

FACTUAL HISTORY

On March 6, 2003 appellant, then a 43-year-old poultry food inspector, filed an occupational disease claim alleging that she developed repeated upper respiratory infections and multiple chemical sensitivity as a result of her exposure to chemicals at the employing establishment, where she washed and cut up contaminated chickens. She stopped work on June 1, 2002. On May 28, 2003 appellant's claim was accepted for chemical-induced pneumonitis and bronchitis. She was placed on the periodic rolls on July 13, 2003.¹

The record contains a May 6, 2003 report from appellant's treating physician, Dr. Susan L. Tanner, a treating physician, who began treating appellant in June 2002 for multiple chemical sensitivity after exposure to chlorine vapors and ozone in the workplace. Dr. Tanner opined that appellant was not capable of continuing in the position as a line inspector due to her sensitivities.

On June 14, 2004 the Office referred appellant, together with a statement of accepted facts, to Dr. Mark D. Livezey, a Board-certified allergist and immunologist and a Board-certified internist, for a second opinion examination to determine the extent of remaining injury-related disability. In an August 27, 2004 report, Dr. Livezey opined that appellant did not have any residuals from her accepted injury and that she was capable of performing the duties associated with her date-of-injury job. He described appellant's work history, indicating that her symptoms began when she was exposed to ozone in 1998 and noted that she had smoked a pack of cigarettes each day for the past 28 years. Dr. Livezey's physical examination revealed a slight respiratory wheeze. Ear canals and tympanic membranes were intact. A pulmonary function study showed a small airway obstruction consistent with asthma or chronic obstructive pulmonary disease (COPD). Allergy skin testing demonstrated intradermal reactivity to the dust mite allergen. Testing for allergies to cat and dog dander, molds, spores, pollens and all foods produced negative results. Dr. Livezey provided diagnoses of COPD and allergic rhinitis, with a possible asthma/reactive airway disease component, including potential hyper-reactivity to chemical fumes. He opined that exposure at work may have led to a temporary worsening of symptoms, which would not be expected to continue for more than a few days or weeks at most, beyond the exposure. Dr. Livezey recommended that appellant discontinue smoking, which was the likely cause of any current respiratory symptoms. In an accompanying work capacity evaluation, he stated that causation had not been established. Dr. Livezey opined that appellant was able to work six hours per day, noting that her condition might be aggravated by temperature extremes, airborne particles and gas/fumes.

The Office found a conflict in the medical opinion evidence between Drs. Tanner and Livezey. The Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Umbreen S. Lodi, a Board-certified allergist and immunologist, for an impartial medical examination. In a January 7, 2005 report, Dr. Lodi reviewed a history of appellant's employment-related exposures and medical treatment, noting

¹ A July 15, 2004 memorandum to the file reflects that appellant filed a traumatic injury claim (File No. 062064742) that was accepted for pneumonitis and rhinitis secondary to chemical exposure. The Office combined appellant's respiratory claims on August 2, 2004. The record does not contain a copy of the traumatic injury claim form.

that appellant had a history of emphysema. Physical examination revealed no lymphadenopathy. Appellant's lungs were clear. Nasal mucosa was red with slight cobblestone edema of the posterior pharyngeal wall. A spirometry performed on December 10, 2004 revealed a forced expiratory vital capacity (FVC) of 109 percent of predicted; an forced expiratory volume (FEV₁) of 89 percent of predicted; an FEV₁/FVC ratio of 82 percent of predicted; and an forced expiratory flow (FEF) 25 to 75 percent of 52 percent of predicted. Post-bronchodilator FEV₁ had improved to 97 percent of predicted and FEF 25 to 75 had improved to 65 percent. Skin prick testing was negative to chicken and aeroallergens. Intradermal skin testing to allergens was significantly positive to dust mites. Dr. Lodi stated that appellant's underlying condition was COPD due to chronic cigarette smoking, with bronchial hyper-reactivity and allergic rhinitis. He indicated that exposure to chlorine or ozone in the workplace might have caused a temporary worsening of symptoms due to bronchial hyper-reactivity, which should have resolved within a few days or weeks at most, of exposure. Dr. Lodi opined that appellant did not continue to have residuals of the work-related exposure and was capable of performing her duties, so long as exposure to chlorine and ozone was avoided.

