

FACTUAL HISTORY

On April 3, 2013 appellant, a 50-year-old mail classification clerk, sustained a traumatic injury in the performance of duty when she walked into a room that had been sprayed for bed bugs the night before and had an asthmatic reaction. OWCP accepted appellant's claim for aggravation of obstructive chronic bronchitis. Appellant received compensation for wage loss on the periodic rolls beginning August 9, 2014.

Dr. Ralph F. Huller, Jr., Board-certified in pulmonary disease and an OWCP referral physician, evaluated appellant on October 9, 2014. He reviewed OWCP's statement of accepted facts and appellant's medical record. Dr. Huller noted that appellant was first diagnosed with asthma in 2000. In 2005 appellant had a severe exacerbation that required a 28-day hospitalization. From 2005 to 2012, she had three or four exacerbations of her asthma each year that required either outpatient therapy with pulse steroid doses or, on several occasions, hospital admission. Appellant was hospitalized in 2012, which was noted to be triggered by stress over her son's death. From 2012 to 2013, she had fewer instances of asthma episodes since it was diagnosed in 2000.

Dr. Huller reviewed appellant's history of injury in April 2013. He advised that her physical examination on October 9, 2014 was entirely normal. Dr. Huller added that appellant now felt her strength, endurance, and ventilator status had returned to her prior baseline. Appellant was reluctant, however, to attempt a return to work, to an environment that she considered threatening and a high risk which could result in a recurrence.

Responding to questions posed by OWCP, Dr. Huller advised that appellant was currently suffering from chronic persistent asthma of moderate severity with fair control unrelated to work. He noted that the asthma had been present since 2000 and had fluctuations in activity and severity during this interval. Dr. Huller also noted that appellant was suffering from reactive airways dysfunction due to the probable chemical exposure that occurred at work in April 2013; however, there were no current objective findings to support any residuals of the accepted aggravation of obstructive chronic bronchitis (reactive airways dysfunction). Appellant admitted that she had returned to her prior level of activity and disease state. He noted that there were no objective findings of a continued active presence of the condition. Dr. Huller therefore opined: "The only way I know to see if it is still operative would be to reexpose her to that irritant that triggered the condition."

It was Dr. Huller's opinion that appellant's condition had returned to its preinjury status and that the accepted aggravation had ceased, though her sensitivity to the implicated irritant might be permanent. Other irritants continued to trigger appellant's asthma, including exercise, extremes of temperature, extremes of dust, chemical fumes, and odors. These nonspecific irritants predated her pesticide exposure and would certainly continue.

On the issue of injury-related disability, Dr. Huller did not feel there were any residuals of the work-related aggravation that would preclude her from performing her job. His only concern was the risk of reexposure to the chemical irritant that triggered her initial reaction.

OWCP provided a copy of Dr. Huller's report to Dr. Christopher E. Hayner, the attending Board-certified specialist in pulmonary disease, and asked whether he concurred. However, Dr. Hayner's prior treatment note had indicated that appellant's asthma remained under decent control with no new symptoms and her symptoms waxed and waned. He noted that she was able to stay off steroids and complete activities of daily living without significant limitation.

In December 2014 Dr. Hayner noted findings consistent with his prior evaluation and reported that appellant denied disability. In February 2015 he noted that appellant was very stable and that she was contemplating going back to work if the employing establishment could get her into an environment that was less likely to exacerbate her asthma.

On March 20, 2015 OWCP notified appellant that it proposed to terminate her wage-loss compensation and medical benefits as her disability had ceased. It found that the weight of the medical evidence, represented by the opinion of Dr. Huller, established that she no longer had any residuals or continuing disability for work stemming from the April 2013 exposure.

In response to the proposed termination of benefits, appellant submitted several brief notes from Dr. Hayner from February and April 2015. The notes advised that appellant could return to full duty on March 9, 2015, but that: "Patient needs to be placed in another building with less exposure to chemicals." Another note documented: "[Appellant] is trying to return back to work into another building, but there is [a] procedure that she has to go through [with] management, before she is able to return."

In a decision dated April 27, 2015, OWCP finalized the termination of wage-loss compensation and medical benefits.

On June 1, 2015 appellant requested a hearing before an OWCP hearing representative. On June 25, 2015 OWCP denied appellant's hearing request as untimely and explained that she could address the issue in her case equally well by requesting reconsideration from OWCP.

