

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

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C.B., Appellant )

and )

DEPARTMENT OF HOUSING & URBAN )  
DEVELOPMENT, Atlanta, GA, Employer )

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**Docket No. 12-1514  
Issued: March 1, 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  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 28, 2012 appellant filed a timely appeal from a February 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 properly terminated appellant's wage-loss compensation benefits effective July 3, 2011 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

**FACTUAL HISTORY**

OWCP accepted that on March 31, 1992 appellant, then a 38-year-old legal technician, developed a severe allergic reaction when a ceiling tile fell in her work area. It accepted her

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

claim for contact dermatitis and esophagitis. Appellant stopped work and received wage-loss compensation. She was treated by Dr. Jack E. Dawson, a cardiologist.

On July 1, 2010 OWCP referred appellant to Dr. Jane St. Clair, Board-certified in occupational medicine, for a second-opinion examination regarding whether she continued to be disabled as a result of her accepted employment injuries. In an August 28, 2010 report, Dr. St. Clair reviewed appellant's medical history, including the statement of facts and provided an accurate history of injury. She opined that appellant's contact dermatitis and esophagitis had resolved and that appellant no longer had residuals from the March 31, 1992 injury. Dr. St. Clair explained that, although appellant related a history of recurrent skin infections, she did not observe any evidence of current lesions or rashes on her arms, chest or face. She noted that appellant did not have a rash, urticaria, hives, erythema, dry skin or skin disease. Regarding the accepted esophagitis, Dr. St. Clair stated that appellant was eating and swallowing without complaints. She noted that "definitive information to answer the question concerning the presence of esophagitis will only become available if she has another endoscopy," but that this would unlikely occur. Dr. St. Clair opined that appellant's current symptoms were related to her personal or psychological health. She stated that there were no physical findings that established that appellant's current complaints were related to her March 31, 1992 work-related injury.

In an August 28, 2010 duty status report, Dr. St. Clair authorized appellant to return to full duty without restrictions. She stated that there was no proof that appellant was allergic to compounds normally found in an office environment.

In a November 10, 2010 statement, appellant contended that Dr. St. Clair's reports contained several errors. She stated that she was accompanied by her husband who stayed in the waiting room. Appellant noted that the examination was interrupted on several occasions because Dr. St. Clair saw another patient. She reported that Dr. St. Clair asked her about the rash on her face and chest and spots on her arms but it was not included in the report.

In an April 1, 2010 note, Dr. Jack E. Dawson, Board-certified in cardiology, related appellant's complaints of hypertension and multi-chemical sensitivities. He noted that she did not have frequent cardiac complaints except for one episode of palpitations about a month prior. On July 27, 2010 Dr. Dawson stated that appellant was still disabled and unable to return to work. She was also found to be totally disabled by the Social Security Administration. He reported that her significant allergy-related problems continued and recommended that she limit her exposure to cleaning agents, plants, and flowers.

In an October 27, 2010 report, Dr. Michelle B. Futral, a Board-certified dermatologist, noted that appellant was treated for follow-up after a toxic chemical burn.

In a November 12, 2010 report, Dr. Dawson disagreed with Dr. St. Clair's opinion that appellant's contact dermatitis had resolved. He reported that on occasional visits he had seen mild-to-moderate erythema of the skin and that she continued to complain of accompanying burning and occasional itching. Dr. Dawson stated that to know what is going on with appellant's esophagus, an endoscope needed to be obtained. He stated that her occasional chest pains did not appear to be heart related, but might be residual esophageal spasms originating with the March 31, 1992 employment injury.

In a February 25, 2002 report, Dr. Husham P. Mishu, a Board-certified psychiatrist and neurologist, stated that appellant's headaches had improved but she was still on pain medication. He stated that she required all these medications secondary to the migraines caused by the toxic exposure she sustained at work.

On May 19, 2011 OWCP issued a notice of proposed termination of appellant's compensation and medical benefits based on Dr. St. Clair's August 18, 2010 medical report. Appellant was advised that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action.

In a decision dated June 24, 2011, OWCP finalized the termination of appellant's compensations benefits effective July 3, 2011. It found that the medical evidence of record established that her accepted conditions had ceased and that she no longer had any residuals or disability causally related to her accepted employment injuries.

In a June 15, 2011 report, Dr. Futral examined appellant for follow-up treatment of a toxic chemical burn that occurred several years ago. She related that appellant continued to complain of dry skin and itching.

In a June 22, 2011 report, Dr. Dawson stated that appellant's original diagnostic problems of multi-chemical sensitivities with skin and esophageal involvement remained the same. He explained that she remained ultra sensitive with skin manifestations on exposure to petrol and other chemicals. Dr. Dawson concluded that appellant's injury was permanent and that she was unable to work because of her sensitivities and symptom manifestations.

On July 18, 2011 appellant submitted a request for an oral hearing. Upon receipt of the May 19, 2011 proposed termination, she contacted Dr. Dawson and Dr. Futral to schedule appointments and requested updated opinions regarding her condition. Appellant reiterated that there were several errors in Dr. St. Clair's August 28, 2010 report. She resubmitted Dr. Dawson's May 27, 2010 and June 22, 2011 reports and Dr. Futral's June 15, 2011 report.

