United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 08-47**
	)	**Issued: September 11, 2008**
U.S. POSTAL SERVICE, NORTH HOUSTON PROCESSING & DISTRIBUTION CENTER, Houston, TX, Employer	)	

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 3, 2007 appellant timely appealed the July 19, 2007 merit decision of the Office of Workers' Compensation Programs, which affirmed the termination of compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office properly terminated appellant's compensation and medical benefits effective October 1, 2006.

FACTUAL HISTORY

Appellant, a 49-year-old mail processing equipment mechanic, has an accepted claim for acute bronchitis (16-2055375), which arose on or about March 20, 2003. He also has an accepted claim for aggravation of rhinitis (16-2067050), with a November 5, 2003 date of injury. These two claims have been combined under claim number 16-2055375. Appellant stopped

work on August 28, 2004 and has yet to return. The Office placed him on the periodic compensation rolls effective September 5, 2004.[1]

Dr. Douglas W. Jenkins, an Office referral physician, examined appellant on February 23, 2005.[2] His clinical observations included difficulty in full inhalation, exhalation and frequent cough. This was the extent of appellant's current findings.[3] Dr. Jenkins indicated that, because appellant had been off work for approximately six months, any allergic manifestation from work would have resolved by now. He further noted that there was no indication that appellant's work environment contained materials that would cause a permanent change in respiratory function. Dr. Jenkins reiterated that appellant's "[w]ork injury would have resolved by this time." He conceded that a dusty work environment "may exacerbate [appellant's] allergic symptoms." However, Dr. Jenkins characterized appellant's allergic disease as "a condition of life and not related to work." He advised that appellant was capable of working an eight-hour day, however, he recommended that appellant's work area consist of a relatively "'clean environment.'"

In a January 13, 2006 report, Dr. Thornton L. Kidd, a Board-certified allergist, noted that appellant's allergy tests showed definite positive reactions to numerous trees used in the making of paper products. He further stated that appellant could not perform the essential functions of his job if exposed to paper or similar dust. Dr. Kidd also noted that retraining appellant to work in a different area would not be helpful if paper products remained in use, such as in shredders and copiers. He also advised that because of appellant's reaction to mold, he should consider a three-month trial in a dryer climate.

Dr. Ben H. Echols, an internist and gastroenterologist, treated appellant for both of his accepted conditions. He had also referred appellant to Dr. Kidd. The Office asked Dr. Echols to review and comment on Dr. Jenkins' February 23, 2005 report. In January 2006, Dr. Echols provided a summary of appellant's medical care dating back to March 19, 2003. He explained that each doctor that had evaluated appellant, including Dr. Jenkins, came to the same conclusion that paper dust exacerbated appellant's allergic symptoms and because he was allergic to paper dust, appellant should no longer be in that environment. Dr. Echols concluded that appellant was unable to perform his duties at the employing establishment because of the dusty environment. He further stated that appellant would continue to be sick and continue with respiratory difficulties if he was placed back in this environment. In a March 21, 2006 report, Dr. Echols reiterated that appellant was unable to work in an environment where paper dust was present. In an accompanying work capacity evaluation (Form OWCP-5b), Dr. Echols indicated that appellant was unable to work at all.

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[1] Effective August 2, 2006, appellant elected to receive benefits from the Office of Personnel Management rather than continue receiving wage-loss compensation under the Federal Employees' Compensation Act.

[2] Dr. Jenkins is a Board-certified internist with a subspecialty in pulmonary disease.

[3] The pulmonary function studies (PFS) Dr. Jenkins administered as part of his evaluation were deemed insufficient for interpretation because of appellant's effort. He also reviewed a previous study from February 8, 2005, which he noted was limited by coughing and appellant's August 2004 PFS was reportedly normal. Because of the noted difficulty with spirometry, Dr. Jenkins administered a February 23, 2005 arterial blood gas study, which revealed a normal pCO_2 and normal pH and a borderline normal pO_2.

The Office declared a conflict of medical opinion and referred appellant for an impartial medical examination with Dr. Jeremiah J. Twomey, a Board-certified internist, who examined appellant on July 17, 2006, and found the examination "entirely normal." Appellant reported that in March 2003, his workstation was moved to the general work area of the postal facility where he was in close proximity to an overhead conveyor belt that transported packages. Paper dust reportedly fell from the conveyor belt in large quantities. According to appellant, airborne particles were visible in sunlight and dust accumulated on top of his desk. He claimed that his respiratory symptoms worsened after his workstation was moved. These symptoms included postnasal drainage, tightness in the chest, wheezing, hoarseness and an unproductive cough. Appellant reported that his symptoms improved while he was away from the workplace, like when he went on vacations. Dr. Twomey noted that appellant's present level of symptoms varied. Current symptoms were limited to tightness in the chest, and there was no reported upper airways congestion.

