United States Department of Labor
Employees' Compensation Appeals Board

N.W., Appellant	)	
and	)	**Docket No. 16-1890**
	)	**Issued: June 5, 2017**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Jacksonville, FL, Employer	)	

Appearances:
Paul H. Felser, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 27, 2016 appellant, through counsel, filed a timely appeal from a June 3, 2016 merit decision[2] of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] Counsel did not appeal the September 15, 2016 decision of OWCP and, therefore, the Board will not review that OWCP decision. 20 C.F.R. § 501.3.

[3] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 19, 2015 due to his accepted conditions of toxic effect of other hydrocarbon gas and central sensitization syndrome; and (2) whether appellant met his burden of proof to establish continuing disability or residuals on or after March 19, 2015 due to his accepted conditions.

On appeal counsel contends that the factual and medical evidence was not fully considered by OWCP. He further contends that the statement of accepted facts (SOAF) was deficient and his report is of diminished probative value.

FACTUAL HISTORY

On March 13, 2007 appellant, then a 43-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that he developed symptoms of disorientation, watering eyes, running nose, burning throat, dizziness, nausea, and headache after exposure to fumes from a roofing repair at the employing establishment on March 8, 2007. OWCP accepted his claim on May 23, 2007 for toxic effect of other hydrocarbon gas.

On March 3, 2009 appellant underwent a neurotoxicological evaluation by Dr. Josef G. Thundiyil, a physician Board-certified in emergency medicine, medical toxicology, and occupational medicine. This testing found that appellant was exposed to volatile organic compounds, solvents, hydrocarbons, isocyanates, petroleum distillates, polyurethane polymer, asphalt, toluene, benzoic acid, phenol, Stoddard solvent, butyl benzyl phthalate, methylene bis phenylisocynate, diphenylmethane disocyanate, polycyclic aromatic hydrocarbons, aluminum, trimethylbenzene, xylene, nonane, naphthalene, ethylbenzene, and n-propylbenzene. Dr. Thundiyil noted that appellant's work exposure occurred over an approximately two-week period of time spent in an enclosed building with poor ventilation. He found that there had been no credible environmental air sampling done during the period of highest exposure. Dr. Thundiyil correlated appellant's chemical exposures to his symptoms noting that pulmonary sequelae of bronchospasm, asthma, and reactive airway disease (RAD) were consistent with exposure to isocyanates. He also determined that development of cognitive changes, neuropathy, and memory loss were consistent with exposure to solvents, hydrocarbons, and to a lesser extent isocyanates.

Appellant returned to work on April 1, 2010 performing special projects for the employing establishment as he was medically disqualified for his date-of-injury position.

In a May 29, 2012 note, appellant's attending physician, Dr. Terry W. Kuhlwein, a Board-certified family practitioner, noted appellant's history of chemical fume exposure at work and diagnosed RAD status post hydrocarbon exposure, stable; paresthesias of uncertain etiology; and fatigue. He provided work restrictions including avoiding hydrocarbon fume exposure and excessive stress. Dr. Kuhlwein indicated that he was uncertain if appellant could "handle the added stress of the air traffic controller." He recommended an updated neuropsychiatric evaluation before appellant's return to his date-of-injury position.

Dr. Kuhlwein completed a note on March 12, 2013 and indicated that appellant had right shoulder arthroscopic rotator cuff repair on November 17, 2012 which was not work related. Appellant's breathing was normal with no dyspnea or wheezing. Dr. Kuhlwein noted that appellant worked 40 hours a week as a quality insurance agent/instructor. He diagnosed RAD, status post hydrocarbon exposure, stable; paresthesias, well controlled on medication; and chronic fatigue/fibromyalgia-like symptoms improved on medication. Appellant expressed interest in reducing medication dosages. Dr. Kuhlwein provided no work restrictions, but noted that appellant was aware that it was wise to avoid hydrocarbon fume exposure.

On July 9, 2013 OWCP expanded appellant's claim to include the additional condition of central sensitization syndrome as well as toxic effect of other hydrocarbon gas.

