



## **FACTUAL HISTORY**

On November 1, 1994 appellant filed a traumatic injury claim (Form CA-1) alleging that on October 28, 1994 she was exposed to toner that had been spilled.<sup>2</sup> Appellant stopped work on December 20, 1994 due to a reduction-in-force.<sup>3</sup>

OWCP accepted the claim on December 13, 1994 for iritis. After additional development of the medical evidence, OWCP accepted the claim on July 15, 1996 for asthma with rhinitis as a result of exposure to copier toner. The record indicates that appellant received compensation benefits on the periodic roll as of June 16, 2002.

Through the years appellant continued to receive treatment by Dr. Robert P. Rabinowitz, an osteopathic physician. In a report dated October 28, 2002 he related that appellant had been seen in his office for a number of years for a prior history of occupational asthma secondary to photocopy toner exposure. He noted that appellant was last seen on September 19, 2002 and had not had any significant asthma symptoms in some time. He noted appellant's diagnoses as asthma, mild intermittent, presently well controlled; allergic rhinitis; history of occupationally-induced asthma secondary to copier toner; and reflex sympathetic dystrophy (RSD). Dr. Rabinowitz related that appellant had significant limitations in activity and ability to work due to her RSD. He also noted that it would be difficult for appellant to find a job that did not expose her to copier toner.

To determine the status of appellant's accepted conditions, she was referred for a second opinion examination by Dr. Brian Kerr, a Board-certified internist with a specialty in pulmonary disease. In a report dated January 16, 2003, Dr. Kerr reported that appellant's asthma, rhinitis, and asthmatic bronchitis may not totally be resolved, as appellant may have episodic symptoms based on exposures to nonspecific irritants. He noted that pulmonary function testing was normal.

OWCP referred appellant for another second opinion examination in 2006 by Dr. Jung-San Shen, a Board-certified internist with a subspecialty in pulmonary disease. In a report dated August 29, 2006, Dr. Shen opined that appellant most likely had chronic bronchitis, rather than bronchial asthma. He noted that pulmonary function tests (PFTs) were normal except for a mild diffusion abnormality, and he did not feel there was a significant functional disability from the employment incident. Dr. Shen indicated that appellant had other medical problems, such as RSD, that were causing more problems than her pulmonary condition. Appellant continued to receive compensation for wage loss.

Appellant's treating physician, Dr. Rabinowitz, periodically submitted reports with respect to appellant's pulmonary condition. In a report dated December 18, 2012,

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<sup>2</sup> The record indicates that appellant initially filed a claim for an injury on March 4, 1994. Appellant, then a 29-year-old copier equipment operator, alleged she inhaled smoke and fumes from a copy machine. The claim was accepted for an episode of asthmatic bronchitis, bilateral conjunctivitis, allergic rhinitis, sinusitis, and pharyngitis.

<sup>3</sup> The Board notes that paper documents submitted to the record prior to 2002 were converted to scanned imaging documents. However the record remains unclear as to periods that appellant did not work and received compensation benefits.

Dr. Rabinowitz reported that appellant was doing well with her asthma but had mild dyspnea on exertion. By report dated December 10, 2013, Dr. Rabinowitz reported that appellant's asthma was well controlled, and that she rarely if ever needed to use an inhaler. He indicated that appellant should not be exposed to photocopier toner. Dr. Rabinowitz noted that appellant was limited by her RSD symptoms, but this was not his area of expertise.

OWCP referred appellant for a second opinion pulmonary examination by Dr. Monroe Karetzky, a Board-certified internist with a subspecialty in pulmonary disease. In a report dated October 29, 2014, Dr. Karetzky provided a history, noting the two specific employment incidents in 1994, and indicated that he had reviewed medical records. He noted that chest x-rays were normal, all PFTs performed have demonstrated normal expiratory flow rates and FEV<sub>1</sub>/FVC (forced expiratory volume after one second/forced vital capacity) ratios without a response to bronchodilators when administered, a negative methacholine provocation test and clear lungs on examination. Dr. Karetzky provided results on examination and reported the PFT results were normal. He concluded, "there is an apparent lack of objective findings of respiratory impairment on physical examination, chest x-ray or Pulmonary Function Testing. I therefore conclude with a reasonable degree of medical probability that [appellant] has no lung disease and no demonstrable objective evidence to support a pulmonary disability." Dr. Karetzky indicated that appellant's regimen of nebulizers and inhalers was excessive and unnecessary, and she required only a metered dose of inhaler periodically as needed without further pulmonary referral. He concluded that there was no evidence of airway obstruction.

In addition, OWCP referred appellant for a second opinion examination from a Board-certified ophthalmologist, Dr. Bruce Berg. In a report dated January 14, 2015, Dr. Berg provided a history and results on examination. He reported a normal eye examination with no evidence of permanent damage to the eyes or visual system.