On physical examination, appellant demonstrated no respiratory distress, he did not cough or sneeze, was not hoarse and there were no signs of nasal drip. Dr. Twomey also reported that appellant's chest was normal. According to him, there was no current diagnosis. He characterized the examination as "entirely normal." Dr. Twomey also stated that while appellant "may have some manifestation to paper products," the extent of his clinical expression could not be determined from "today's evaluation." Additionally, he questioned Dr. Kidd's correlation between appellant's allergy to trees and his reported reaction to dust from wood-based paper products. Dr. Twomey noted that appellant had no history of an allergic reaction when exposed to trees in the everyday outdoor environment. Thus, he questioned whether appellant's allergic reaction was due to exposure to paper products rather than other workplace allergens such as dust mites.

In a supplemental report dated August 2, 2006, Dr. Twomey reiterated that appellant had no definitive evidence of ongoing symptoms or physical findings. He again questioned whether appellant's allergic reaction was to paper dust rather than dust mites. Dr. Twomey recommended that appellant's work area be moved to a less dusty environment to avoid the possibility of recurrent discomfort from allergic rhinitis. He also noted that appellant reached maximum medical improvement and there was no justification for the two medications currently being prescribed appellant for reactive airways disease.

The Office issued a notice of proposed termination of benefits on August 24, 2006.[4] Appellant responded on September 16, 2006, noting, among other things, that Dr. Twomey was abrasive, rude and a "quack."[5] He also submitted a September 15, 2006 report from Dr. Echols who stated that appellant had been diagnosed with reactive airway disease, which still persisted. Dr. Echols also indicated that appellant was to avoid exposure to paper dust and continue treatment with his present medications, Advair and Xopenex.

[4] Appellant had elected to receive OPM benefits a few weeks prior to the issuance of the pretermination notice. *Supra* note 1.

[5] Appellant was actively involved in the selection process for an independent medical examiner, and in fact, he previously consented to Dr. Twomey's participation as the referee examiner.

By decision dated September 27, 2006, the Office terminated appellant's wage-loss compensation and medical benefits effective October 1, 2006. Appellant subsequently requested an oral hearing, which was held on March 27, 2007. In a July 19, 2007 decision, the hearing representative affirmed the Office's September 27, 2006 decision terminating benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[6] 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.[7] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[8] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[9]

ANALYSIS

The Office found a conflict of medical opinion on the issue of whether there were continuing residuals of his March 20 and November 5, 2003 employment injuries. On one side of the conflict, Dr. Echols was of the opinion that appellant was disabled from all work. He had previously linked appellant's respiratory condition to exposure to paper dust in the workplace. Dr. Echols continued to find that appellant was unable to work in an environment where paper dust was present. Dr. Jenkins, an Office referral physician, found that appellant was able to work an eight-hour day, but in a "'clean environment,'" such as office or computer work. He further indicated that, given appellant's six-month absence from work, any allergic manifestation from work would have resolved by the time he examined appellant in February 2005. Dr. Jenkins also noted there was no evidence that appellant's work environment contained materials that would cause a permanent change in his respiratory function. He unequivocally stated that appellant's "[w]ork injury would have resolved by this time." Dr. Jenkins characterized appellant's allergic disease as "a condition of life and not related to work."

In view of the conflicting opinions of Drs. Echols and Jenkins, the Office properly referred appellant to Dr. Twomey for an impartial medical evaluation.[10] Dr. Twomey questioned the premise that appellant's allergy to trees manifested itself in the form of a workplace reaction to wood-based paper products. He posited that if this were the case then why was there no

[6] *Curtis Hall*, 45 ECAB 316 (1994).

[7] *Jason C. Armstrong*, 40 ECAB 907 (1989).

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

[9] *Calvin S. Mays*, 39 ECAB 993 (1988).

[10] The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a) (2000); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

evidence of an allergic reaction when appellant was exposed to trees in the everyday outdoor environment. Dr. Twomey surmised that dust mites or other allergens were likely causes for the airway irritation appellant claimed to have experienced at his workstation. But regardless of the specific workplace allergens appellant had previously been exposed to, Dr. Twomey found that appellant's current examination was "entirely normal." He also noted that appellant had reached maximum medical improvement and that the medications prescribed for reactive airway disease were not justified.

The Office properly accorded determinative weight to Dr. Twomey's findings, as he was the impartial medical examiner.[11] Dr. Twomey's July 17 and August 2, 2006 reports are sufficiently well rationalized and based upon a proper factual background. This evidence established that appellant's accepted conditions have resolved and there is no longer a need for medical treatment. Dr. Echols' September 15, 2006 report, wherein he diagnosed ongoing reactive airway disease, is insufficient to outweigh the impartial medical examiner's report and insufficient to create a new conflict. He was on one side of the conflict in medical opinion that Dr. Twomey was called upon to resolve. Dr. Echols latest finding is essentially a reiteration of his earlier opinion, and thus, it is insufficient to overcome the weight properly accorded the impartial medical examiner's opinion.[12]

The Board finds that Dr. Twomey's opinion establishes that appellant no longer has employment-related disability or residuals due to his March 20 and November 5, 2003 employment injuries. Accordingly, the Office properly terminated appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective October 1, 2006.

[11] Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[12] *Kathryn E. Demarsh*, 56 ECAB 677, 684 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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