In a note dated October 24, 2013, Dr. Kuhlwein reported that appellant was experiencing "a flare-up of polyarthralgias." He noted that appellant had a long history of periodic flares of polyarthralgias since his toxic exposure at work. Appellant reported extreme fatigue, severe headaches, a rash, increased blurriness of his vision, and increased difficulty breathing. Dr. Kuhlwein again diagnosed chronic effects from toxic exposure, central sensitization syndrome, paresthesias, chronic intermittent fatigue, and RAD after hydrocarbon exposure. He also diagnosed elevated C-reactive protein and polyarthralgias of an uncertain etiology. Dr. Kuhlwein suggested that this could have an auto-immune etiology or could be related to appellant's toxic exposure. He repeated these findings on March 10, 2014.

On November 7, 2013 Dr. Jorge M. Pascual, a Board-certified pulmonologist, noted appellant's history of hyperactive airway disease following chemical exposure and reported that about one month prior to examination appellant developed increased wheezing and cough with clear mucus. Appellant utilized medication with a return to baseline. Dr. Pascual found that appellant's pulmonary function tests were within normal limits and stable.

Dr. Benjamin Wang, a Board-certified rheumatologist, examined appellant on February 18, 2014 and diagnosed central sensitization syndrome with fibromyalgia features and possible inflammatory disease.

Dr. Kuhlwein noted that appellant's symptoms of fibromyalgia and depression had worsened on April 7, 2014. He reported that appellant was upset as he was medically disqualified as an air traffic controller. Appellant's supervisor informed him that his employment may be terminated.

In an April 15, 2014 memorandum, the employing establishment's flight surgeon, Dr. Susan E. Northrup, Board-certified in occupational and aerospace medicine, determined that appellant was medically disqualified for air traffic control duties. She determined that appellant's symptoms of recurrent headaches, intermittent dizziness, neuralgia, myalgia, arthralgia, and fatigue and his diagnoses of central sensitization syndrome and fibromyalgia were treated with restricted medications for performing the duties of his date-of-injury position.

On April 30, 2014 Dr. Kuhlwein reported that appellant had increased symptoms of fibromyalgia and chronic pain. He opined that stress from his decertification as an air traffic controller with a resulting potential for him to be terminated was increasing his anxiety level and aggravating his fibromyalgia and chronic pain syndromes. Dr. Kuhlwein found that appellant

was totally disabled. He continued to support appellant's total disability from May 9 through 15, 2014 due to an acute severe flare of symptoms from his work-related condition. In a May 9, 2014 treatment note, Dr. Kuhlwein reported that appellant's symptoms had improved since April 30, 2014 as he was not working. He opined, "The stress with his decertification from the [employing establishment] with a resulting potential for him to be terminated is increasing his anxiety level and aggravating his fibromyalgia and chronic pain syndrome symptoms." Dr. Kuhlwein recommended that appellant remain off work while his medications were titrated. Dr. James M. Lance, an osteopath, completed a work status report on May 14, 2014 and opined that appellant was totally disabled due to a temporary flare-up of his work-related conditions from May 14 through June 14, 2014.

Dr. Kuhlwein completed a note on May 30, 2014 and reviewed appellant's medications. He opined that stress contributed to appellant's increased fibromyalgia symptoms. Dr. Kuhlwein diagnosed fibromyalgia, acute flare, central sensitization syndrome, paresthesias, and major depression. He found appellant totally disabled for a month.

Dr. Wang completed a report on May 30, 2014 and indicated that appellant experienced a high level of work-related stress which worsened his symptoms. He diagnosed central sensitization syndrome with fibromyalgia manifestations, and depression. Dr. Wang opined, "I believe that the patient's work environment was crucial in initiating and perpetuating his central sensitization syndrome with a chemical exposure likely being an inciting factor, followed by repeated work-related stress, which served to perpetuate his condition."

Appellant claimed wage-loss compensation (Form CA-7) from May 1 to 16, 2014. In a letter dated June 9, 2014, OWCP requested additional factual and medical evidence in support of appellant's claim for recurrence of total disability on May 1, 2014.

