

employment. Appellant stated that, beginning in late September 1996, she became hoarse when she entered the employing establishment and was unable to talk by the time she left to go on her route. Her symptoms continued for over a week. On September 28, 1996 she went to work and began coughing. By October 1, 1996, when appellant arrived at work she would start coughing and experienced difficulty breathing within one or two minutes. By letter dated January 21, 1997, the Office accepted appellant's claim for aggravation of allergic rhinitis. The Office paid appropriate compensation.

In an August 21, 2002 letter, the Office requested that appellant submit a current medical report from an attending physician addressing her continuing residuals and disability due to her employment-related injury.

Dr. R. Lawrence Siegel, an attending Board-certified allergist and immunologist, submitted reports in which he opined that appellant's work-related asthma and allergic rhinitis had not ceased and that she was unable to work at that time.

By letter dated September 25, 2002, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Mukesh H. Mehta, a Board-certified pulmonologist, for a second opinion medical examination.

In a January 24, 2003 report, Dr. Mehta provided a history of the accepted employment injury and appellant's medical and social background. He reported essentially normal findings on physical and x-ray examination, and diagnosed allergic rhinitis and reactive airway disease. Dr. Mehta opined that these conditions had significantly improved and found that appellant's symptoms had completely resolved. He explained that there were no objective findings that the accepted condition was still present and active. Dr. Mehta related that it was medically probable that the work-related conditions had ceased. Appellant's current conditions were nothing but the progression of reactive airway disease and allergic rhinitis. Dr. Mehta stated that, apart from avoiding exposure to strong perfumes, dust and molds, appellant did not have any work limitations but recommended a functional capacity evaluation. In a work capacity evaluation (Form OWCP-5b) dated March 11, 2003, Dr. Mehta stated that appellant could return to work eight hours a day within restrictions.

The Office found a conflict in the medical opinion evidence between Dr. Siegel and Dr. Mehta regarding whether appellant had continuing employment-related residuals or disability. By letter dated April 10, 2003, it referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. David H. Goldstein, Board-certified in pulmonary disease, for an impartial medical examination.

The employing establishment submitted an April 22, 2003 investigative memorandum and photographs which revealed appellant breathing odors from fresh cut grass and dust blown with a blower in her back yard, sawdust, paints and glue from a woodwork shop, perfumes, chemicals and hair perms from a hair salon. The employing establishment stated that none of these odors affected her ability to walk, drive or perform normal activities during the stated observation period.

In a May 8, 2003 report, Dr. Goldstein provided a history of appellant's employment injury and her medical, social and family background. He reported essentially normal findings on physical examination and reviewed appellant's medical records. Dr. Goldstein opined that appellant had a history consistent with allergic rhinitis and reactive airways disease. Appellant was stable at that time and her symptoms had resolved. Dr. Goldstein noted, however, that when appellant was exposed to certain conditions at the employing establishment or in certain dusty areas, she developed symptoms that aggravated her condition. He related that there were only subjective findings of the accepted employment injury based on her complaints. Dr. Goldstein opined that it was medically probable that appellant's work-related condition was in remission and that her current conditions were not due to any progression of her underlying conditions. Appellant had intolerance to dust, extreme heat and perfume. Dr. Goldstein noted that an Office form was not included in the paperwork provided but he agreed with Dr. Mehta's assessment. He concluded that appellant could participate in vocational rehabilitation and that her only restriction was to avoid exposure to dust, ink, fumes or perfumes at the employment establishment.

By letter dated June 16, 2003, the Office requested that Dr. Goldstein provide clarification of his opinion as to whether the accepted employment injury had resolved since appellant had not been exposed to the implicated employment factors since November 1996. It inquired whether appellant's current work restrictions were preventive only or whether her exposures at the employing establishment prior to November 1996 had permanently aggravated her allergic disease, necessitating continuing restrictions. The Office asked Dr. Goldstein to review the employing establishment's investigative memorandum and state whether this new evidence affected his opinion as to whether appellant's work-related aggravation of allergic rhinitis had fully resolved.