By letter dated March 30, 2015, OWCP advised appellant that it proposed to terminate compensation for wage-loss and medical benefits, based on the weight of the medical evidence. It indicated that the case would be held open for 30 days to provide appellant and opportunity to present additional evidence or argument.

Appellant submitted an April 23, 2015 report from Dr. Rabinowitz which indicated that appellant's asthma was stable as long as she was not exposed to photocopy toner or extreme temperatures. He asserted any of these individual triggers could induce symptoms. Dr. Rabinowitz wrote that appellant "still maintains that her asthma is exacerbated by exposure to significant amounts of photocopier toner," and concluded that appellant would not be able to return to work as a printer clerk due to the risk of exposure to toner.

By decision dated May 12, 2015, OWCP terminated compensation for wage-loss and medical benefits. It found the weight of the medical evidence was represented by the second opinion physicians, Drs. Karetzky and Berg.

Appellant, through counsel, requested a hearing before an OWCP hearing representative on May 20, 2015. A hearing was held on September 11, 2015. Counsel argued that appellant's condition prevented her from returning to work and Dr. Karetzky acknowledged appellant required an inhaler.

By decision dated December 1, 2015, the hearing representative affirmed the March 30, 2015 OWCP decision. The hearing representative found the weight of the medical evidence was represented by the second opinion physicians and therefore OWCP had met its burden of proof to terminate compensation.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was 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 to compensation for disability. 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>5</sup>

### **ANALYSIS**

In the present case, OWCP accepted that appellant sustained asthma with rhinitis, and iritis, as a result of exposure to photocopier toner on October 28, 1994. Appellant received compensation for wage-loss and medical benefits following her work stoppage on December 20, 1994. OWCP terminated compensation for both wage-loss and medical benefits on May 12, 2015.

The Board finds that the weight of the medical evidence in this case is represented by the second opinion physicians Drs. Karetzky and Berg. With respect to the asthma condition, Dr. Karetzky provided a detailed October 29, 2014 report. After reviewing the history and results on examination, he clearly and unequivocally found that appellant did not have a continuing asthma or other respiratory condition. Dr. Karetzky discussed the results of diagnostic tests, finding the diagnosis of asthma was not currently established based on physical examination, chest x-ray and pulmonary function test results. He found no evidence of airway obstruction or objective findings of respiratory impairment, and noted there were no recommendations for continuing treatment. The Board finds Dr. Karetzky provided a rationalized medical opinion that appellant did not have a continuing employment-related respiratory condition.

With respect to an eye condition, Dr. Berg provided a complete report that indicated there was no continuing employment-related iritis. Dr. Berg found the eye examination was normal and based on his examination opined there was no continuing employment-related iritis.

Appellant submitted an April 23, 2015 report from Dr. Rabinowitz that refers to appellant having asthma that was stable. He does not indicate what current evidence he relied on to establish the diagnosis of asthma. Dr. Rabinowitz then indicates that exposure to photocopier

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<sup>4</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

toner or extreme temperatures could trigger symptoms. The only explanation provided is that appellant maintained her asthma was exacerbated by exposure to significant amounts of photocopier toner. Dr. Rabinowitz does not explain why he believes exposure would trigger symptoms. The Board also notes that the possibility of a future aggravation is not a basis for compensation.<sup>6</sup> When an aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased. Only if the employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the claimant may be entitled to continuing compensation.<sup>7</sup> Dr. Rabinowitz does not provide a reasoned opinion that the exposure to toner in federal employment had caused a permanent condition.

The Board accordingly finds that OWCP met its burden of proof to terminate compensation in this case. The weight of the medical evidence is represented by the second opinion physicians, Dr. Karetzky and Dr. Berg.

On appeal, appellant's counsel argues that the report from Dr. Karetzky was not sufficient to resolve the issue. He argues that Dr. Karetzky acknowledged that appellant required use of an inhaler at times. The use of an inhaler does not establish a diagnosis of a continuing employment-related respiratory condition. And as noted above, the possibility of a future aggravation on return to work is not itself a basis for compensation. Counsel also argues the medical evidence is sufficient to establish a conflict under 5 U.S.C. § 8123(a). It is well established that a conflict arises when there are opposing medical reports of virtually equal weight and rationale.<sup>8</sup> For the reasons discussed, the medical reports are not of virtually equal weight, and the second opinion physicians represent the weight of the evidence.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### CONCLUSION

The Board finds OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits effective May 12, 2015.

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<sup>6</sup> See *D.M.*, Docket No. 11-0386 (issued February 2, 2012); *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

<sup>7</sup> *James C. Ross*, 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980).

<sup>8</sup> *William C. Bush*, 40 ECAB 1064 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 1, 2015 is affirmed.

Issued: July 14, 2016  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board