

On appeal appellant contends that she is unable to return to work due to continuing employment-related residuals and disability.

FACTUAL HISTORY

On September 26, 1995 appellant, then a 36-year-old respiratory therapist, filed an occupational disease claim (Form CA-2) alleging that she sustained contact dermatitis of which she first became aware on July 5, 1993. She stopped work on September 19, 1995 and returned to restricted duty on September 29, 1995.

On December 1, 1995 OWCP accepted the claim for contact dermatitis in both hands and paid compensation benefits for intermittent periods of disability.

Appellant was assigned a rehabilitation nurse, who facilitated her enrollment in a training program to become a paralegal. She withdrew from the program and did not reenroll within the time allotted.

In a February 14, 2001 decision, OWCP found that appellant had failed, without good cause, to undergo vocational rehabilitation as directed and reduced her wage-loss compensation benefits. It found that, if she had participated in good faith in vocational rehabilitation, she would have been able to perform the constructed paralegal position, Department of Labor, *Dictionary of Occupational Titles* #119.267-026. The reduction of compensation was effective February 25, 2001. This decision was affirmed on February 1, 2002 by an OWCP hearing representative. Thereafter, appellant advised OWCP in writing of her willingness to comply with rehabilitation. Her benefits were reinstated beginning March 6, 2002.

In a May 14, 2004 decision, OWCP again found that appellant had failed, without good cause, to undergo vocational rehabilitation as directed and reduced her wage-loss compensation benefits. It found that, had she participated in good faith in vocational rehabilitation, she would have been able to perform the constructed paralegal position.²

Thereafter, appellant continued to receive wage-loss compensation based on her ability to perform the constructed paralegal position. The medical record was essentially dormant until a July 14, 2009 report from Dr. Robert J. Kaplan, a Board-certified dermatologist and an OWCP referral physician. Dr. Kaplan advised that appellant's hands were under good control with no erythema present. Appellant had some areas of post-inflammatory hyperpigmentation on the dorsal area of her fingers. Dr. Kaplan advised that appellant had very mild dermatitis of her hands secondary to her work-related condition. He opined that she could not perform her date-of-injury position due to possible latex exposure. Dr. Kaplan recommended avoiding irritating chemicals and extreme temperature changes.

Appellant was next seen by Dr. James E. Turner, a Board-certified dermatologist and an OWCP referral physician on June 27, 2012. He noted findings of low-grade, minimally dry hyperpigmentation of the dorsum of the hands and fingers. Dr. Turner advised that appellant's

² The record indicates that appellant had refused to continue to participate in her OWCP-sponsored paralegal training program.

accepted dermatitis condition had mostly resolved and that she could perform her respiratory therapist position while wearing latex-free gloves. He reported that her condition could be treated with cleanser and lotion.

In a June 4, 2015 letter, OWCP requested that appellant submit a medical report from her treating physician regarding her work capacity. Appellant did not respond.

On August 28, 2015 OWCP referred appellant, together with a statement of accepted facts (SOAF),³ the medical record, and a list of questions, to Dr. Turner to determine whether she had any residuals from her accepted condition and to determine if she had continuing disability. The examination was scheduled for September 21, 2015 at 8:15 a.m. On September 23, 2015 OWCP was advised by its medical scheduler that appellant did not keep the scheduled appointment with Dr. Turner.

In a September 25, 2015 notice, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to appear for the examination scheduled for September 21, 2015 with Dr. Turner. In a September 29, 2015 letter, appellant explained why she missed the appointment with Dr. Turner and expressed her intent to report and fully cooperate with any rescheduled examination with the physician.

By letter dated October 2, 2015, OWCP advised appellant that her appointment with Dr. Turner was rescheduled for October 28, 2015 at 10:30 a.m. In an October 28, 2015 medical report, Dr. Turner reviewed the SOAF and medical record. He noted appellant's complaint of dermatitis in both hands, right hand worse than left hand. Appellant also complained about pain running from the tips of her fingers down into her palms and wrists. At times, she had blisters on the dorsum of her fingers. Dr. Turner reported that he conducted a thorough examination and found that she was oriented to time, place, and person and her mood and affect demonstrated no abnormalities. Appellant had no signs of anxiety. She had low-grade, dry, lichenified, patchy dermatitis of the dorsum of the fingers. Dr. Turner assessed Lichen Simplex Chronicus which he related was not a whole lot unlike what he saw during his prior examination in August 2012 which dated back to appellant's on-the-job exposure of wearing latex gloves at the employing establishment. He contended that, based on his review of the medical record, examination findings, and further history, she had Lichen Simplex Chronicus. Dr. Turner advised that her condition would be aggravated or irritated by exposure to irritants such as, detergents or extremes of environment, cold or hot. He discussed appellant's prophylactic treatment plan. In response to queries from OWCP, Dr. Turner noted that her condition was caused by her work-related contact dermatitis injury. He indicated that appellant's ongoing symptoms were more related to her Lichen Simplex Chronicus than her original diagnosis of contact dermatitis. Dr. Turner determined that she had reached maximum medical improvement (MMI). He advised that appellant could perform her usual job eight hours a day with no restrictions. Dr. Turner further advised that her condition was aggravated by the established factors of employment.

On September 30, 2016 OWCP provided appellant with a notice of proposed termination of her wage-loss compensation because she was no longer disabled due to her accepted

³ The SOAF noted the accepted injury, appellant's medical treatment, and the duties of her date-of-injury position.

employment-related injury. It determined that the weight of the medical evidence rested with the October 28, 2015 report of Dr. Turner. Appellant was given 30 days to submit additional evidence or argument.