By decision dated July 14, 2014, OWCP denied appellant's claim for a recurrence of disability finding that the medical evidence did not establish a spontaneous change in the nature and extent of his accepted injury-related conditions. Appellant requested reconsideration of this decision on August 18, 2014. He submitted a July 25, 2014 report from Dr. Kuhlwein supporting that his ongoing conditions and disability were due to his accepted employment injuries.

By claim (Form CA-2a), appellant requested that the accepted conditions be expanded to include an emotional condition.

In a September 12, 2014 report, Dr. Kuhlwein listed the objective findings consistent with toxic exposures at work including intermittent hematuria, intermittent renal insufficiency, intermittent highly elevated C-reaction protein, and audible wheezing. He opined that appellant's exposure to hydrocarbon gas had not resolved and that he needed ongoing evaluation and treatment. Dr. Kuhlwein opined that central sensitization was an amplification of neural signaling within the central nervous system that elicits pain hypersensitivity and that appellant met the criteria of this condition. He concluded that, based on appellant's clinical history, his symptoms were consistent with the compounds of exposure on March 8, 2007. Dr. Kuhlwein listed those symptoms as extreme fatigue, lethargy, numbness in hands and feet, abnormal vibrating sensations in thighs, forearms, hips, genitals, and stomach, as well as shortness of breath, breathing spasms, coughing, choking, and extreme congestion in his upper airways and

throat. He also noted that appellant experienced joint pains, headaches, blurry vision, low back pain, nausea, irritability, temperature sensitivity, noise sensitivity, as well as feelings of dread and hopelessness, worry and anger. Dr. Kuhlwein opined that he had increased symptoms in the summer which necessitated stopping work. He further noted that appellant was diagnosed with post-traumatic stress disorder (PTSD) and that stress could increase many of his symptoms. Dr. Kuhlwein concluded that appellant's current symptoms were "a flare of previous symptoms that are sequelae from his work-related exposure to hydrocarbons and other products."

By decision dated September 30, 2014, OWCP denied modification of the July 14, 2014 recurrence decision and found that Dr. Kuhlwein's report did not sufficiently explain the increase in appellant's symptoms which resulted in his claimed recurrence of disability.

On October 9, 2014 OWCP referred appellant and a SOAF, for a second opinion evaluation with Dr. Lance I. Chodosh, Board-certified in occupational medicine. The August 6, 2014 SOAF indicated that appellant attributed his condition to "fumes from roofing repair" that had been in the building for days. The SOAF listed appellant's accepted conditions, his work duties, and physical requirements of the position. The SOAF indicated that appellant stopped work on November 27, 2009, returned to limited-duty work on April 1, 2010, and stopped work again on May 1, 2014.

In an October 23, 2014 report, Dr. Chodosh reviewed appellant's history of injury as "a brief, but intense exposure" to hydrocarbon gas, isocyanate gas, and other gases. He noted that appellant's current symptoms were somewhat diffuse and nonspecific. Dr. Chodosh reported that he was not provided with test results, and noted "it is safe to assume the extensive testing has been done and that it has been essentially normal." He found no current, relevant objective findings on physical examination and noted that fibromyalgia and central sensitization syndrome were diagnoses of exclusion. Dr. Chodosh opined that the diagnosis of toxic effect of other hydrocarbon gas was a generic category and that he was unable to accept the diagnosis. He found that appellant was highly symptomatic, but without objective signs of illness or disease, and opined that the accepted condition of toxic effect of other hydrocarbon gas never existed. Dr. Chodosh also discounted the accepted diagnosis of central sensitization syndrome opining that this was a theoretical construct and an umbrella term used to explain various chronic pain syndromes including fibromyalgia, myofascial pain syndrome, and chronic fatigue syndrome. He conceded that appellant had symptoms compatible with a diagnosis of central sensitization syndrome, that the condition persisted, and that there were no objective findings based on the nature of the syndrome. Dr. Chodosh further opined, "I am unable to conclude that there was an actual work injury despite the individual's perception that he was injured. There is no evidence presented of actual physical exposure." He concluded that appellant was physically capable of sedentary work for eight hours a day, but that he may have psychological limitations. Dr. Chodosh opined that appellant's treatment for chronic pain syndrome should continue.

Appellant filed a request for reconsideration.

