

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERI A. HOLVICK and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Bellmawr, NJ

*Docket No. 00-532; Submitted on the Record;
Issued August 27, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation effective July 31, 1998.

On January 18, 1997 appellant, then a 54-year-old mail processor, filed an occupational disease claim alleging that she developed acute bronchitis and chronic asthma as a result of factors of her federal employment. The Office accepted the claim for aggravation of asthma and appellant received appropriate compensation benefits. She worked limited duty from February 21 until April 14, 1997, when she stopped work entirely.¹

On September 30, 1997 appellant filed a claim alleging a recurrence of disability on April 14, 1997, which was accepted by the Office. She received compensation for wage loss based on continuing claims for disability filed on CA-8 forms.

The record indicates that appellant was initially seen by Dr. Russell Griesback, an osteopath, on November 21, 1996 at Kennedy Memorial Hospital. In a report of January 30, 1997, Dr. Griesback opined that appellant's asthma was worsened by several triggers including infection and inhaling dusty, dirty air. He stated, "It appears that her work environment does contribute to her breathing disorder and may be associated with chronic symptoms and airways obstruction. In this sense, the work environment can certainly aggravate asthma."

On May 28, 1997 Dr. Griesback reported:

"[I]n answering questions for determination, it is my medical opinion that [appellant's] exacerbation of asthma and bronchitis with reactive airways disease is caused by exposure to and inhalation of paper dust, dirt and possibly other pollutants. It is my medical opinion that [appellant's] asthma, which had been

¹ Appellant was hospitalized from November 21 to 30, 1996 and from April 16 to 23, 1997 for exacerbation of asthma and bronchitis. She underwent a fiberoptic bronchoscopy on December 11, 1996.

stable for many years, has been aggravated recently, particularly over the past six months, with exposure to inhaled air pollutants at work.

“In regard to role of cigarette smoking, it is possible that [appellant] has an element of chronic bronchitis associated with prior smoking. However, her recent symptoms and aggravation of asthma/bronchitis seem to be directly related to work exposures rather than to cigarette smoking, since she ceased smoking eight months ago.

“In summary, it is my medical opinion that there is a causal relation between [appellant’s] disability and the specific employment factors as outlined above....”

He concluded that appellant could only return to work in a dust-free environment.

In an August 12, 1997 medical report, Dr. Griesback opined that appellant could not return to work in the processing plant where she was regularly employed.² He noted his concern that the “air quality in the plant is similar to that several months ago and I am concerned that exposure to any level of paper dust and/or other dust or dirt in the plant would aggravate her asthma” workroom floor so that aggravation of her asthma can be prevented.

On September 25, 1997 appellant underwent a second opinion evaluation with Dr. Douglas J. Cohen, a Board-certified pulmonary specialist, who opined that appellant had reactive and entirely reversible airways disease based on the fact that appellant’s pulmonary function studies after bronchodilators returned to within normal limits. He stated that there appeared to be a causal relationship between appellant’s presence in the mail processing center and her recurrent asthmatic attacks. He further stated that “on the basis of her known history of reactive airways disease, the relation of exacerbations between her presence in her work environment and repeated attacks, I do believe she has a component of occupational asthma. The exact etiology of this occupational asthma is unproven.”

According to Dr. Cohen, appellant “has fully recovered from the effects of her injury on the job as manifested by her normal pulmonary function studies after the use of an inhaled bronchodilator in my office. The individual is capable of full-time gainful work. The issue of the location is somewhat problematic. It appears that the location does cause exacerbation of her asthma....” He concluded that appellant could return to full-time work although the location of her work was problematic as “[it] appears the location does cause exacerbation of her asthma.”

