

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

K.L., Appellant

and

**TENNESSEE VALLEY AUTHORITY, WATTS
BAR NUCLEAR PLANT, Spring City, MN,
Employer**

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**Docket No. 13-1595
Issued: December 2, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 26, 2013 appellant filed a timely appeal from a May 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits on the grounds that he no longer had any residuals causally related to his accepted employment-related injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 18, 1983 appellant, then a 44-year-old painter, filed an occupational disease claim (Form CA-2) alleging a skin condition due to the use of epoxy in the performance of his duties. OWCP accepted his claim for contact dermatitis due to solvents on August 21, 1984. It placed appellant on the periodic rolls for temporary total disability. Appellant returned to work as a janitor and retired in 2004. He regularly submitted documentation supporting his continued disability from 1984 until 2011.

On December 1, 2011 OWCP requested that Dr. Jason L. Smith, a Board-certified dermatologist, submit an updated medical report relating to appellant's accepted work-related contact dermatitis and ability to perform the duties of a painter.

By letter dated December 29, 2011, Dr. Smith replied that appellant's most recent examination was November 17, 2011, when seen for a red itching rash on the bilateral axilla diagnosed intertrigo. The diagnosis was unrelated to any allergic process and he was unable to determine whether appellant was able to perform the duties of a painter because he had never treated him for an allergy. Dr. Smith treated him for intertrigo and eczematous dermatitis. He also stated that he did not have access to appellant's medical records from the physician who diagnosed the allergy to paint and solvents. Dr. Smith had not performed any allergy testing in his office because the conditions appellant presented did not necessitate testing.

By letters dated January 17 and February 8, 2012, OWCP referred appellant to Dr. John Chung, a Board-certified dermatologist, to determine whether he had any residuals of his accepted contact dermatitis and could perform the duties of a painter. It included a statement of accepted facts regarding appellant's history of injury and work requirements of his former position as a painter.

In a report dated February 23, 2012, Dr. Chung obtained a history of an itching, burning rash of several years duration. Appellant's symptoms began to occur in 1982 after two years of working as a painter at the employing establishment. The rash completely cleared after he started work as a custodian, cleaning floors. Dr. Chung referenced the reports of Dr. Samuel L. Banks, a Board-certified dermatologist, who treated appellant and obtained allergy testing. He examined appellant's skin and found all areas were normal. Dr. Chung stated that appellant had no residuals at the time of examination of the accepted contact dermatitis and no further treatment was necessary. Appellant could not perform the duties of a painter.

By letter dated March 6, 2012, OWCP forwarded Dr. Chung's report to Dr. Smith. It requested an opinion as to whether Dr. Smith concurred with Dr. Chung that appellant did not have any residual of the accepted contact dermatitis.

On March 23, 2012 Dr. Smith responded that he agreed with Dr. Chung that appellant had no residual injury and that his contact dermatitis had resolved.

On October 18, 2012 OWCP proposed to terminate appellant's compensation benefits based on the opinions of Drs. Chung and Smith, who found that his accepted condition had resolved. In response, appellant submitted an undated narrative statement in which he stated that

Dr. Smith had not examined him at a time when his contact dermatitis was active. He contended that his condition was permanent and could recur for the rest of his life. Appellant requested that he be evaluated by another physician. On October 29, 2012 he disputed the findings of Dr. Chung, stating that his rash was not active at the time of Dr. Chung's examination. Further, Dr. Chung incorrectly stated that appellant had no problems with contact dermatitis once he began working as a custodian rather than as a painter.

By decision dated November 26, 2012, OWCP terminated appellant's compensation benefits, effective December 16, 2012. It found that the opinion of Dr. Chung established that the accepted contact dermatitis had resolved.

Appellant requested an oral hearing, which was held on March 19, 2013. Following the hearing, he submitted several medical reports dated September 30, 1986 to April 4, 2006 from Dr. Banks, who stated that appellant's skin allergy to paint and paint fumes was permanent.

By decision dated May 30, 2013, OWCP's hearing representative affirmed the November 26, 2012 decision. She found that the reports from Dr. Banks were duplicates of evidence of record and that Dr. Chung's opinion represented the weight of the medical evidence. Furthermore, Dr. Smith, a treating physician, agreed with Dr. Chung's assessment that appellant no longer had residuals related to his accepted contact dermatitis.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that the claimant no longer has residuals of an employment-related condition which requires further medical treatment.⁴

OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS

OWCP accepted appellant's claim for contact dermatitis and placed him on the periodic rolls. It did not accept that his underlying allergy was employment related. The burden is on OWCP to support the termination of appellant's compensation by establishing that the accepted condition has resolved.

² *I.J.*, 59 ECAB 408, 412 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

³ *J.M.*, 58 ECAB 478, 482 (2007); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975).

⁴ *See E.J.*, 59 ECAB 695 (2008).

⁵ *T.P.*, 58 ECAB 524, 526 (2007); *Larry Warner*, 43 ECAB 1027, 1032 (1992).

Dr. Chung, a second opinion Board-certified dermatologist, examined appellant and found that his accepted condition had resolved. He noted that appellant's symptoms began to occur in 1982 after two years of working as a painter at the employing establishment. Dr. Chung conducted a full body skin examination and determined that appellant's contact dermatitis had resolved and warranted no further medical treatment. He referenced the reports of Dr. Samuel L. Banks, a Board-certified dermatologist. Dr. Chung stated that appellant had no residuals at the time of the examination. Appellant's attending dermatologist, Dr. Smith, concurred in this determination by letter dated March 23, 2012.

The Board finds that Dr. Chung had a full and accurate knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Chung provided a review of the records and performed a thorough physical examination. He addressed the medical records as well as his own examination findings to reach a reasoned conclusion regarding appellant's condition.⁶ At the time benefits were terminated, Dr. Chung found no residuals attributable to appellant's accepted contact dermatitis. His opinion is found to be probative and reliable. Dr. Smith concurred in Dr. Chung's conclusion by letter dated March 23, 2012. The Board finds that Dr. Chung's opinion, in conjunction with that of Dr. Smith, constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted contact dermatitis.

Dr. Chung indicated that appellant could not perform the duties of a painter. He did not further explain this opinion. Again, it is noted that appellant's underlying allergy has not been accepted as employment related. Thus, to the extent that Dr. Chung found appellant as unable to perform the duties of a painter reflects as a prophylactic measure to avoid further injury, it does not support continuation of compensation.

The Board notes that the reports dated 1986 to 2006 of Dr. Banks are not sufficient to establish ongoing disability due to the accepted contact dermatitis. The most recent report from the physician was dated April 4, 2006 and is not reasonably contemporaneous to the treatment by Dr. Smith or the examination by Dr. Chung in 2012.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective December 16, 2012.

⁶ See *Michael S. Mina*, 57 ECAB 379, 385 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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