In a June 20, 2003 letter, Dr. Goldstein opined that the work-related injury had fully resolved. He explained that there was no present cause and effect relationship between her prior work and allergic condition. Dr. Goldstein stated that her work restrictions were due to her underlying conditions and he did not believe that her work exposure permanently altered the course of her allergic disease to necessitate these restrictions. He reviewed the employing establishment's investigative memorandum and stated that appellant's exposure to odors from perfume, chemicals, hair perms and fresh cut grass without significant problem demonstrated that she did not have allergies to everything. However, this did not preclude the fact that appellant could have an allergic reaction to certain environments at the employing establishment or in other buildings.

In a July 21, 2003 letter, the Office requested that Dr. Goldstein provide further medical rationale to support his opinion that appellant no longer suffered from her accepted work-related injury. In a July 29, 2003 response, he stated that appellant denied symptomatology of her accepted condition unless she went into an employing establishment building. He stated that she was not experiencing any problem at that time. Dr. Goldstein concluded that appellant's aggravation was temporary and she no longer had any work-related aggravation.

By letter dated August 28, 2003, the Office issued a notice of proposed termination of compensation based on Dr. Goldstein's medical opinion. The Office provided 30 days in which appellant could respond.

In a September 16, 2003 letter, appellant's attorney contended that it was improper for the Office to send a copy of the employing establishment's investigative memorandum to Dr. Goldstein. He enclosed appellant's response to the employing establishment's memorandum. Appellant's attorney requested that the Office forward a copy of appellant's response to Dr. Goldstein. He noted that prior to the acceptance of her work-related condition she did not have any work restrictions. Appellant's attorney agreed with Dr. Goldstein's recommendation that she should not return to work at the employing establishment. He contended that any future employment should consider appellant's restrictions and permanent sensitivity. Appellant's attorney contended that it could not be said that appellant had returned to baseline. He concluded that Dr. Goldstein's continuing environmental restrictions represented a permanent aggravation and, thus, appellant's benefits should not be terminated.

In a July 10, 2003 letter, appellant explained her exposure to the odors the employing establishment documented in its investigative memorandum.

By decision dated October 24, 2003, the Office terminated appellant's compensation benefits effective November 2, 2003.

In a December 11, 2003 report, Dr. Siegel reviewed the opinions of Dr. Goldstein and Dr. Mehta that appellant's aggravation was only temporary. He stated that she continued to require medical treatment which strongly suggested that her condition had not resolved and that it was not temporary.

By letter dated November 18, 2003, appellant, through her attorney, requested an oral hearing before an Office hearing representative. At the June 22, 2004 hearing appellant further explained the pictures obtained by the employing establishment in its investigation. In a May 17, 2004 report, Dr. Runi A. Foster, a Board-certified pulmonologist, provided a history of appellant's employment-related condition and her family and medical background. She reported findings on pulmonary examination and stated that appellant continued to have severe reactive airway disorder secondary to chemical exposure at the employing establishment in the mid-1990s. Dr. Foster noted significant symptoms which impaired her quality of life and caused her to use an inhaler quite frequently. She opined that appellant's condition was permanent and required further medical treatment. Dr. Foster noted her treatment plan and concluded that appellant should continue to avoid exposures at work.

Appellant submitted a July 30, 2004 decision of the Social Security Administration which approved her disability retirement benefits beginning October 13, 1998.

By decision dated October 14, 2004, an Office hearing representative affirmed the October 24, 2003 decision, finding that Dr. Goldstein's medical opinion as an impartial medical specialist constituted the weight of the medical evidence.

On January 31, 2005 appellant requested reconsideration. She submitted a statement in reply to the employing establishment's investigative memorandum and photographs and the hearing representative's October 14, 2004 decision. Appellant also described her condition. Narrative statements from her husband, coworkers and friends addressed her respiratory condition.