The Office referred appellant for an impartial medical evaluation with Dr. Joseph Sokolowski, a Board-certified pulmonologist, on April 3, 1998. He was provided a copy of the medical record and a statement of accepted facts. In an April 10, 1998 report, Dr. Sokolowski noted that appellant suffered from asthma since age 16, and that she was a former smoker who had developed “progressively worsening reactive airways disease that has required her to be hospitalized in 1994, 1996 and 1997.” Physical findings, a description of appellant’s symptoms,

² On August 2, 1997 the employing establishment made a limited-duty job offer but it was rejected by appellant on the grounds that it was against her physician’s medical restrictions. On August 12, 1997 Dr. Griesback advised that he was not certifying appellant to return to any environment within the plant.

history of medical treatment and work exposure were provided. He indicated that baseline spirometric studies revealed alterations in flow rates consistent with a moderate obstructive ventilatory defect, but that there was marked improvement in all major parameters following acute nebulization of a bronchodilator. He considered this to be consistent with reversible airway disease or bronchial asthma. Dr. Sokolowski stated:

“[T]he work[-]related aggravation of [appellant’s] asthma/reactive airway disease has not ceased since three attempts to return to employment were associated with the recrudescence of her symptomatology. Because of this, [appellant] is not capable of working in her regular work environment at Bellmawr facility. It has been noted in the medical literature, persistence of employment by individuals with reactive airway disease in those environments associated with exacerbation of their symptoms is accompanied by progressive worsening as measured by objective parameters. Since she is not capable of working in her regular work environment, an alternative site in which she would not be exposed to potential environmental irritants either in the form of particulate or gaseous agents would be appropriate....”

In an OWCP-5 work restriction evaluation report, Dr. Sokolowski indicated that appellant was capable of working eight hours per day but that she could not work at her regular work site due to environmental pollutants. On April 17, 1998 he clarified that appellant should avoid all environmental irritants including dust, volatile organic compounds and bioaerosols.

In a May 6, 1998 report, Dr. Sokolowski reported that there were no objective findings to indicate that her work-related aggravation was present. He stated:

“My comments that individuals with reactive airways disease related to environmental exposure ultimately experience progressive worsening of their disorder if they continue to work in the environment associated with their exacerbation is a valid one with a reasonable degree of medical probability. The fact that [appellant’s] pulmonary function studies have not significantly changed from those obtained prior to the onset of her accepted work[-]related aggravation is also a reflection of her reversible airway disease in association with the fact that she has not worked since April 16, 1997.”

The record indicates that while appellant was off work due to her asthma condition she was also suffering from orthopedic problems. On June 9, 1998 appellant underwent a left hip cor decompression. The diagnosis on the discharge summary was listed as left hip avascular necrosis.

On June 25, 1998 the Office issued a notice of proposed termination of compensation. The Office noted that the report of the impartial medical specialist represented the weight of the medical evidence and established that appellant’s aggravation of asthma due to her employment factors had ceased and that she was no longer disabled by her employment-related condition.

In a decision dated July 30, 1998, the Office terminated appellant’s compensation effective July 31, 1998 for the reason that the medical evidence of record established that

appellant no longer had any continuing disability as a result of the November 21, 1996 work injury.³

On August 3, 1998 appellant requested a hearing.

Appellant subsequently submitted treatment notes from Dr. Harold Friedman, a Board-certified orthopedic surgeon, dated August 12, 1998 and September 2, 1999. On August 12, 1998 he indicated that appellant “reported aseptic necrosis; totally asymptomatic.” He noted that appellant had normal range of motion of the right hip but had lost about 70 percent of her motion in the left hip. On September 2, 1999 Dr. Friedman reported that appellant was severely incapacitated with pain in her left hip and was unable to raise it or put it into complete extension. He advised that a magnetic resonance imaging (MRI) scan taken on August 17, 1998 revealed extensive avascular necrosis of the left femoral head with persistent joint effusion.

In an August 24, 1998 report, Dr. Lawrence S. Deutsch, a Board-certified orthopedic surgeon, advised that avascular necrosis of the hips has been shown in orthopedic literature to have a high correlation with steroid use. Dr. Deutsch indicated that appellant did not have any other risk factors for avascular necrosis other than her steroid usage. He further explained that the condition spreads into both hips and “[it] is well established that it can result in crippling collapse of femoral head.” Dr. Deutsch indicated that appellant might require a hip replacement in the future.

On September 22, 1998 Dr. Friedman performed a total left hip replacement for the preoperative diagnosis of aseptic necrosis of the head of the left femur.

