

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRMA J. FLOOD and DEPARTMENT OF DEFENSE, DEFENSE  
COMMISSARY AGENCY, MAXWELL AIR FORCE BASE, AL

*Docket No. 02-1782; Submitted on the Record;  
Issued November 26, 2002*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

On December 14, 2000 appellant, then a 43-year-old teller, filed a claim alleging that, when she changed her position to working in the cash cage on August 31, 1999, she developed an allergic reaction which was brought on by asthma. She reported that the cash cage was very dusty and had poor ventilation. Appellant first realized her illness was caused or aggravated by her employment in July 2000. The Office accepted that appellant had sustained an aggravation of dust allergies and paid appropriate compensation. The employing establishment assigned appellant to a temporary position as a cashier.

By decision dated August 6, 2001, the Office terminated compensation for wage loss and medical benefits effective June 7, 2001 on the basis that appellant had recovered from the aggravation of dust allergies. It accorded weight to the opinion of a referral physician, Dr. Robert Settiane, a Board-certified allergist, who opined that appellant's work-related aggravation had ceased. In a decision dated June 10, 2002, an Office hearing representative affirmed the termination decision. The hearing representative found that the effects of appellant's work-related aggravation had resolved no later than August 6, 2001.

The Board finds that the Office met its burden of proof to terminate compensation.

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.<sup>1</sup>

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

In a January 10, 2001 report, Dr. George A. Spreccace, Board-certified in allergy and immunology, provided a review of appellant's medical history and Dr. Spreccace's experience with appellant since her first visit in October 2001. He opined that a change from the work exposure, which appellant described as a "very dusty areas with poor ventilation in the cash cage," would improve appellant's clinical condition, reduce her need for medication and probably avoid the need for a prolonged program of allergy immunotherapy.

In a January 24, 2001 report, Dr. John J. Hand, an internist, noted that appellant stated that her symptoms had improved since her transfer from the money cage area. Appellant additionally reported that the commissary complex brings about a recurrence of her symptoms, though not as severe as in the cage area. Dr. Hand recommended that appellant be assigned a position outside the commissary and preferably in as much of a dust free, allergen free environment as possible.

The Office referred medical records and a statement of accepted facts and list of questions to Dr. Settupane, Board-certified in allergy and immunology. In a June 7, 2001 report, he reviewed appellant's history of injury and medical treatment, provided the results of his physical examination and the results of appellant's pulmonary function testing. Dr. Settupane diagnosed episodic cough, episodic dyspnea and episodic chest pain. He stated that the diagnosis of asthma was not established based on his examination, nor on the basis of the medical records. Dr. Settupane opined that appellant appeared to be in normal current condition in terms of not differing from her baseline prior to working in the cage area and not suffering in any way related to the incident or her job environment as of July 24, 2000. Dr. Settupane opined that appellant's aggravation had ceased on the basis that she reported that her cough had resolved and the pulmonary tests were normal. He noted that appellant felt she was not back to her baseline condition as she experienced shortness of breath and chest pains. Dr. Settupane stated that it was not unusual for all individuals to experience some sense of shortness of breath with exertion. He noted that appellant was overweight, which could add to a sense of shortness of breath and chest tightness when going into certain stores, which would seem to be distinctly unrelated to having worked in the cash cage. Appellant's chest pains appeared to be of an arthritic nature in the sense that the chest pains responded to naproxen 500 mg twice per day. Dr. Settupane advised that asthma or allergy-induced tightness or shortness of breath was not typically associated with chest pain and particularly not the type of chest pain that would resolve with the use of a nonsteroidal anti-inflammatory type medication. He further stated that the nature of appellant's exposure was not of the type known to cause permanent damage or long-lasting aftereffects.