On October 28, 2014 OWCP repeated its denial of modification of appellant's claim for recurrence of disability and included the appropriate appeal rights.

By decision dated October 30, 2014, OWCP denied appellant's emotional condition claim.

In a note dated October 2, 2014, Dr. Kuhlwein continued to support appellant's ongoing symptoms and disability due to his conditions of chronic effects from toxic exposure, RADS status post hydrocarbon exposure, polyarthralgia, fibromyalgia, and central sensitization syndrome. On November 6, 2014 Dr. Pascual noted appellant's hyperreactive airway disease following chemical exposure at work. He reported that appellant continued to use inhaled steroids for periods of increased respiratory symptoms. Dr. Pascual opined that appellant's condition of RAD was permanent and clearly related to the exposure at work. In his November 13, 2014 note, Dr. Kuhlwein repeated his diagnoses and found dermatitis on appellant's forearms. He again opined that appellant's ongoing conditions were directly and causally related to an acute exacerbation of work-related diagnoses.

On November 4, 2014 OWCP advised appellant that there was a conflict in the medical evidence between Drs. Kuhlwein and Chodosh regarding whether he had residuals of his accepted conditions. In a November 24, 2014 decision, it denied appellant's request to participate in the selection of the impartial medical examiner.

In a letter dated December 9, 2014, OWCP referred appellant, a newly dated, but otherwise duplicated SOAF, dated September 10, 2014, and a list of questions for an impartial medical examination with Dr. Stuart M. Brooks, a Board-certified internist also Board-certified in occupational medicine and pulmonology, to resolve the medical conflict regarding whether appellant had residuals of the March 8, 2007 work injury.

On December 9, 2014 Dr. Kuhlwein reported that appellant had requested to return to work on December 10, 2014. He consulted with Dr. Majorie J. McMaster, a Board-certified psychiatrist, and released appellant to return to work four hours a day with a reevaluation after two weeks. Dr. Kuhlwein completed a narrative report on December 23, 2014 and listed his disagreements with Dr. Chodosh. He noted that Dr. Chodosh was not provided and did not review appellant's testing including his medical toxicology evaluation, abnormal pulmonary function tests, and elevated C-reactive protein. Dr. Kuhlwein opined that due to these deficiencies, Dr. Chodosh's report was not based on a complete medical history. In a separate note dated December 23, 2014, Dr. Kuhlwein indicated that appellant could work six hours a day.

On January 8, 2015 OWCP requested a copy of appellant's March 3, 2009 toxicology report from Dr. Thundiyil. Appellant resubmitted this report.

In a February 9, 2015 report, Dr. Brooks reviewed the SOAF and appellant's description of the work injury. He listed appellant's current symptoms of headaches, dizziness, and imbalance, as well as sensitivity to trigger irritants, noise, and light. Dr. Brooks noted his "claimed" exposure to volatile organic compounds, various solvents and hydrocarbons, isocyanates, petroleum distillates, polyurethane polymers, asphalt, toluene, benzoate acid, phenol, Stoddard solvent, butyl benzyl phthalate, methylene phenol isocyanate, diphenylmethane disocyanate, tri-methyl benzene and "presumably other agents/chemicals." He reviewed appellant's medications and his treatment including appellant's denial of any preemployment history of asthma. Dr. Brooks described the accepted employment injury as a '"toxic exposure" and determined that appellant had no current objective examination findings. He described appellant's ongoing symptoms of headaches, noting "Supposedly, [appellant's] last headache occurred in December 2014." He reported appellant's claimed dizziness, imbalance, wavy