A discharge summary dated September 23, 1998 from the West Jersey Health System reported admitting and discharge diagnoses of avascular necrosis and severe osteoarthritis of the left hip.

At the hearing held on February 10, 1999, appellant submitted additional evidence identified by the Office hearing representative as Exhibit A, a list of appellant’s medications and Exhibit B, a medical report from Dr. Friedman dated December 16, 1998. Dr. Friedman reported that appellant was seen on August 12, 1998 at which time her x-rays showed avascular necrosis of the left femoral head and some increased sclerosis. He indicated that the conditions represented on the x-ray required appellant to have a hip replacement.

In a decision dated April 1, 1999, an Office hearing representative affirmed the Office’s July 30, 1998 decision.

On May 5, 1999 appellant by counsel requested reconsideration and submitted a February 25, 1999 report by Dr. Friedman, who noted that, during three hospital admissions during the period December through April 1994, appellant received intravenous SoluMedrol steroids, and that after her discharge she was prescribed oral doses of prednisone for a period of four to five months. According to Dr. Friedman, medical literature has documented the

³ The Office references a November 21, 1996 injury, which appears to be the first date appellant was hospitalized for an asthma attack while working at the processing plant in Bellmawr.

correlation of avascular necrosis and steroid use. He opined that appellant's severely symptomatic avascular necrosis, confirmed by MRI scan, was causally related to appellant's asthma and her use of steroids.

In a decision dated August 6, 1999, the Office denied modification following a merit review.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation effective July 31, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ 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.

In this case, the Office terminated appellant's compensation after determining that appellant's disability related to the accepted condition of aggravation of asthma had ceased. As used in the Federal Employees' Compensation Act,⁷ the term disability means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. The general test in determining loss of wage-earning capacity is whether the employment-caused impairment prevents the employee from engaging in the kind of work she was doing when she was injured.⁸ In other words, if an employee is unable to perform the required duties of the job in which he or she was employed when injured, the employee is disabled.⁹

Although the Office relied on the opinion of Dr. Sokolowski to terminate appellant's compensation, the physician did not find that appellant was capable of returning to her date-of-injury job. Dr. Sokolowski specifically stated in his April 10, 1998 report that "the work-related aggravation of appellant's asthma/reactive airways disease has not ceased since three attempts to return to employment were associated with the recrudescence of her symptomatology." He also opined that appellant could not return to her regular work environment and that she should avoid further exposure to potential environmental irritants.

⁴ *Mohamed Yunis*, 42 ECAB 325 (1991).

⁵ *Id.*

⁶ *Furman G. Peake*, 41 ECAB 361 (1990).

⁷ 5 U.S.C. §§ 8101-8193, § 8102.

⁸ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁹ *Id.*

In his May 6, 1998 report, Dr. Sokolowski reiterates that appellant's work-related aggravation of asthma had ceased but only as long as she remained out of her regular work environment. He stated that appellant could work eight hours a day in a controlled environment with no exposure to certain agents that were present in appellant's last job. Because the evidence of record indicates that appellant is unable to perform the type of work she was performing when injured, the Board finds that appellant continues to be disabled and that the Office improperly terminated appellant's compensation benefits.

Additionally, the Board finds that appellant has submitted sufficient medical evidence to require further medical development by the Office on appellant's avascular necrosis of the left hip associated with steroid use for aggravation of asthma. Dr. Friedman has opined that appellant's steroid use during her hospitalization for a work-related asthma attack contributed or caused her subsequent hip condition. Although his report does not fully explain the relationship between steroid use and the development of avascular necrosis in specific relation to appellant's condition, his opinion is sufficient to require further medical development by the Office¹⁰ as to whether appellant's hip condition represents a consequential injury.¹¹

The decisions of the Office of Workers' Compensation Programs dated August 6 and April 1, 1999 are hereby reversed.

Dated, Washington, DC
August 27, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ See generally *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹¹ It is an accepted principle of workers' compensation law that, when the primary injury is known to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. *Charlet Garrett Smith*, 47 ECAB 562 (1996).