Dr. Settupane noted that the cash cage was described in the materials he received as being quite dusty in appearance yet exceeding air quality standards on the basis of testing performed in response to appellant's complaint. Dr. Settupane stated that it was doubtful that there would be a significant amount of dust mite antigen or dust mite particles in the dust from a carpet or anywhere else in the cash cage. He noted that appellant indicated that she felt worse by being in the cash cage and did not experience this problem at other locations in her work facility. Dr. Settupane opined that any discomfort appellant had experienced in the cash cage would not cause any permanent or ongoing impairment. Dr. Settupane further opined that there was a lack of evidence to support a diagnosis of asthma. Appellant's breathing tests on the date of

examination were normal and showed no signs of an asthmatic condition. Dr. Settipane further stated that there was no preexisting condition affecting appellant except the possibility of arthritis and gastroesophageal reflux disease.<sup>2</sup> Dr. Settipane further indicated that appellant has reached maximum medical improvement.

The Board finds that the weight of the evidence indicated that the employment-related condition had resolved. Dr. Settipane provided an unequivocal opinion, based on a complete background, that appellant was no longer suffering from any residuals from her work-related aggravated condition. He further provided medical rationale for his explanations as to why appellant's subjective complaints of chest pain and occasional shortness of breath were not related to her accepted aggravated condition. The Board accordingly finds that the Office met its burden of proof to terminate compensation effective June 7, 2001.

The Board also finds that the failure of the Office to provide appellant notice prior to the termination of her medical benefits was not improper. At the time of termination, appellant had returned to work and continued to receive medical benefits. The Office noted that a pretermination notice was not required when a closed period of disability has been established and the physician indicates that further medical treatment is not necessary or the treatment has ended. This is consistent with Chapter 2.1400.6(d)(1) of the federal procedure manual.<sup>3</sup> Moreover, appellant's own physicians did not indicate that additional medical treatment was required. Under these circumstances, the Board finds that the Office's procedures did not require a pretermination notice as the physicians of record either implied or specifically found no further medical treatment was required.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits.<sup>4</sup>

The Board notes that although the Office stated that the termination was initially effective June 7, 2001, the Office hearing representative noted that the Office paid compensation for total disability from March 1 to August 10, 2001. Accordingly, appellant bears the burden to demonstrate that she had an employment-related disability that continued after August 10, 2001.

The Board finds that the medical reports submitted are of limited probative value to the issue presented and are insufficient to create a conflict with Dr. Settipane's medical opinion.

In a report dated October 4, 2001, Dr. Hand advised that he spoke with Dr. Sprepace who felt, unequivocally, that appellant has asthma and multiple allergies which could be responsible for her problems. Dr. Hand noted that Dr. Sprepace heard that Dr. Settipane found that appellant

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<sup>2</sup> These conditions were not accepted by the Office as being work related.

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(d) (March 1997).

<sup>4</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

“no longer suffering from her baseline condition.” Dr. Hand stated that there was a conflicting medical determination plus appellant’s history that she develops symptoms while at her assigned job. The Board has held that an opinion on causal relationship based solely on continuing symptoms after a work injury, without supporting rationale and explanation, is of diminished probative value.<sup>5</sup> Moreover, neither physician provides an explanation as to why they are in disagreement with Dr. Settipane’s report or acknowledges how appellant’s symptoms have changed since she was placed in a different position.

In an October 22, 2001 report, Dr. Peter A. Wheeler, an orthopedic surgeon, noted that appellant presented with a complaint of anterior chest wall pain and diagnosed costochondritis. However, as no opinion was rendered in terms of causal relationship to appellant’s accepted work-related condition, this report is of limited probative value to the issue presented.

In a February 11, 2002 disability note, Dr. Paul M. Greif, a Board-certified internist specializing in pulmonary disease, advised that appellant has asthma and should work in a clean air environment. However, this disability note is of diminished value as it is not a reasoned medical opinion, based on a complete background, with respect to a continuing condition after August 10, 2001 causally related to the accepted work-related injury of July 24, 2000.

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<sup>5</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an injury is not sufficient to establish causal relationship without supporting rationale).

The June 10, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
November 26, 2002

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member