vision, and feeling "fuzzy headed." Dr. Brooks noted that appellant claimed persistent and greater sensitivity to various trigger irritant and odorant products. Appellant also reported noise and light sensitivity, irritable bowels, and joint, muscle, and body aches. He reported intermittent finger numbness, vibrating feelings of the muscles in the legs, pain on the bottoms of both feet, chronic fatigue, fibromyalgia, and respiratory complaints as well as rashes, depression, PTSD, and allergies to plants and agents. Dr. Brooks noted, "It is my medical opinion that there are no objective findings substantiating the designation 'toxic effect of other hydrocarbon gas'… as the cause (or aggravation) of [appellant's] current or past symptomatology/complaints." He opined that central sensitization syndrome was not a medically accepted diagnosis and did not offer any definitive criteria. Dr. Brooks noted that this term afforded a theoretical explanation for the development of augmented pain perception. He opined that using central sensitization syndrome to explain appellant's symptoms was "biologically implausible and borders on quackery." Dr. Brooks determined that none of appellant's current symptoms and complaints were related to the 2007 workplace exposure. He reviewed appellant's respiratory symptoms and concluded that it was not mechanistically possible for appellant to have any of the four types of occupational asthma as he did not meet the clinical criteria of allergic-type, acute irritant-induced asthma or RAD, low intensity chronic exposure dysfunction syndrome, or aggravation of preexisting asthma. Dr. Brooks opined that appellant's condition was irritable larynx syndrome with possible psychological complaints which were not triggered, caused or aggravated by work exposures. He found that appellant could work eight hours a day in a sedentary capacity. Dr. Brooks recommended continuing current medical treatment.

In a letter dated February 13, 2015, OWCP proposed to terminate appellant's medical benefits and wage-loss compensation based on Dr. Brooks' report. It afforded him 30 days for a response if he disagreed with the proposed decision.

Appellant responded to OWCP's proposed termination in a March 16, 2015 letter received by OWCP on March 19, 2015. Counsel argued, in his response, that as Dr. Chodosh had not accepted as factual the diagnosed condition found by OWCP his report was not based on a proper factual background and could not create a medical conflict. He contended that the SOAF was insufficient such that Dr. Brooks' opinion was not the weight of the medical evidence.

By decision dated March 19, 2015, OWCP terminated appellant's medical benefits and wage-loss compensation effective March 19, 2015.

OWCP received additional evidence. Appellant also had requested his claim to be expanded to include an emotional condition.[4]

In a March 22, 2007 memorandum of conference, OWCP noted that 33 claims were filed for symptoms associated with exposure to roofing remodeling at the employing establishment from February 28 through March 9, 2007. After contacting the Occupational Safety and Health Administration (OSHA) the employing establishment was no longer challenging these claims.

[4] By decision dated May 12, 2015, an OWCP hearing representative set aside the earlier denial dated October 30, 2014 and remanded the claim for further development.

In a memorandum dated August 13, 2015, the employing establishment described the leakage of an industrial grade contact adhesive from a roofing replacement project into the air traffic services portion of the building. The contaminated areas were the radar room, break room, kitchen, main hallway, and administrative offices. The adhesive actually dripped from the ceiling tiles in the break room onto an employee's clothing as well as furniture. On March 11, 2007 emergency services were called for employees who were overcome by the fumes. The employing establishment began mitigation the next day on March 12, 2007. It noted, "The contamination was so bad that all of the ceiling tiles, carpet, and most of the furniture in these areas had to be replaced." Controllers had to work in the bubble for several weeks until the cleanup was complete. Due to confusion regarding the chemicals and venting of the building there was no way to tell the extent of the chemical exposure. A status report from the employing establishment described the exposure to roofing fumes beginning on February 28, 2007 and ongoing through March 11, 2007 when the offices were relocated.

In an October 31, 2014 report, Dr. Thundiyil opined that appellant had an extensive chemical exposure from March 2 through 16, 2007, and that appellant had objective respiratory findings consistent with RAD and neurologic symptoms "which are most probably directly related to his high dose exposure to these chemicals at work." He found that appellant was totally disabled.

In a report dated May 1, 2015, Dr. Kuhlwein opined that appellant's current condition was due to an acute exacerbation of appellant's previous work-related diagnoses for which he had been under continuous treatment. On June 12, 2015 he repeated his findings and conclusions. Dr. Wang completed a report on July 30, 2015 and noted that appellant was experiencing profound levels of fatigue.

The employing establishment provided a list of the chemicals to which appellant was possibly exposed and the known hazards. This list included Fas N Free Adhesive, D.D. Aluminum LV, and Rock-It Adhesive. Fas N Free Adhesive was noted to cause allergic respiratory sensitization, but was considered a slight health concern. The latter two noted moderate health concerns including moderate irritation to the respiratory system, nausea, headaches, and dizziness as well as drowsiness, weakness, and fatigue.

