



airborne irritants at work. He became aware of his condition on January 7, 1993 and realized that it was causally related to his employment on February 8, 1994. Appellant stopped work on June 28, 1994. On April 8, 1998 OWCP accepted the claim for chronic sinusitis and allergic rhinitis.<sup>2</sup> Appellant received compensation benefits.

Appellant was initially treated by Dr. Brian K. Hoban, a Board-certified otolaryngologist, for chronic refractory bacterial rhinosinusitis, inflammatory changes and infection of his sinus mucosa. On April 30, 1993 Dr. Hoban performed endoscopic sinus surgery with nasal endoscopy, bilateral endoscopic complete ethmoidectomies and sphenoidotomies, bilateral maxillary enteroscopies with maxillary sinus endoscopy and bilateral reduction middle turbinoplasties. He diagnosed pansinusitis with extensive nasal and sinus polyposis. Dr. Hoban found that appellant was totally disabled from work as it entailed exposure to airborne contaminants associated with processing mail and other paper products. He recommended that appellant change occupations.

On June 25, 1997 appellant was referred for vocational rehabilitation. A rehabilitation plan was approved with the objective of returning to school to earn a nursing degree and to obtain work as a registered nurse. The record reflects that appellant completed his degree program in May 2000 and obtained a registered nursing license that year. Appellant accepted a full-time registered nurse position on November 13, 2000.

In an August 27, 2001 decision, OWCP reduced appellant's wage-loss compensation by 77 percent to reflect his actual earnings as a nurse. It found that his earnings as a full-time registered nurse fairly and reasonably represented his wage-earning capacity.

Appellant came under the treatment of Dr. David M. Choquette, a Board-certified otolaryngologist. In an April 6, 2006 report, Dr. Choquette reviewed appellant's history of exposure to paper dust which necessitated sinus surgeries. Appellant was retrained and presently worked as a mental health nurse. Dr. Choquette commented that appellant had been remarkably healthful since he left the employing establishment. On examination, the left ear canal, tympanic membrane, and pinna were normal while the right side revealed cerumen (ear wax) impaction cleared with curettage. The nose showed a mild pale boggy edema of the nasal mucosa with a small portion of the inferior turbinates present. The middle turbinates had been excised. Dr. Choquette reported that there was no sign of infection and that the edema of the nose was consistent with mild allergic rhinitis. The oral cavity and neck examination were normal. He diagnosed paper dust allergy by history and mild allergic rhinitis. Dr. Choquette instructed appellant to follow up on an as needed basis.

In a work capacity evaluation dated October 2, 2007, Dr. Choquette noted that appellant was unable to perform his usual job with the postal service due to the chronic paper dust allergy which precluded exposure to airborne particles. He noted that appellant had no other work limitations and presently was taking no medications that impacted his ability to work. On October 25, 2007 appellant was again seen for his annual evaluation and reported that he had

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<sup>2</sup> An indoor air quality survey of appellant's work area on July 28, 1994 revealed that all work areas met the Occupational Safety & Hazard Administration's standards for air quality and that all levels of dust, contamination and microbiological growths were well below expected normals.

been on no allergy medicines and was in good health and long as he avoided paper dust. On examination, Dr. Choquette found the ear canals clear, the tympanic membranes and pinna revealed mild cerumen impaction that was easily cleared. He stated that appellant's chronic allergic rhinitis was currently stable.

On September 16, 2008 Dr. Choquette completed a work restriction evaluation and noted that appellant was not capable of performing his usual job with the employing establishment. He answered "yes" in response to the question of whether prevention of possible future injury was the only reason for appellant's work limitations. In a September 18, 2008 note, Dr. Choquette advised OWCP that appellant had not been exposed to paper dust since last seen a year prior and presently had no complaints of any sinusitis or any allergy symptoms and was doing well. Dr. Choquette noted that appellant had been retrained as a nurse and had no impairment because of his sinuses, stating "I am unclear why it is necessary to continue to see this gentleman given his past history. I have never seen any sign of pathology...." On May 12, 2009 he advised that he had not seen appellant since the prior September and reiterated there was no evidence of any sinus disease or nasal polyps. Dr. Choquette recommended that appellant be seen by an allergist.

On August 11, 2009 OWCP referred appellant to Dr. James A. Hamp, a Board-certified otolaryngologist, for a second opinion. In a September 10, 2009 report, Dr. Hamp reviewed the history of appellant's paper dust exposure and prior sinus surgeries. He noted that appellant presented for examination "basically without symptoms other than some loss of smell and mild-to-moderate chronic, clear nasal discharge that is a minor complaint. All of his severe problems with allergies, nasal obstruction and recurrent infection have resolved since he left the [employing establishment] 15 years ago." On examination, Dr. Hamp advised that appellant presently had no visible residual problems related to his disease. The nasal and sinus cavities were found completely clean and healed and were not discharging, crusting, obstructing, bleeding or draining. Dr. Hamp described the physical examination as benign. He noted that appellant confirmed that he had no problems working as a nurse. Dr. Hamp advised that appellant should continue in his employment with no restrictions other than avoiding paper dust and ink.

