

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY M. RICE and DEPARTMENT OF DEFENSE,
DEFENSE SUPPLY CENTER, Philadelphia, PA

*Docket No. 01-2271; Submitted on the Record;
Issued April 9, 2002*

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 residuals of appellant's employment injury had ceased by November 17, 2000.

On July 6, 2000 appellant, a 52-year-old contract specialist, filed a claim alleging that she sustained a respiratory condition causally related to poor air quality in her work building. Appellant noted that her building was evacuated on June 29, 2000; the record indicates that air samples had revealed fibrous glass particles and the employing establishment directed that the building be evacuated and cleaned.

The Office accepted that appellant sustained an aggravation of asthmatic bronchitis as a result of her work exposure. Appellant received compensation through November 17, 2000.

By decision dated February 14, 2001, the Office determined that appellant was not entitled to additional compensation. In a decision dated June 6, 2001, the Office denied modification.

The Board finds that the Office properly determined that appellant's employment injury had resolved by November 17, 2000.

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 her 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

In a report dated November 24, 2000, an Office medical adviser noted that appellant had been hospitalized and was discharged on July 7, 2000. The medical adviser opined that the effects of the asthma aggravation had resolved by August 14, 2000, when appellant was treated

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

by Dr. Ira Horowitz, a pulmonary specialist.² The Office medical adviser opined that no hypersensitivity to fiberglass had been established, and any work restrictions were preventative in nature.

Under the Federal Employees' Compensation Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.³ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁴ If the employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the claimant may be entitled to continuing compensation;⁵ a medical restriction that is based on a fear of future aggravation due to employment exposure is not employment related.⁶

The Office medical adviser offered a reasoned opinion that the employment-related aggravation had ceased. He noted the medical record and the lack of a heightened sensitivity or other permanent residual causally related to work exposure. As noted above, a restriction based on fear of future aggravation is not employment related. Appellant, on the other hand, did not submit any probative evidence establishing a continuing employment-related aggravation after November 17, 2000. In a report dated August 31, 2000, Dr. Murray Moliken, a family practitioner, stated that appellant was still coughing and somewhat short of breath, and he recommended that appellant remain out of work for several more weeks to allow for further recovery. Dr. Moliken noted appellant's exposure at work, but he did not provide additional explanation as to the nature and extent of an employment-related aggravation or disability, nor did he submit any subsequent reports regarding appellant's condition on or after November 17, 2000. The Board finds no probative medical evidence containing an opinion that appellant's aggravation of asthmatic bronchitis, as a result of exposure to fibrous glass dust in her work building, continued beyond November 17, 2000.

The weight of the evidence, therefore, rests with the Office medical adviser. The Board accordingly finds that the Office met its burden of proof in this case.

² In a report of that date, Dr. Horowitz provided results on examination, noting that "lungs are clear with occasional coughing."

³ *Mary A. Moultry*, 48 ECAB 566 (1997).

⁴ *Id.*

⁵ *James C. Ross*, 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980).

⁶ *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

The decisions of the Office of Workers' Compensation Programs dated June 6 and February 14, 2001 are affirmed.

Dated, Washington, DC
April 9, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member