

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE G. THOMAS and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Cherry Point, NC

*Docket No. 01-202; Submitted on the Record;
Issued May 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's disability compensation effective August 15, 1999.

This is the second appeal in this case. Previously, the Board affirmed the Office's decisions dated July 7 and September 17, 1987. The Board found that appellant submitted no rationalized medical evidence establishing that he sustained a pulmonary condition causally related to his employment and therefore failed to meet his burden of proof. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.¹

In a decision dated February 8, 1989, the Office accepted appellant's claim for irritant dermatitis and paid wage-loss compensation starting in December 1984.²

On February 4, 1999 appellant's treating physician, Dr. Cameron Smith, a Board-certified dermatologist, referred appellant to Dr. Kenneth L. Klein, also a Board-certified dermatologist, for evaluation. Dr. Klein previously examined appellant in 1994 and diagnosed folliculitis. He noted upon examination a few scattered small papules on appellant's back and seborrheic keratoses on his face. Dr. Klein diagnosed very mild folliculitis and prescribed a topical ointment. He indicated that "there is absolutely no dermatologic reason for disability."

¹ Docket No. 88-154 (issued January 28, 1988).

² In a statement of accepted facts dated June 22, 1988, the Office noted appellant was not exposed to hazardous chemicals after July 1983. Additionally, the Office noted appellant last worked in the sandblasting area on July 24, 1984. On August 20, 1984 appellant was reassigned to the reclamation area. On September 11, 1984 appellant was transferred to another department. He was terminated from his federal employment effective November 30, 1984 due to excessive unauthorized absences.

On July 15, 1999 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Klein's February 4, 1999 report established no continuing disability as a result of the work-related condition of dermatitis. The Office provided 30 days in which appellant could respond to this notice.

In a letter dated July 20, 1999, appellant indicated that he believed he sustained a pulmonary condition in addition to the irritant dermatitis and sought a deferment of the Office's action pending the gathering of additional data.

By decision dated August 19, 1999, the Office terminated appellant's benefits effective August 15, 1999 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his work-related dermatitis.

By letter dated September 13, 1999, appellant requested an oral hearing, which was held on June 6, 2000. He submitted additional medical evidence including a report from Dr. Toby R. Alligood, a Board-certified dermatologist; an undated report from Dr. Smith; and a narrative statement dated June 6, 2000.

In a decision dated August 17, 2000, the hearing representative found that the weight of the medical evidence established that appellant had no continuing disability resulting from his work-related dermatitis.

The Board finds that the Office has met its burden of proof to terminate disability compensation effective August 15, 1999.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ 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.⁴

In this case, Dr. Klein noted upon examination a few scattered small papules on appellant's back with a few seborrheic keratoses on his face. He diagnosed very mild folliculitis and concluded indicated that "there is absolutely no dermatologic reason for disability." Dr. Klein also prepared an attending physician's report dated February 2, 1999 and indicated with a checkmark "no" that appellant's condition was not caused or aggravated by an employment activity. The Board finds that the Office properly terminated benefits based on Dr. Klein's report.

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

After the Office properly terminated disability, the burden of proof shifted to appellant.⁵ Dr. Alligood treated appellant on October 5, 1999 and noted on examination scattered hyperpigmented patches over appellant's trunk. He diagnosed "Pruritis - ? Exzematous." Dr. Alligood's report did not indicate that he was familiar with the history of appellant's condition.⁶ Also, he couched his opinion in speculative terms and did not attribute appellant's condition to any particular employment factors.⁷ Without any further explanation or rationale, Dr. Alligood's report is insufficient to establish that appellant had a continuing disability causally related to his employment.⁸

Dr. Smith noted that upon examination that the physical findings were "minimal" and "there was not much to see." He indicated that appellant should not be exposed to volatile chemicals or airborne particles which could aggravate his condition. However, this restriction is prophylactic in nature and is not a basis for compensation.⁹ Additionally, Dr. Smith did not indicate that appellant had a continuing disability causally related to his employment. Therefore, this report is insufficient to demonstrate that appellant was still disabled from an employment-related condition.

Other medical reports either significantly predate the termination of benefits or do not support a continuing employment-related condition.

The Board finds no medical evidence to support continuing disability in this case. Dr. Klein had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time wage-loss benefits were terminated he clearly opined that appellant had absolutely no dermatologic reason for disability. The Board finds that Dr. Klein's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of disability compensation.¹⁰

⁵ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. To prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits. See *Howard Y. Miyashiro*, 51 ECAB __ (Docket No. 97-1002, issued December 23, 1999).

⁶ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

⁷ See *Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

⁸ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁹ See *Mary A. Geary*, 43 ECAB 300, 309 (1991) (finding that fear of future injury is not compensable under the Act); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

¹⁰ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

The August 17, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 9, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member