

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERMAN J. HARRIS and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 99-267; Submitted on the Record;
Issued July 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective September 20, 1994.

On June 11, 1993 appellant, a pump and engine operator, filed a claim asserting that he developed a pulmonary/asbestos condition from breathing airborne fibers and stress while in the performance of duty. The Office accepted his claim for a precipitation of episodes of asthma secondary to exposure to a degreaser/cleaning agent. Effective October 7, 1993 appellant was separated from his employment based on his physical inability to perform the duties of his position.

To resolve the cause and extent of impairment residual to his accepted employment injury, the Office referred appellant, together with a copy of the medical evidence and a statement of accepted facts, to Dr. William Fineman, a Board-certified specialist in internal medicine and pulmonary medicine. In a report dated October 6, 1994, Dr. Fineman stated that he evaluated appellant on September 20, 1994. He related appellant's history and complaints. He stated that he had reviewed the folder of medical records submitted by the Office. After reporting his findings on physical examination, from x-rays and on pulmonary function testing, Dr. Fineman concluded that appellant had reversible small airways obstruction consistent with the diagnosis of underlying asthma. On the subject of continuing residuals of the accepted employment injury, he offered the following opinion:

“Asthma can certainly be exacerbated by exposure to inhalants at the place of work, particularly those which serve as respiratory tract irritants, and [appellant] may have been exposed to such substances in the course of his work as a tank cleaner. However, he has continued to have prominent bronchospasm despite being out of work since October 1993, so that I believe other factors are at work in the causation of his bronchospasm at this point in time. One would anticipate that his bronchospasm should have improved much more than it has with this

period of work cessation, and I do n[o]t believe that any injury that he may have sustained at the place of work should have such severe lingering affects. Although a work injury, such as an irritant inhalant exposure could have triggered his bronchospasm, I do not feel that the affects of any work injury of this kind are still present. However, whatever the cause of his bronchospasm, it remains fairly severe and poorly responsive to his present medical regimen. Therefore, I do not feel that he can return to work at this time and certainly not to the type of work he has previously done. His prognosis for return to work and improvement in his functional capacity would depend upon achieving better control of his respiratory symptoms.”

In a decision dated January 12, 1995, the Office terminated appellant’s compensation benefits effective September 20, 1994 on the grounds that the medical evidence established that he had no work-related disability after that date. In a decision dated November 12, 1997, the Office affirmed the termination of appellant’s benefits.

The Board finds that the Office properly terminated appellant compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ 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.²

The Office terminated appellant’s compensation benefits on the strength of the medical opinion provided by Dr. Fineman. The Office provided Dr. Fineman with a copy of the medical record and a statement of accepted facts. In a detailed report, Dr. Fineman related an accurate history and presented his findings and diagnosis. He concluded that appellant no longer had residuals of his occupational exposure to inhalants and he supported his conclusion with medical rationale. He explained that while asthma can certainly be exacerbated by exposure to inhalants at the place of work, one would anticipate that appellant’s bronchospasm should have improved much more than it had since appellant stopped work in October 1993. Noting that no injury that appellant may have sustained at work should have such severe lingering affects, Dr. Fineman reasoned that other factors were currently at work in the causation of his bronchospasm. The record contains no probative medical opinion to the contrary.

The Board finds that Dr. Fineman’s opinion is based on an accurate factual and medical background and is sufficiently well reasoned to discharge the Office’s burden to justify the termination of appellant’s compensation benefits.³

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. However, when the aggravation is temporary and

The November 12, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 19, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect that the employment factors might have on the underlying condition. Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment; *see Gaeten F. Valenza*, 39 ECAB 1349 (1988).