

**United States Department of Labor
Employees' Compensation Appeals Board**

B.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
O'Fallon, MO, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 10-1947
Issued: May 9, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 19, 2010 appellant filed a timely appeal of a January 22, 2010 Office of Workers' Compensation Programs' merit decision. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation and medical benefits on the grounds that the temporary aggravation of her underlying extrinsic asthma and allergic rhinitis had ceased.

On appeal, appellant argued that the Office did not consider all the relevant evidence contained in the impartial medical examiner's report.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 26, 2009 appellant then a 56-year-old letter carrier, filed an occupational disease claim alleging that she developed recurrent and prolonged bronchitis, chronic cough and bronchospasms and moderate chronic obstructive asthma due to heavy lifting, constant exposure to temperature extremes and unhealthy air quality which aggravated her condition.

Appellant submitted a report dated March 6, 2009 from Dr. Frank S. Calandrino, a Board-certified pulmonologist, who noted her history of moderate chronic obstructive asthma, as well as intermittent bronchospasms and cough that began in December 23, 2008. Dr. Calandrino found that she had scattered wheezes and a decrease of 17 to 20 percent of her best spirometry from October 2006. He recommended that appellant work in an environment where she was not exposed to the elements. Dr. Calandrino stated:

“Sudden or acute changes in temperature or humidity as well as the extremes of temperature and humidity are often triggers for asthma and I do not think [appellant’s], long-term, will do well if she works in an outdoor environment. Additionally, carrying heavy weights (approximately 30 to 45 pounds of mail in a bag) is also likely to trigger an asthma attack in an outdoor environment with wide swings of temperature and humidity.

“[Appellant’s] current occupation as a letter carrier, while not the cause of asthma, is an aggravating and potentially triggering factor because of the heavy weights that she carries in the face of wide swings in temperature and humidity.”

On July 7, 2009 the Office referred appellant for a second opinion evaluation by Dr. Richard Parcinski, an osteopath and Board-certified pulmonologist. A pulmonary function report dated July 30, 2009, indicated that appellant had severe small airway obstructive disease with significant reversibility associated with increased airway resistance. In a report dated August 6, 2009, Dr. Parcinski diagnosed reversible obstructive airway disease or asthma which was related to multiple environmental allergens. He stated that appellant’s work environment was neither the cause nor associated with a natural progression of the underlying disease. Dr. Parcinski stated that she had a permanent condition which was not caused by her employment, but may be aggravated by her job. Appellant continued to have symptoms outside of the work environment and her present condition would have occurred even if she was never employed by the Federal Government. Dr. Parcinski stated that she could not return to her position at the employing establishment.

The Office found a conflict of medical opinion between Drs. Parcinski and Calandrino regarding the causal relationship of appellant’s current condition to her employment and referred her to Dr. Richard Summa, a Board-certified pulmonologist, to resolve the conflict.

In a report dated October 22, 2009, Dr. Summa diagnosed obstructive lung disease with components of asthma and chronic obstructive pulmonary disease (COPD). He noted that appellant’s asthma had allergy and exercise-induced components and that her COPD was due to a history of smoking cigarettes. Dr. Summa stated that her asthma was exacerbated by allergen exposure, exercise and environmental condition such as extremes of temperature and humidity.

He stated, “[Appellant’s] asthma and allergic rhinitis were precipitated, aggravated and perpetuated by her job as a letter carrier due to extremes of temperature, humidity exposure, allergen exposure and the level of physical activity required for her federal employment.” Dr. Summa further found that although the exacerbation of [her] obstructive lung disease and allergic rhinitis was temporary and that her lung conditions stabilized and improved once she was removed from her job as a letter carrier; but had not returned to her preemployment baseline. He did not feel that appellant’s employment resulted in any permanent change in her lung function. Dr. Summa stated:

“It is my medical opinion that [appellant’s] asthma and allergic rhinitis would not have worsened or become persistent with frequent exacerbation if she had not been exposed to the conditions of her federal employment as a letter carrier. This clearly moved her disease from an intermittent to persistent pattern and precipitated frequent exacerbation that required an aggressive increase in her respiratory maintenance and rescue treatment regimen.”