In a July 28, 2011 report, Dr. Mark A. Sims, a Board-certified internist, stated that appellant's esophagitis had healed on her current therapy. He advised her to continue taking her medication daily or else her condition would return as severe as or even worse than it was before. Dr. Sims reported that the endoscopy performed last week showed no evidence of acute ulceration in appellant's esophagus, but the valve between her esophagus and stomach was more loose than normal.

On August 9, 2011 appellant requested that her compensation continue until her hearing. She described the March 31, 1992 employment incident where she was exposed to formaldehyde, fiber glass, pest control, poison and asbestos. Appellant stated that she still experienced extreme allergic dermatitis, multiple chemical sensitivities, stress syndrome, esophagitis, migraines, fatigue, colon problems, vertigo and dry mouth.

On November 4, 2011 a telephone hearing was held. Appellant contended that OWCP should not have relied on Dr. St. Clair's opinion because it contained numerous errors. She stated that her husband went with her to the appointment even though Dr. St. Clair noted that she

was unaccompanied. Appellant also contended that Dr. St. Clair did not conduct a thorough examination.

In an October 4, 2011 progress note, Dr. Mishu conducted a follow-up examination for appellant's fibromyalgia, migraines and lumbar radiculopathy. He related that her neck and back pain had worsened since an April 2011 accident. Dr. Mishu stated that appellant's symptoms were about the same and recommended cervical and lumbar epidural injections.

In a November 14, 2011 report, Dr. Dawson reiterated that appellant's original diagnostic problems of multi-chemical sensitivities with skin and esophageal involvement remained the same and that there was no change in her accepted employment-related injuries. He concluded that her injury was permanent and that she was unable to work because of her symptom manifestations.

In a November 17, 2011 report, Dr. Sims stated that appellant was under his care for esophagitis and dysphagia. Appellant's problems were due to esophageal spasm which resulted in difficulty eating, swallowing and taking her medication and also resulted in significant chest pain. Dr. Sims reported that if she took Prilosec daily then her symptoms were mostly controlled.

In a December 8, 2011 report, Dr. Mishu stated that appellant had been his patient since 2007 and was treated for fibromyalgia, migraines, cervical and lumbar radiculopathy and imbalance. He stated that she would need to continue her treatment for her conditions indefinitely.

In a December 6, 2011 report, Dr. Michelle Juneau, a Board-certified dermatologist, stated that she had treated appellant for a history of recurrent contact dermatitis. She noted that she prescribed appellant steroid cream and advised that she continue to use Aveeno Moisturizing cream and Cetaphil. Dr. Juneau reported that appellant's contact dermatitis would remain for the rest of her life.

By decision dated February 14, 2012, OWCP's hearing representative affirmed the June 24, 2011 termination decision. He determined that Dr. St. Clair's August 28, 2010 report represented the weight of the medical evidence.

### **LEGAL PRECEDENT**

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>2</sup> OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>3</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup> The

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<sup>2</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>6</sup>

If there is a 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.<sup>7</sup>

### ANALYSIS

OWCP accepted that on March 31, 1992 appellant developed contact dermatitis and esophagitis while in the performance of duty. She stopped work and received disability compensation.

In an August 28, 2010 report, Dr. St. Clair, the second-opinion examiner, concluded that appellant was no longer disabled due to the March 31, 1992 employment injury. Appellant did not have any residuals causally related to the work-related injury. Dr. Dawson, appellant's treating physician, stated that her work-related conditions had not resolved and that she continued to be totally disabled from work. OWCP determined that Dr. St. Clair's opinion constituted the weight of the evidence and thereafter terminated appellant's entitlement to disability compensation.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits due to a conflict in medical opinion between Dr. St. Clair, OWCP's referral physician, and Dr. Dawson, appellant's treating physician. In an August 28, 2010 report, Dr. St. Clair reviewed appellant's history and conducted an examination. She observed that, although appellant had a history of recurrent skin infections, there was no evidence of current lesions or rashes. Dr. St. Clair also noted that appellant was eating and swallowing without complaints, but recommended another endoscopy be performed. She stated that there were no physical findings to establish that appellant's current complaints were directly related to her March 31, 1992 work-related injury and concluded that her contact dermatitis and esophagitis had resolved. Dr. Dawson disagreed with Dr. St. Clair's findings and observed that appellant continued to suffer from allergy-related problems and remained totally disabled from work. He reported that he still observed mild-to-moderate erythema of the skin and that appellant complained of burning and occasional itching. Regarding appellant's esophagitis, Dr. Dawson explained that an endoscope was needed. He stated that there was no change in appellant's employment-related injuries and concluded that she was unable to work because of her symptoms. The Board, therefore, finds a conflict in medical opinion.

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<sup>5</sup> *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>6</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>7</sup> 5 U.S.C. § 8123; 20 C.F.R. § 10.321(b); *see also Darlene R. Kennedy*, 57 ECAB 414 (2006).

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>8</sup> The case will be remanded for an impartial medical examiner to resolve the conflict in medical opinion. On remand, OWCP should refer appellant and a statement of accepted facts to an appropriate physician to examine her and evaluate the evidence pursuant to section 8123(a) of FECA. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 1, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> *Id.* at § 8123(a); *see also Charles S. Hamilton*, 52 ECAB 110 (2000).