environment, her asthma was relatively stable. She reiterated that appellant must work in an environment free of irritants and allergens.

In his report dated March 7, 1995, Dr. Putnam considered appellant's history of injury, performed a medical examination and reviewed chest x-rays, pulmonary function studies and an electrocardiogram which were normal and a complete blood cell eosinophil count and immunoglobulin E level which suggested that appellant's allergy was *not* a significant source of her problem. He stated that appellant had normal physiology with no evidence of any residual lung disease or destruction of any lung tissue. (Emphasis added). Dr. Putnam stated:

"It is not possible to state with absolute certainty the etiology of her specific problem. [Appellant] does have a strong family history of asthma and allergies but 50 percent of people with asthma develop it after the age of 35. It may well be that the onset of her problem was related to an acute infectious process and only exacerbated by the irritant factors at work, but, no one can state this categorically with any degree of certainty. In addition, based upon the review of the available data, I am not able to state with certainty when she reached full

recovery. Certainly, her peak flow rates have been in a good range since she left the work environment back in 1994.”

He opined that appellant could work as a postal clerk but appropriate precautions should be taken so that she would not be exposed to strong odors, noxious fumes, or chemicals, including cigarettes and she should work in a well-ventilated area.

At the hearing, appellant submitted medical reports and evaluation forms from Dr. Hamilton dated August 9 and November 20, 1994 from Dr. Raymon Noble, a Board-certified internist with a specialty in pulmonary diseases, dated June 30, 1994 and from Dr. Deidra L. Varner, a Board-certified internist with a specialty in cardiovascular disease, dated January 3, 1996. As the issue in this claim is whether appellant continued to be disabled in 1995 and 1996, the 1994 reports appellant submitted are not relevant. Further, Dr. Hamilton’s November 20, 1994 report had been previously submitted and was noted above.

In her January 3, 1996 report, Dr. Varner considered appellant’s history of injury and noted that after appellant returned to work on December 18, 1995, she developed sneezing, postnasal drip, nasal congestion, itchy, swollen red eyes, wheezing and cough and generalized pruritis, which she attributed to the floral Christmas decorations in her workplace. She stated that appellant suffered from multiple allergies causing severe allergens, rhinitis, sinusitis and asthma since 1994. Dr. Varner opined that appellant’s allergies were caused and exacerbated by her work environment as it contained many of the allergens to which she was sensitive. She stated that appellant’s symptoms were clearly brought on or made worse in certain work environments especially if these workplaces were dusty, not well ventilated, moldy, contained smoke, fumes perfumes, plants and animals.

At the hearing, appellant testified that she had respiratory problems since leaving the hospital in 1994. Appellant stated that she returned to work the last week of March 1995 and was transferred from the Bethesda annex to the Bethesda main office on April 1, 1995. She testified that when she returned to the annex, the annex had the same conditions as it had previously had, which were excessive amounts of dust and dirt and fumes from postal vehicles, which entered the building and from cleaning by the custodian. Appellant stated that at the main office the conditions were not quite as dirty as the annex, but there was still dust in the air and fumes from the custodian’s cleaning fluids. Claimant testified that she had residuals from her original claim.³ The hearing representative noted that an air quality investigation was conducted at the employing establishment on February 21, 1995 and employing establishment installed a new system for filtering air.

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

³ Appellant had a previous claim for her pulmonary conditions, which the Office accepted and paid appellant appropriate disability benefits. Appellant testified that the Office, however, terminated her benefits because the employing establishment did not forward her medical reports to the Office. The Office informed appellant that for her current condition she must file a new claim because she was working in a new work environment even though her condition was the same as in the first claim.

factual background, must be given special weight.⁴ The Board finds Dr. Elson's opinion is sufficiently well rationalized in establishing that appellant recovered from her accepted condition of aggravation of chronic rhinitis, sinusitis, and allergic conjunctivitis and asthma. Dr. Elson opined that appellant's aggravations by her work environment were temporary based on her history and her current, normal pulmonary physiology and had resolved. Dr. Varner's January 3, 1996 opinion, in which Dr. Varner opined that appellant's allergies were caused and exacerbated by her work environment does not provide a sufficiently rationalized medical opinion as to why appellant's aggravation of her accepted condition continued and does not negate Dr. Elson's report.⁵ Therefore, as an impartial medical specialist, Dr. Elson's opinion constitutes the weight of the evidence. His opinion justifies the Office's decision to terminate benefits.

The decisions of the Office of Workers' Compensation Programs dated November 8 and January 23, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 9, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

⁵ *See Jerry D. Osterman*, 46 ECAB 500, 507-08 (1995).