In a letter dated December 28, 2009, the Office accepted appellant’s claim for temporary aggravation of extrinsic asthma, ceased and temporary aggravation of allergic rhinitis, ceased.

In a letter dated December 30, 2009, the Office provided appellant with a notice of proposed termination finding that she no longer had medical residuals or wage loss due to her accepted conditions. It relied upon Dr. Summa’s report.

By decision dated January 22, 2010, the Office terminated appellant’s compensation and medical benefits effective February 27, 2009.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ 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.⁵ Which require further medical treatment.⁶

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *Id.*

When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect which the employment factors might have on the underlying condition. Under such circumstances, her disqualification for continued employment is due to the underlying condition, without any contribution by the employment.⁷ The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to her to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability during the period subsequent to the date when compensation is terminated or modified.⁸ It's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of the Act which provides that, 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 and resolve the conflict of medical evidence.¹⁰ This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹¹

In situations where there are 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 on a proper factual background, must be given special weight.¹²

ANALYSIS

Appellant's physician, Dr. Calandrino, supported appellant's claim that she sustained an aggravation of asthma due to her exposures to extremes of temperature and humidity as well as exertion as a letter carrier. The Office referred her to Dr. Parcinski for a second opinion evaluation. Dr. Parcinski opined that appellant's asthma was not caused or permanently aggravated by her work environment, but noted that her underlying condition may be aggravated by her job. Due to the disagreement between the physician on the nature and extent of the aggravation of appellant's asthma by her employment duties, the Office properly determined that a conflict of medical opinion existed.

⁷ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *T.E.*, Docket No. 07-2227 (issued March 19, 2008).

⁸ *Id.*

⁹ *Id.*

¹⁰ 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

¹¹ *R.C.*, 58 ECAB 238 (2006).

¹² *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

The Office referred appellant to Dr. Summa to resolve the conflict. The Board finds that he provided several inconsistent statements regarding the degree of aggravation of her underlying condition caused by her employment duties. Dr. Summa stated, “[Appellant’s] asthma and allergic rhinitis were precipitated, aggravated and perpetuated by her job as a letter carrier due to extremes of temperature, humidity exposure, allergen exposure and the level of physical activity required for her federal employment.” He also opined that the employment-related aggravation was temporary and had not resulted in any permanent changes in her lung function, but her asthma did not appear to have returned to her preemployment baseline. Dr. Summa noted “asthma and allergic rhinitis would not have worsened or become persistent with frequent exacerbation if she had not been exposed to the conditions of her federal employment as a letter carrier. This clearly moved appellant’s disease from an intermittent to persistent pattern and precipitated frequent exacerbation that required an aggressive increase in her respiratory maintenance and rescue treatment regimen.”

The Board finds that Dr. Summa’s opinion on causal relation requires clarification. As Dr. Summa initially stated employment factors had temporarily aggravated her underlying condition in one sentence but concluded that her condition had worsened since such exposure in another. He did not provide a detailed opinion with medical reasoning supporting either the aggravation of appellant’s asthma was temporary with no change in the underlying condition or that the aggravation of appellant’s asthma was permanent, resulting in a change in the underlying condition rather than merely a temporary increase in symptoms. When the Office secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.¹³ Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act, will be circumvented when the impartial specialist’s medical report is insufficient to resolve the conflict of medical evidence.¹⁴ Dr. Summa’s report is not sufficient to resolve the conflict of medical opinion. The Office should have requested a supplemental report and provided him the definition of temporary and permanent aggravations. Dr. Summa failed to provide a well-reasoned report as to whether the aggravation of appellant’s asthma was temporary or permanent and, if temporary when this aggravation ceased.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof to terminate appellant’s compensation benefits due to an unresolved conflict of medical opinion evidence.

¹³ *L.R. (E.R.)*, 58 ECAB 369, 375 (2007); *Raymond A. Fondots*, 53 ECAB 637, 641 (2002).

¹⁴ *L.R. (E.R.)*, *id.* at 376; *Harold Travis*, 30 ECAB 1071 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 22, 2010 is reversed.

Issued: May 9, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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