On appeal, appellant argues that she lost significant income in April, May, and June 2015 while waiting for her manager to arrange her return to work.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵

³ 5 U.S.C. § 8102(a).

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for 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 that the employment factors might have on the underlying condition. Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.⁶

ANALYSIS

Appellant suffered from an underlying asthma condition since she was first diagnosed in 2000. As Dr. Huller, the second opinion pulmonary disease specialist, explained that she had a severe exacerbation in 2005, followed by three or four exacerbations each year thereafter until 2012.

On April 3, 2013 appellant suffered an exacerbation of her underlying condition when she walked into a room at work that had been sprayed the night before with a pesticide. Accepting that this single exposure caused an aggravation, OWCP paid compensation for the disability resulting from that exposure.

Dr. Hayner, the attending specialist in pulmonary disease, saw appellant in September 2014 and noted that appellant's asthma remained under decent control with no new symptoms. Her symptoms waxed and waned, but for the most part she was able to stay off steroids and complete activities of daily living without much limitation.

Dr. Huller examined appellant one month later and found that her physical examination was entirely normal. Indeed, appellant advised that her strength, endurance, and ventilator status had returned to her prior baseline. Dr. Huller could find no current objective findings to support any residuals of the accepted aggravation from April 2013. He concluded that appellant's sensitivity had returned to its preinjury status and that the accepted aggravation had ceased.

Dr. Hayner saw appellant in December 2014 and again found that her asthma remained under decent control with no new symptoms. Further, Dr. Hayner noted that appellant denied disability. In February 2015 he added that appellant was very stable.

The Board finds that the weight of the medical opinion evidence rests with Dr. Huller, who directly addressed the issue of injury-related residuals. OWCP provided him with a statement of accepted facts and appellant's medical record so he could base his opinion on a proper factual and medical history. Dr. Huller's findings appear consistent with those of Dr. Hayner as well as appellant's own assessment of her status. Moreover, his conclusion is sound, logical, and rational. Appellant had an underlying asthma condition that was aggravated by a work exposure on April 3, 2013. This caused disability for work, but after a period of time away from the irritant in question, appellant returned to her preinjury or preexposure baseline.

⁶ *Gaeten F. Valenza*, 39 ECAB 1349 (1988).

Accordingly, appellant is not entitled to compensation after the April 2013 aggravation of her underlying condition ceased.

The Board finds that OWCP met its burden to terminate appellant's wage-loss compensation and medical benefits for the April 3, 2013 aggravation. The Board will affirm OWCP's April 27, 2015 decision.

Appellant argues that she should receive further compensation for her wage loss in April, May, and June 2015, when her manager was attempting to arrange her return to work. However, the record establishes that her wage loss for this period was not the result of any disability attributable to the April 3, 2013 exposure. That aggravation had resolved. Rather, it appears that she was not able to return to work promptly after the termination of her compensation because of the effect employment factors might have on her underlying condition. The manager had to find out when rooms would be sprayed and when appellant could return to her work environment.

Appellant told Dr. Huller that she was reluctant to attempt a return to work because she considered the environment threatening and a high risk to result in recurrence disease. The Board has held, however, that fear of future injury, or fear of a recurrence of disability if the employee returns to work, is not compensable. There must be medical evidence showing that a claimant is currently disabled for work due to an employment-related condition.⁷

Dr. Hayner also noted that appellant was contemplating going back to work if the employing establishment could get her into an environment that was less likely to exacerbate her asthma, but again, this was out of concern for the effect that the work environment might have on appellant's underlying condition. The wage loss in April, May, and June was not the result of a continuing aggravation from the April 3, 2013 exposure. In the case of *Gaeten F. Valenza*,⁸ the medical evidence indicated that the claimant would again have asthma attacks if he returned to an environment involving exposure to tobacco smoke. The Board observed, however, that the proscription against returning to such an environment was based on the effect the exposure might have on the underlying condition, and the possibility of future injury did not constitute an injury under FECA. Accordingly, no compensation could be paid for such possibility.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for the April 3, 2013 aggravation of her obstructive chronic bronchitis.

⁷ *William A. Kandel*, 43 ECAB 1011 (1992); *Mary A. Geary*, 43 ECAB 300 (1991).

⁸ *Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board