On October 29, 2009 OWCP issued a notice of proposed termination of compensation benefits on the grounds that appellant had no residuals of work-related chronic sinusitis or allergic rhinitis.

Appellant submitted a November 15, 2009 statement and disputed the proposed termination noting that he was unable to return to work at the employing establishment or his prior occupation due to his allergies. After he graduated from nursing school in 2000 his compensation benefits were reduced and his career was cut short due to his allergy. Appellant advised that if his disability benefits were terminated he would be required to return to work at age 70. He noted that he worked part time to supplement his compensation.

By decision dated February 17, 2010, OWCP terminated appellant's wage-loss compensation and medical benefits effective March 13, 2010 based on the report of Dr. Hamp.

On February 24, 2010 appellant requested a telephonic oral hearing which was held on June 17, 2010.

In a decision dated October 5, 2010, the hearing representative affirmed the February 17, 2010 OWCP decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>5</sup>

An employee is entitled to receive compensation for periods of disability related to an aggravation of an underlying condition. An employee is not entitled to compensation for periods of disability where the aggravation is temporary and leaves no permanent residuals. This is true even through the employee is found medically disqualified to continue in such employment because of the effect that employment factors may have on his or her underlying condition. Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.<sup>6</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for chronic sinusitis and allergic rhinitis and authorized sinus surgery in 1993 and again in 1998. Appellant was found totally disabled from continuing in his employment at the employing establishment due to exposure to paper dust. He received vocational training as a nurse and subsequently secured employment in that field in 2000. Appellant's wage-loss benefits were reduced as his actual earnings were found to fairly and reasonably represent his wage-earning capacity. He received compensation based on a 77 percent wage-earning capacity.

Dr. Choquette commenced treating appellant in 2006 and noted that he had relief from his symptoms following removal from exposure to paper dust. He addressed appellant's sinus surgery and noted his retraining as a nurse, commenting that appellant had been "remarkably healthful" since he left the employing establishment. Dr. Choquette provided findings on examination and noted no sign of infection with mild edema of the nose consistent with mild allergic rhinitis. He advised that appellant was not on any medication that impacted his ability to work and, other than avoidance of paper dust particles, no other work limitations. In 2007,

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<sup>3</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>4</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>5</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

<sup>6</sup> *See Raymond W. Behrens*, 50 ECAB 221 (1999); *Marion Thornton*, 46 ECAB 899 (1995); *James L. Hearn*, 29 ECAB 278 (1978).

Dr. Choquette reported that appellant was not on any allergy medication and in good health. He advised that appellant's chronic allergic rhinitis was stable. In 2008, Dr. Choquette noted that appellant's restriction from performing his usual job with the employing establishment was to prevent possible future injury. He noted that appellant had not been exposed to paper dust and had no complaints of any sinusitis or allergy symptoms. In 2009, Dr. Choquette recommended examination by an allergist.

Dr. Hamp examined appellant and reviewed the history of exposure to paper dust while employed at the employing establishment and prior sinus surgery. He noted that appellant was basically without symptoms other than some loss of smell, with mild-to-moderate nasal discharge. Dr. Hamp stated that appellant's severe problems with allergies, nasal obstruction and recurrent infection had resolved since he left the employing establishment. He provided findings on examination, noting that the nasal and sinus cavities were completely clean and healed. Dr. Hamp advised that appellant was not restricted in his present work as a nurse but to avoid exposure to paper dust and ink.

The medical evidence from Dr. Choquette, appellant's attending physician and Dr. Hamp, the second opinion referral, are in general agreement as to the resolution of appellant's accepted chronic sinusitis and allergic rhinitis conditions. They noted that appellant remained disqualified from returning to the employing establishment due to the effect paper dust exposure might have on his underlying condition; however, there were no restrictions in his ability to work as a nurse. Dr. Choquette stated that appellant was seen on an annual basis, was not on any allergy medicine and was in good health. The only treatment rendered was the removal of impacted earwax from the ear canal. Dr. Choquette noted that he had never seen any sign of pathology related to the accepted conditions. Dr. Hamp advised that appellant had occasional mild-to-moderate clear nasal discharge but his symptoms due to allergies, nasal obstruction and recurrent infection had resolved since he left the employing establishment. He described the nasal and sinus cavities as clean and healed without any discharging, crusting, obstructing, bleeding or draining and noted that appellant's physical examination was benign.

The Board finds that the weight of medical opinion establishes that the aggravation of appellant's underlying chronic sinus has ceased. Dr. Choquette and Dr. Hamp noted that the accepted employment factor, exposure to paper dust, ceased when appellant stopped work at the employing establishment. Under the facts of this case, his disqualification for continued employment by the employing establishment is due to his underlying condition. For this reason, OWCP properly terminated his compensation benefits.

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective March 13, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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