

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTIE WHITFIELD and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 99-2477; Submitted on the Record;
Issued January 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to compensation after April 15, 1996, due to her accepted employment injury.

In the present case, the Office accepted that appellant sustained an aggravation of sinusitis causally related to exposure to moldy ceiling tiles in her work environment prior to August 2, 1995. The record indicates that appellant was off work from August 2 to October 12, 1995, when she returned to work at a different work site, and then she stopped working again on December 22, 1995. The employing establishment requested that she return to work on April 15, 1996; appellant reported to her supervisor on that date, but she believed a recurrence of symptoms would result and she did not continue working.

The record indicates that the Office paid appellant compensation during the period August 2, 1995 to April 15, 1996.

By decision dated April 28, 1999, the Office determined that appellant was not entitled to compensation after April 15, 1996.

The Board has reviewed the record and finds that the Office properly determined appellant's employment-related disability had ceased by April 15, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

Although the Office appeared to place the burden of proof on appellant, it is evident that it is the Office's burden in this case, since they paid compensation for her employment injury through April 15, 1996.² The weight of the evidence, however, does establish that the employment-related condition had ceased. In a report dated June 16, 1997, Dr. David D. Plaxico, an allergist, noted the results of appellant's examination in January 1996: "normal HEENT exam[ination] other than mild edema and pallor of nasal membranes with suborbital ecchymosis and edema. There was moderate edema and pallor of nasal membranes with a clear drainage. Chest exam[ination] was clear to auscultation and percussion bilaterally. The remainder of the exam[ination] was otherwise unremarkable."

Dr. Plaxico thus reports in January 1996 an essentially normal examination with mild edema. Moreover, appellant's representative conceded in an August 14, 1998 letter that appellant "has overcome her injury and has been capable of performing the duties of her former position and any position with similar qualifications, since April 15, 1996." The Board accordingly finds that the weight of the evidence establishes that appellant's aggravation of sinusitis, causally related to exposure at work prior to August 2, 1995, was no longer disabling as of April 15, 1996. Appellant is not entitled to continuing compensation for wage loss based on a concern that her work environment would again aggravate her underlying condition. Even if an employee is found to be medically disqualified from returning to employment because of the effect the work environment might have on her underlying condition, if the employment-related aggravation is no longer disabling then any continuing disability is due to the underlying condition, not the employment injury.³ In this case, the evidence established that the disability from the accepted employment injury had ceased by April 15, 1996.

The Board notes, however, that it is also the Office's burden to terminate entitlement to medical benefits. The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.⁴ The Office stated in its April 28, 1999 decision that the medical evidence supported that that the work-related condition resolved after removal from the work environment, without citing a specific medical report. Dr. Plaxico did not specifically opine that all residuals of the employment injury had ceased and there is no probative medical evidence of record providing an opinion as to the duration of residuals from the accepted condition. In the absence of such evidence, the Board finds that the Office did not meet its burden of proof to terminate medical benefits for the accepted condition.

² In the April 28, 1999 decision, the Office stated that it "erred" in paying compensation after October 12, 1995, because appellant had returned to work in a different building until December 22, 1995. The fact remains that the Office accepted an aggravation of sinusitis causally related to appellant's work environment prior to August 2, 1995, and paid compensation for this injury through April 15, 1996.

³ *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988); *James L. Hearn*, 29 ECAB 278 (1978).

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

It is also noted that appellant requested that the Board review actions of the employing establishment with respect to her claim. The jurisdiction of the Board is limited to review of final decisions of the Office and the relevant issues raised therein.⁵

The decision of the Office of Workers' Compensation Programs dated April 28, 1999 is affirmed with respect to compensation for wage loss, and reversed with respect to medical benefits.

Dated, Washington, D.C.
January 5, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 501.2(c).