In a September 16, 2003 letter, Dr. Siegel contended that there were inconsistencies in Dr. Goldstein's report. He noted that Dr. Goldstein opined that appellant had no residuals of her accepted condition but recommended that she not return to work at the employing establishment. Dr. Siegel further noted that in opining that appellant's employment-related condition was temporary and that consequently she had returned to her baseline, Dr. Goldstein stated that she could not return to her former work environment. He opined that appellant sustained a permanent aggravation and required continuing medical treatment to control her symptoms. Dr. Siegel concluded that her condition was stable, had not resolved, and was not in remission.

Dr. Foster's December 1, 2004 report provided normal findings on physical examination. She diagnosed reactive airway disease. Dr. Foster stated that appellant was limited in where she could go and what she could do due to triggers in the environment that could reactivate her lung disease. She required life-long medical treatment. Dr. Foster opined that appellant's condition was related to the initial lung damage she sustained in the mid-1990s from chemical exposure. She was unable to work in any environment that would expose her to any type of trigger such as strong odors and fumes and dust.

In a decision dated September 29, 2005, the Office denied modification of the October 19, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

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.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

ANALYSIS -- ISSUE 1

The Board notes that a conflict in the medical opinion evidence was created between Dr. Siegel, an attending physician, and Dr. Mehta, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted aggravation

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

² *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

of allergic rhinitis. Dr. Siegel opined that appellant continued to experience residuals and disability due to the accepted employment injury. Dr. Mehta opined that her employment-related condition had resolved and that she could work eight hours a day within restrictions due to her reactive airway disease.

The Office referred appellant to Dr. Goldstein, selected as the impartial medical specialist. He listed no objective findings of residuals relative to the accepted employment-related condition of aggravated allergic rhinitis. After reviewing appellant's medical records and the employing establishment's investigative memorandum, Dr. Goldstein opined that she was not currently disabled, that her employment-related condition had resolved. He found that the employment-related aggravation of appellant's underlying allergic condition was temporary and the employment exposure did not permanently alter her condition and did not cause her current work limitations. He further opined that she was incapable of returning to her date-of-injury job due to her underlying allergic conditions. Dr. Goldstein reported that appellant could participate in vocational rehabilitation and that there was no causal relationship between her prior employment and her current condition.

The Board finds that Dr. Goldstein's opinion is based on a proper factual and medical background and is entitled to special weight. Dr. Goldstein found that appellant no longer had any residuals or disability due to the accepted employment-related aggravation of allergic rhinitis.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.⁴ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.⁷

⁴ See *Manuel Gill*, 52 ECAB 282 (2001).

⁵ *Id.*

⁶ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding any employment-related residuals and disability after November 2, 2003 includes Dr. Siegel's September 16 and December 11, 2003 reports. Dr. Siegel found that appellant required continuing medical treatment which strongly suggested that her condition had not resolved and was not temporary. In reports dated May 17 and December 1, 2004, Dr. Foster also stated that appellant continued to have severe reactive airway disorder causally related to her employment-related exposures. She opined that appellant's condition and need for continuing medical treatment were permanent. Dr. Siegel essentially reiterated his opinion concerning her allergic condition and findings which gave rise to the conflict. His subsequent reports are insufficient to overcome the weight properly accorded Dr. Goldstein as the impartial medical specialist.⁸ In turn, Dr. Foster did not provide adequate rationale in support of her stated opinion. She did not fully explain how appellant's condition in 1996 would be permanently aggravated by any exposures and did not distinguish her exposure to allergies outside of the work environment.

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

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective November 2, 2003 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related aggravation of allergic rhinitis. The Board further finds that appellant has failed to establish that she had any continuing employment-related residuals or disability after November 2, 2003.

⁸ See *Bernadine P. Taylor*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2005 and October 14, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 5, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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