

that her chronic bronchial asthma was exacerbated by chemical exposure at the employing establishment. She stated that epoxy was used to prime the restrooms for painting. Appellant stopped work on October 26, 2004. By letter dated December 8, 2004, the Office accepted her claim for aggravation of chronic bronchitis and temporary aggravation of asthma. The Office paid appropriate compensation. Appellant remained out of work based on the opinion of her attending pulmonologist, Dr. Haytham M. Tlaygeh, that she continued to experience residuals and disability causally related to her accepted employment-related injuries.

By letter dated March 15, 2005, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Franklin D. Krause, a Board-certified internist, for a second opinion medical examination. In a March 29, 2005 medical report, Dr. Krause provided a history of appellant's employment and medical background. He reported essentially normal findings on physical and pulmonary examination. Based on the results of pulmonary function studies, Dr. Krause opined that appellant appeared capable of returning to her previous employment as a lead sales service associate. He noted that she was willing to return to work. Dr. Krause, however, stated that appellant's ability to return to work successfully depended upon her workplace being free of fumes, odors and vapors. He further stated that presumably the primer and epoxy to which she was exposed five months prior had long since dissipated. Dr. Krause recommended that she avoid temperature extremes, airborne particles, gases and fumes. In an addendum dated April 19, 2005, Dr. Krause opined that there was no objective finding to show that the work-related temporary aggravation of appellant's bronchial asthma was still active and causing symptoms. Her pulmonary function studies were normal and she was not experiencing residuals of her work-related injury. Dr. Krause stated that appellant should do well and her condition appeared to have completely resolved. In an accompanying work capacity evaluation (Form OWCP-5c), dated March 29, 2005, he stated that she could perform her usual work duties with no restrictions.

On April 28, 2005 the Office requested that Dr. Tlaygeh review an enclosed statement of accepted facts and Dr. Krause's March 29, 2005 report to complete an OWCP-5c form. On May 18, 2005 Dr. Tlaygeh completed the OWCP-5c form, which stated that appellant could perform her usual work duties with no restrictions.

On June 30, 2005 the Office issued a notice of proposed termination of compensation on the basis that the medical evidence established that appellant had no continuing residuals or disability as a result of her employment-related injuries. Appellant was provided 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action. She did not submit any evidence within the allotted time period.

In a letter dated July 8, 2005, appellant's attorney advised the Office that she returned to work in her previous job on June 18, 2005. Counsel stated that appellant was doing well at that time.

By decision dated August 2, 2005, the Office terminated appellant's compensation effective the same date. It found that she no longer had any residuals or disability causally related to her employment-related injuries based on Dr. Krause's March 29, 2005 report.

In a letter dated August 5, 2005, appellant, through counsel, requested an oral hearing before an Office hearing representative. Appellant submitted Dr. Tlaygeh's September 29, 2005 report. He stated that her health improved initially and she had been off prednisone for six months. However, when appellant returned to work in June 2005 she started having symptoms of wheezing, chest pain and coughing as a result of low ventilation system and being in a dusty work area. Dr. Tlaygeh reported normal findings on physical examination and stated that it would be ideal for appellant to work in a better environment. He noted that she was going to talk to the employing establishment about providing accommodation.

In a decision issued on June 12, 2006, an Office hearing representative affirmed the August 2, 2005 decision. The evidence submitted was insufficient to overcome the weight accorded to Dr. Krause's March 29, 2005 medical opinion.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

ANALYSIS -- ISSUE 1

In a report dated March 29, 2005, Dr. Krause, an Office referral physician, reviewed the evidence of record to determine the extent and degree of appellant's employment-related conditions. He reported normal findings upon physical and pulmonary examination. Dr. Krause opined that appellant had recovered from her work-related injuries as there was no objective finding to show that her work-related temporary aggravation of bronchial asthma was still active and causing symptoms. Dr. Krause stated that the chemicals she was exposed to five months ago had long since dissipated. In an April 19, 2005 addendum, Dr. Krause noted that there was no objective evidence demonstrating that the employment-related aggravation of appellant's bronchial asthma remained active and symptomatic and that her condition had resolved completely. He completed a Form OWCP-5c, which indicated that appellant could perform her usual work duties with no restrictions.

¹ *Paul L. Stewart*, 54 ECAB 824 (2003).

² *Elsie L. Price*, 54 ECAB 734 (2003).

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁴ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 3.

The Board finds that Dr. Krause's report is detailed, well rationalized and based upon a complete and accurate history. His opinion represents the weight of the medical evidence in finding that appellant no longer has any residuals or disability causally related to her employment-related aggravation of chronic bronchitis and temporary aggravation of asthma. Dr. Krause's opinion was supported by Dr. Tlaygeh, appellant's own attending physician, who reviewed Dr. Krause's report and agreed that appellant could perform her regular work duties with no restrictions. The Board, therefore, finds that the Office met its burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant.⁵ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the diagnosed condition and the implicated employment relationship between appellant's diagnosed condition and the implicated employment factors.⁶ The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁷

ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of benefits, appellant submitted Dr. Tlaygeh's September 29, 2005 report. Dr. Tlaygeh stated that, after appellant's return to work in June 2005, she started having symptoms of wheezing, chest pain and coughing as a result of a low ventilation system and being in a dusty work area. He reported normal findings on physical examination and recommended that appellant work in a better work environment. Dr. Tlaygeh's report addressed her condition following her return to work in June 2005. While his report may be relevant to a claim of recurrence of disability, Dr. Tlaygeh did not address the condition accepted by the Office. Dr. Tlaygeh provided a diagnosis of reactive airway dysfunction syndrome. He indicated this could be due to possible heavy exposure to an allergen, which he did not identify. Dr. Tlaygeh also stated that her symptoms were suggestive of occupational asthma. This report is not sufficient to establish that appellant has residual disability due to her occupational exposure to epoxy in 2004.

⁵ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁶ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

⁷ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

As appellant has not submitted rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her employment-related aggravation of chronic bronchitis and temporary aggravation of asthma, she has not met her burden of proof.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective August 2, 2005 on the grounds that she no longer had any residuals causally related to her employment-related aggravation of chronic bronchitis and temporary aggravation of asthma. The Board further finds that appellant has failed to establish that she had any employment-related residuals or disability after August 2, 2005.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2006 and August 2, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 22, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board