OWCP developed an additional SOAF including this information on July 21, 2015.

In an August 13, 2015 memorandum, the employing establishment described appellant's 2007 exposure to chemicals after its roofing replacement project leaked an industrial grade contact adhesive into the air traffic services area. The initial spill occurred on February 27, 2007 and was discovered because adhesive dripped from the ceiling tiles in the break room onto an employee's clothing. The fumes continued to worsen and on March 11, 2007 rescue services were called to aid employees who were overcome by fumes. The employing establishment evacuated some employees on March 12, 2007 and appellant's workstation was placed in a plastic bubble with fresh air piped into it. The contamination was such that all of the ceiling tiles, carpet, and most of the furniture had to be replaced in the radar room, controller's break room, kitchen, main hallway, and administrative offices. The air traffic controllers had to work in the bubble for several weeks until cleaning was completed. Initially, the roofers provided the wrong safety information and the employing establishment was unaware of the actual chemicals involved. The building was vented before any air samples were taken and there was no way to

discover the actual extent of exposure. The employing establishment's industrial hygienist informed workers of the possibility of renal and respiratory issues as a result of the exposure to isocyanates and other chemicals.

Following OWCP's remand of May 12, 2015, appellant was referred to a second opinion examination with Dr. Anjali Pathak, Board-certified in adolescent medicine and psychiatry. She provided a report dated august 27, 2015.

Counsel requested reconsideration of the September 30, 2014 recurrence decision on September 30, 2015. He noted that appellant had returned to work on December 10, 2015.

On October 5, 2015 based on the report of Dr. Pathak, OWCP accepted additional conditions of PTSD and major depressive disorder based on a second opinion evaluation on that matter.

Appellant submitted additional medical evidence including an October 22, 2015 report from Dr. Sara Filmalter, a sports medicine specialist. She noted symptoms of body pain, exhaustion, headaches, and rash. Dr. Filmalter diagnosed chronic effects from toxic exposure, RAD after hydrocarbon exposure, polyarthralgia, central sensitization syndrome, paresthesias, chronic fatigue, and intermittent elevated C-reactive protein, PTSD, major depressive disorder, generalized anxiety disorder, and dermatitis. Appellant had fibromyalgia treatment with Barbara K. Bruce, a licensed psychologist on September 23 and 24, 2015.

Dr. Kuhlwein completed a report on December 18, 2015. He noted appellant's accepted conditions and indicated that appellant's symptoms had been stable since April 2014. On April 30, 2014 appellant's symptoms of daily headaches, painful muscle knots in his back, extreme fatigue, and excessive sleepiness became so severe that he was totally disabled. Dr. Kuhlwein concluded, "His absence from work during the period May 1 through December 9, 2014 was medically necessary and caused by sequelae resulting from his on-the-job injury. This episode was an acute exacerbation (temporary worsening) of his previous work-related conditions."

In a decision dated January 20, 2016, OWCP modified the September 30, 2014 decision to reflect that appellant had established a recurrence of disability and authorized compensation benefits from the period May 1 through December 9, 2014.

Dr. Kuhlwein completed a note on February 23, 2016 and continued to support that appellant had symptoms of all-over body pain and fatigue. He repeated his diagnoses of chronic effects from toxic exposure, polyarthralgia, fibromyalgia, central sensitization syndrome, paresthesias, chronic intermittent fatigue, intermittent elevated C-reactive protein, major depressive disorder, PTSD, generalized anxiety disorder, and dermatitis.

Counsel requested reconsideration of the March 19, 2015 termination decision on March 18, 2016. He argued that, as OWCP's hearing representative had found the SOAF inadequate to address appellant's emotional conditions claims, (in the May 12, 2015 decision) the reports from Dr. Chodosh and Dr. Brooks could not be considered to have been based on a

proper factual background.[5] He contended that the SOAF provided these OWCP physicians did not include a comprehensive list of appellant's specific chemical exposures, medical treatment, and diagnostic tests. Counsel cited OWCP's procedures regarding SOAF.

