

appellant's wage-earning capacity was represented by the constructed position of math teacher.¹ Appellant continued to receive wage-loss compensation, which was adjusted to account for this wage-earning capacity determination. He stopped working for the employing establishment in 1980.

On April 10, 1980 Dr. Manuel Lopez, an attending Board-certified allergist, noted that appellant reported that he suffered periodic attacks that principally involved urticaria lesions appearing on his hands and knees for several hours at a time. Appellant took steroids for his urticaria, which had first appeared about three years prior. Dr. Lopez indicated that his examination of appellant revealed normal skin.

On March 3, 2006 the Office requested that appellant submit current medical evidence supporting ongoing disability related to his accepted work injury.² In a March 10, 2006 report, Dr. Peter K. Senechal, an attending Board-certified family practitioner, advised that he had reviewed Dr. Lopez' April 10, 1980 report. He performed a physical examination of appellant on February 28, 2006 at which time he had normal findings "except on x-ray he had findings consistent with chronic obstructive pulmonary disease." Dr. Senechal stated:

"Currently, [appellant] does not have any skin reactions.... [He] is currently 77 years old, and does not work. I cannot document any allergic skin reactions to chemicals at this time, since he has not been exposed to them in over 25 years."³

In an October 10, 2008 report, Dr. Senechal again stated that he had reviewed Dr. Lopez' April 10, 1980 report. He conducted a physical examination of appellant on August 13, 2008 at which time he had normal findings "with the exception of chronic obstructive pulmonary disease on his chest x-ray, and a mild benign hereditary tremor in his hands." Dr. Senechal stated:

"Currently, [appellant] does not have any skin reactions. [He] will soon be 80 years old, and does not work. I cannot document any allergic skin reaction to chemicals at this time, since he has not been exposed to them in over 25 years."⁴

In a February 6, 2009 letter, the Office advised appellant that it proposed to modify its determination of his wage-earning capacity and to terminate his wage-loss compensation and medical benefits. It noted that the opinion of Dr. Senechal established that he no longer had residuals of his accepted employment injury, allergic urticaria, and that he had sustained a material change in his work-related condition for the better.⁵ The Office provided appellant with

¹ The Office determined that appellant was capable of earning \$13,000.00 per year as a math teacher.

² The Office periodically made such requests for medical evidence.

³ The record contains a similar report of Dr. Senechal dated October 15, 2007, which documents a March 5, 2007 examination.

⁴ Dr. Senechal indicated that appellant had a mild memory disorder, which was being monitored.

⁵ The Office advised appellant that it proposed to reduce his wage-loss compensation to zero to reflect that he had no wage loss.

30 days to submit evidence and argument if he disagreed with the proposed action. Appellant did not submit any evidence within the allotted time.

In a March 13, 2009 decision, the Office terminated appellant's wage-loss compensation and medical benefits effective March 13, 2009 and modified the 1982 wage-earning capacity determination to reflect that he had no wage loss. It based the termination on the opinion of Dr. Senechal who found that appellant no longer had residuals of his accepted employment injury, allergic urticaria.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,⁶ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁷ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

Once a loss of wage-earning capacity is determined, a modification of such a determination is not warranted unless there is a material change in the nature and extent of the work-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was in fact erroneous.¹⁰ The burden of proof is on the party attempting to show the award should be modified.¹¹

ANALYSIS

On October 3, 1979 the Office accepted that appellant sustained allergic urticaria due to exposure to chemicals in the workplace. In a March 8, 1982 decision, it determined that appellant's wage-earning capacity was represented by the constructed position of math teacher. Appellant stopped working for the employing establishment in 1980.

The Board finds that the opinion of Dr. Senechal, an attending Board-certified family practitioner, establishes that appellant ceased to have residuals of his accepted condition, allergic urticaria. In reports dated March 10, 2006, October 15, 2007 and October 10, 2008, Dr. Senechal advised that he had performed physical examinations on February 28, 2006, March 5, 2007 and August 13, 2008, respectively. In each report, he found that appellant did not have any ongoing skin reactions. Dr. Senechal could not document any allergic reaction to chemicals because appellant had not been exposed to them in over 25 years.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁸ *Id.*

⁹ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ *George W. Coleman*, 38 ECAB 782, 788 (1987); *Ernest Donelson, Sr.*, 35 ECAB 503, 505 (1984).

¹¹ *Jack E. Rohrabough*, 38 ECAB 186, 190 (1986).

The Board has carefully reviewed the opinion of Dr. Senechal and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. His reports show that appellant ceased to have residuals of his work injury. Dr. Senechal's opinion is based on a proper factual and medical history and he provided medical rationale for his opinion by explaining that there was no sign of allergic urticaria during his examinations. The Board further notes that there is no medical evidence in the record showing that appellant was treated for allergic urticaria or any similar condition around the time that Dr. Senechal treated him.

For these reasons, the Office has presented sufficient medical evidence to justify its termination of appellant's wage-loss compensation and medical benefits effective March 15, 2009. Dr. Senechal's reports show that appellant ceased to have residuals of his allergic urticaria. The Office justified the modification of its 1982 wage-earning capacity determination. As noted, the weight of medical evidence establishes that appellant sustained a material change in his work-related condition for the better such that he no longer had wage loss due to the work injury.¹²

CONCLUSION

The Board finds that the Office met its burden of proof to modify its determination of appellant's wage-earning capacity and to terminate his wage-loss compensation and medical benefits effective March 15, 2009.

¹² On appeal appellant's representative asserted that appellant's use of steroids for urticaria necessitated cataract surgery in both eyes. No medical evidence was submitted to support this assertion. Appellant's representative asserted that appellant's mild memory disorder prevented him from submitting evidence supporting continuing work-related residuals, but this assertion has not been adequately supported by the documents in the record.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2010
Washington, DC

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

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

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