In a letter dated October 27, 2016, appellant responded to OWCP's proposal to terminate her wage-loss compensation benefits and disagreed with its finding that she was no longer disabled from work. She contended that OWCP failed to consider the medical evidence of record which indicated that her employment-related condition was still present and that she continued to receive medical treatment for her condition. Appellant submitted a diagnostic report on latex allergen dated October 20, 2016 from American Esoteric Laboratories of Memphis. She also submitted a Standard Data Collection Form dated October 21, 2016 from SmartPractice.

In a November 21, 2016 decision, OWCP terminated appellant's wage-loss compensation effective December 11, 2016. It found that the weight of the medical evidence rested with Dr. Turner who reported that she no longer had any disability stemming from the accepted employment injury. OWCP did not terminate appellant's medical benefits.

In an undated appeal request form postmarked on January 10, 2017 and received by OWCP on January 13, 2017, and a letter signed on January 9, 2017 and received by OWCP on January 17, 2017, appellant requested an oral hearing before an OWCP hearing representative. She submitted medical evidence in support of her request.

By decision dated January 30, 2017, OWCP denied appellant's request for an oral hearing as it was not filed within 30 days of the November 21, 2016 decision. It exercised its discretion and denied appellant's request for a hearing as it found that the issue in the case could be addressed equally well on reconsideration by submitting new evidence which established that she had continued disability due to her work injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation.⁴ 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.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective December 11, 2016.

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

OWCP accepted that appellant sustained contact dermatitis in the performance of duty. It terminated appellant's wage-loss compensation based on the medical opinion of Dr. Turner, a second opinion physician.

In his October 28, 2015 report, Dr. Turner described appellant's current complaints, history, and medical treatment. He provided essentially normal findings on physical examination with the exception of low-grade, dry, lichenified, patchy dermatitis of the dorsum of the fingers. Dr. Turner assessed appellant as having Lichen Simplex Chronicus. He noted that he had previously examined appellant in August 2012 and that her current condition was not unlike her condition at that time which was related to wearing latex gloves at work. Dr. Turner opined that appellant's Lichen Simplex Chronicus condition was caused by the accepted work-related contact dermatitis injury. He advised that she had reached MMI. While Dr. Turner noted that appellant's condition would be aggravated or irritated by exposure to irritants such as, detergents or extreme environment temperatures such as, cold or hot, he maintained that she could perform her usual job eight hours a day without restrictions.

The Board finds that Dr. Turner's report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's wage-loss compensation for the accepted condition on December 11, 2016. Dr. Turner's opinion is based on a proper factual and medical history as he reviewed the SOAF and her prior medical treatment. He also related his comprehensive examination findings in support of his opinion that appellant no longer had any disability causally related to the accepted contact dermatitis injury.

The remaining evidence submitted by appellant prior to the termination of her wage-loss compensation is insufficient to show that she had any remaining work-related disability. The October 20, 2016 diagnostic report from American Esoteric Laboratories of Memphis and October 21, 2016 Data Collection Form from SmartPractice do not provide a medical opinion addressing whether appellant had any continuing disability due to the accepted work injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷

The Board finds that Dr. Turner's opinion that appellant had no employment-related disability represents the weight of the medical evidence. Appellant provided no current medical evidence from a physician supporting that she was disabled from her date-of-injury position. Therefore, OWCP properly terminated appellant's compensation effective December 11, 2016 based on Dr. Turner's opinion.⁸

On appeal appellant contends that she is unable to return to work due to continuing employment-related residuals and disability. However, appellant's own opinion on her ability to work would not be a substitute for probative medical evidence as lay persons are not competent

⁷ See *D.W.*, Docket No. 15-0836 (issued July 24, 2015).

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

to render medical opinion.⁹ As found above, Dr. Turner's opinion represents the weight of the medical evidence that appellant is no longer disabled due to the accepted work injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.¹⁰ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹¹ The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.¹² A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.¹³

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.¹⁴

ANALYSIS -- ISSUE 2

The time limitation to request an oral hearing from OWCP's Branch of Hearings and Review expired on December 21, 2016, 30 days after OWCP's November 21, 2016 decision.¹⁵ Appellant's hearing request was postmarked on January 10, 2017. Therefore, OWCP properly found in its January 30, 2017 decision that appellant was not entitled to an oral hearing as a matter of right because her request was not made within 30 days of its November 21, 2016 decision.¹⁶

OWCP then properly exercised its discretion by noting that it had considered the matter and denied appellant's request for a hearing because the issue could equally well be addressed through a request for reconsideration.¹⁷ The Board has held that the only limitation on OWCP's authority is reasonableness and an abuse of discretion is generally shown through proof of

⁹ *L.L.*, Docket No. 16-0896 (issued September 13, 2016); *James A. Long*, 40 ECAB 538 (1989).

¹⁰ 5 U.S.C. § 8124(b)(1).

¹¹ 20 C.F.R. § 10.615.

¹² *Id.* at § 10.616(a).

¹³ *See Leona B. Jacobs*, 55 ECAB 753 (2004).

¹⁴ 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

¹⁵ *T.T.*, Docket No. 15-1397 (issued December 3, 2015).

¹⁶ 20 C.F.R. § 10.616(a); *supra* note 13 at Chapter 2.1601.4(a) (October 2011).

¹⁷ *M.H.*, Docket No. 15-0774 (issued June 19, 2015).

manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹⁸ In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for a hearing as untimely under section 8124.¹⁹

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective, December 11, 2016, as she no longer had any disability causally related to her accepted employment-related injury. The Board further finds that OWCP properly denied appellant's request for a hearing as untimely filed under 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2017 and November 21, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 13, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁸ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁹ *R.P.*, Docket No. 16-0554 (issued May 17, 2016).