By letter dated February 1, 2005, the Office issued a notice of proposed termination of appellant's compensation and medical benefits, based on Dr. Lodi's January 7, 2005 report. The Office found that appellant's temporary aggravation of her COPD had resolved. The Office provided 30 days in which appellant could respond to this notice.

On February 23, 2005 appellant submitted a 14-page letter reiterating the history of her condition and her contention that she has a medical condition and disability due to her work injury. She stated that Dr. Lodi's examination was not thorough. Appellant argued that, if she returned to work, where she would be reexposed to chlorine, she would immediately experience a chemically-induced pneumonitis and bronchitis. She provided copies of previously submitted reports from Drs. Tanner, Livezey and Lodi. Appellant submitted a March 14, 2004 report from Dr. Tanner reflecting her diagnosis of multiple chemical sensitivities with secondary COPD. Dr. Tanner recommended that, although appellant had no respiratory symptoms at that time, she should totally avoid volatile aromatic chemicals. In a July 29, 2004 report, she opined that appellant would never be able to return to work in her position as a line inspector due to her chemical sensitivities.

By decision dated March 7, 2005, the Office terminated appellant's compensation and medical benefits effective March 12, 2005 on the grounds that she no longer had any employment-related residuals or disability. The Office accorded special weight to Dr. Lodi's January 7, 2005 medical opinion as an impartial medical specialist.

The record contains a May 4, 2004 form, signed by Ellen Click, resource management specialist for the employing establishment. The form reflects that the employing establishment was unable to reassign appellant to a position that would accommodate her medical restrictions. In an April 7, 2005 letter, the employing establishment confirmed that the agency did not have any vacant assignments within appellant's commuting area which would allow her to work in an environment free of chlorine and ozone.

On April 5, 2005 appellant requested an oral hearing, which was held on February 13, 2006. At the oral hearing, she testified that her work exposure to ozone and chlorine caused her emphysema and other respiratory conditions, as well as her current sensitivity to all chemicals. The hearing representative informed appellant that the record would remain open for 30 days for the submission of additional evidence.

Appellant submitted an April 1, 2005 report from Dr. John L. Wilson, a treating physician, who obtained a factual and medical history from appellant and reviewed her medical records. She reported that she experienced excessive ozone exposure at work in 1998, which was followed by decreased tolerance to chlorine exposure. Dr. Wilson opined that appellant was sensitized in the workplace, that her sensitivity had increased through time and that she must avoid exposure to sensitizing chemicals. Appellant submitted an April 6, 2005 statement from Connie Broome, who indicated that appellant had an allergic reaction to a bottle of scented hand lotion. In an undated statement, Rita Moran, a union representative, noted that reports employees had filed reflected that chlorine smells allegedly burned eyes and caused drowsiness. In a May 19, 2001 statement, Dale Glaze questioned the safety of air quality at the Fieldale plant, indicating that several inspectors had complained from time to time of being drowsy. Appellant submitted several articles on exposure to respiratory toxicants from the American Academy of Allergy, Asthma and Immunology. In a March 13, 2006 letter, Michelle Poindexter, a nurse practitioner from the employing establishment, opined that appellant was not unable to work, but was hypersensitive to chemical exposure.

By decision dated May 2, 2006, the hearing representative affirmed the Office's March 7, 2005 termination of medical and compensation benefits. The representative found that the weight of medical evidence, which was contained in Dr. Lodi's January 7, 2005 report, established that appellant had no employment-related residuals.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to 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.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ 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.⁶

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁷ When 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.⁸

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for chemical induced pneumonitis and bronchitis and placed her on the periodic rolls. The Office, therefore, bears the burden of justifying the termination of appellant's compensation for these medical conditions.