Dr. Kuhlwein completed notes on May 6 and 27, 2016 as well as June 1, 2016 repeating his diagnoses. Dr. Pascual examined appellant on May 6, 2016 and diagnosed hyperreactive airways disease following chemical exposure. Dr. McMaster examined appellant on May 9 and 17, 2016 and continued to diagnose PTSD and major depressive disorder, partially treated.

In a June 3, 2016 decision, OWCP denied modification of the March 19, 2015 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[6] 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.[7] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[8] 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.[9]

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is 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 and resolve the conflict of medical evidence.[10] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[11]

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.[12] OWCP procedures dictate that when an OWCP medical

[5] Counsel referenced a May 12, 2015 hearing representative's decision with regard to the emotional condition aspect of the present claim wherein she had directed OWCP to further develop the factual and medical evidence.

[6] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[7] *Id.*

[8] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[9] *Id.*

[10] 5 U.S.C. § 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

[11] *R.C.*, 58 ECAB 238 (2006).

[12] *K.V.*, Docket No. 15-0960 (issued March 9, 2016); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[13]

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 18, 2015 due to his accepted conditions of toxic effect of other hydrocarbon gas and central sensitization syndrome.

OWCP accepted appellant's claim for the physical conditions of toxic effect of other hydrocarbon gas and central sensitization syndrome. In its termination decision, it determined that the special weight of the medical evidence rested with Dr. Brooks, designated as the impartial medical specialist. The Board finds that Dr. Brooks was not properly designated as the impartial medical specialist and that his report is of little probative weight.

Appellant's attending physicians supported his ongoing disability and medical residuals due to his accepted conditions. OWCP referred appellant for a second opinion with Dr. Chodosh, to address ongoing disability and medical residuals. The Board finds that Dr. Chodosh's opinion was based on a deficient SOAF. To assure that the report of a medical specialist is based upon a proper factual background, OWCP provides information through the preparation of the SOAF.[14] OWCP's procedures require that the SOAF include appellant's diagnostic tests and a specific description of the exposure factors,[15] such as the period and length of exposure, and the concentration of noxious substances in the air.[16] The Board notes that the August 6, 2014 SOAF did not describe appellant's employment exposures in any detail. The SOAF also failed to include neurotoxicological testing by Dr. Thundiyil. Due to these deficiencies, Dr. Chodosh reported that he was not provided with test results, and noted "it is safe to assume the extensive testing has been done and that it has been essentially normal." He further opined, "I am unable to conclude that there was an actual work injury despite the individual's perception that he was injured. There is no evidence presented of actual physical exposure." His report, therefore, was not based on a proper history or background. The Board has found that when an OWCP referral physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, the probative value of the opinion is seriously diminished or negated altogether.[17] As Dr. Chodosh's report was based on an inadequate SOAF, his report lacks the probative value to create a conflict with the reports of appellant's attending physicians. Since there was no existing conflict of medical opinion evidence at the time of the referral to

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (September 1995); *see L.J.*, Docket No. 14-1682 (issued December 11, 2015).

[14] *N.G.*, Docket No. 15-0567 (issued April 27, 2015).

[15] *Id.*

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.4(a)(4) (September 2009).

[17] *Supra* note 12.

Dr. Brooks, he cannot be properly designated as an impartial medical examiner and his report is not entitled to special weight.[18]

As there is no medical evidence based on a complete and accurate SOAF establishing that appellant's disability and medical residuals due to his accepted conditions of toxic effect of other hydrocarbon gas and central sensitization syndrome had ended, OWCP failed to meet its burden of proof to terminate appellant's wage-loss and medical benefits effective March 19, 2015.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 19, 2015 due to his accepted conditions of toxic effect of other hydrocarbon gas and central sensitization syndrome.

ORDER

IT IS HEREBY ORDERED THAT June 3, 2016 decision of the Office of Workers' Compensation Programs is reversed.[19]

Issued: June 5, 2017
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

[18] *D.J.*, Docket No. 06-0792 (issued November 6, 2006); *Cleopatra McDougal-Saddler*, 47 ECAB 480, 489 (1996).

[19] In light of the disposition of the first issue, the second issue is moot.