Finding a conflict in medical opinion between appellant's treating physician, Dr. Tanner, and Dr. Livezey, the second opinion examiner, the Office properly referred appellant to an impartial medical specialist under section 8123(a) of the Federal Employees' Compensation Act. The Office provided Dr. Lodi with appellant's case file and a statement of accepted facts, so that he could base his opinion on a complete and accurate factual and medical history. Dr. Lodi examined appellant and reported that the accepted conditions had unequivocally resolved. He stated that appellant's underlying condition was COPD due to chronic cigarette smoking, with bronchial hyper-reactivity and allergic rhinitis. Noting that exposure to chlorine or ozone in the workplace might have caused a temporary worsening of symptoms due to bronchial hyper-reactivity, Dr. Lodi opined that the condition should have resolved within a few days or weeks at most, of exposure. He opined that appellant did not continue to have residuals of the work-related exposure and was capable of performing her duties, so long as exposure to chlorine and ozone was avoided. The Board finds that Dr. Lodi provided a reasoned opinion that was based on a proper history. His opinion is entitled to special weight and establishes that appellant no longer suffered residuals of her accepted employment injury.

In response to the proposed notice of termination, appellant argued that if she returned to work, where she would be reexposed to chlorine, she would immediately experience a chemically-induced pneumonitis and bronchitis. Dr. Tanner recommended that although appellant had no respiratory symptoms, she should totally avoid volatile aromatic chemicals. The Board has repeatedly held that a fear of future injury is not a compensable factor of

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, *supra* note 5.

⁷ 5 U.S.C. § 8123(a).

⁸ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

employment.⁹ This is true even if the employee is found medically disqualified to continue in the employment because of the effect which the employment factors might have on the underlying condition.¹⁰ The Board has found under such circumstances, that an employee's disqualification for continued employment was due to her underlying condition, rather than to the employment. In the instant case, Dr. Lodi stated that appellant's underlying condition was COPD due to chronic cigarette smoking, with bronchial hyper-reactivity and allergic rhinitis. He indicated that appellant's condition may have temporarily worsened as a result of the work-related chemical exposure. However, Dr. Lodi opined that she did not continue to have residuals of the chemical induced pneumonitis and bronchitis and was capable of performing her duties, so long as exposure to chlorine and ozone was avoided. Appellant's restrictions are clearly due to her underlying COPD and her fear of future injury is not compensable. The Board will affirm the Office's May 2, 2006 decision terminating compensation for medical benefits and wage loss.

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. 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.¹¹

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.¹² 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.¹³

ANALYSIS -- ISSUE 2

As the Office properly terminated appellant's medical and compensation benefits, the burden for reinstating benefits shifted to appellant. Therefore, appellant must establish by the weight of the reliable, probative and substantial evidence that she had employment-related residuals or disability, which continued after March 12, 2005.¹⁴ Medical evidence of record

⁹ See *Calvin E. King*, 51 ECAB 394 (2000); *Joseph G. Cutrufello*, 46 ECAB 285 (1994); *Mary A. Geary*, 43 ECAB 300 (1991).

¹⁰ *Mary A. Geary*, *supra* note 9.

¹¹ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

¹² *Donald W. Wenzel*, 56 ECAB ____ (Docket No. 05-146, issued March 17, 2005).

¹³ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁴ See *supra* note 11.

submitted after the Office's termination of benefits consists of a March 13, 2006 report from Michelle Poindexter, a nurse practitioner, and an April 1, 2005 report from Dr Wilson. Neither report is sufficient to establish appellant's burden of proof.

Nurse practitioner Ms. Poindexter opined that appellant was not unable to work, but that she was hypersensitive to chemical exposure. A nurse practitioner is not considered to be a "physician" under the Act. Therefore, her report lacks probative value.¹⁵

In his April 1, 2005 report, Dr. Wilson opined that appellant was sensitized in the workplace, that her sensitivity had increased through time and that she must avoid exposure to sensitizing chemicals. However, he did not provide findings on examination or even indicate that he actually examined appellant. Moreover, Dr. Wilson did not specifically address the relevant issue, to-wit: whether appellant had residuals of her accepted chemical-induced pneumonitis and bronchitis. Therefore, his report is of diminished probative value. As appellant has not submitted rationalized medical evidence establishing that she had any continuing residuals or disability causally related to her employment-related, chemical-induced pneumonitis and bronchitis subsequent to March 12, 2005, she has not met her burden of proof.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective March 12, 2005 on the grounds that she no longer had any residuals or disability causally related to her employment-related injuries. The Board further finds that appellant has failed to establish that she had any employment-related residuals or disability after March 12, 2005.

¹⁵ Section 8101(2) of the Act provides in pertinent part as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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