United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 18-1230**
	)	**Issued: June 8, 2020**
DEPARTMENT OF THE ARMY, MONTCRIEF ARMY HOSPITAL, Fort Jackson, SC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 1, 2018 appellant filed a timely appeal from an April 10, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 10, 2018, as she no longer had residuals or disability causally related to her accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On May 20, 2002 appellant, then a 40-year-old medical records clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 2002 she experienced burning in her nasal passages after inhaling fumes from a stained door and perfume from coworkers while in the performance of duty. OWCP accepted the claim for a temporary aggravation of chronic chemical irritant contact dermatitis. It subsequently expanded acceptance of the claim to include an aggravation of allergic rhinitis. Appellant stopped work on May 14, 2002 and returned to work on May 16, 2002. On August 9, 2002 she stopped work.

By decision dated February 5, 2010, OWCP terminated appellant's wage-loss compensation and medical benefits effective February 13, 2010.

By decision dated July 1, 2011, the Board reversed OWCP's February 5, 2010 decision.[4] The Board found that OWCP had not met its burden of proof to terminate appellant's compensation benefits effective February 13, 2010 as a conflict in medical opinion existed between Dr. David Amrol, a Board-certified pulmonologist and OWCP referral physician, who found that she could resume successful employment in an environment in which there were no excessive irritant exposures, and Dr. Billy J. Lance, Board-certified in family medicine and her treating physician, who opined that she continued to have significant residuals of her work-related injury and was totally disabled.

Commencing November 20, 2011, OWCP paid appellant wage-loss compensation on the periodic rolls.

On February 24, 2016 OWCP referred appellant to Dr. Gregg J. Colle, a Board-certified dermatologist, for a second opinion examination regarding the status of her employment-related conditions.[5]

[3] Docket No. 10-2012 (issued July 1, 2011).

[4] *Id*.

[5] In a report dated June 1, 2012, Dr. James Atkinson, a Board-certified dermatologist and OWCP referral physician, diagnosed chronic rhinitis, pruritus. He indicated that he found no specific objective findings to support disabling residuals; however, by history he believed that this condition had not resolved as appellant was sensitive to skin contacts and her rash is likely to recur upon reexposure. Dr. Atkinson advised that she was likely to be exposed to cleaning agents, colognes, perfumes, and other odors beyond the employing establishment's control. He opined that appellant was totally disabled from her date-of-injury position.

In a March 14, 2016 report, Dr. Colle reviewed appellant's history of injury and noted that she had experienced periodic pruritus over the prior 10 years that she attributed to exposure at work to photographic developing chemicals and other scents. He noted that she was currently asymptomatic with no rashes or pruritus. Dr. Colle found no current employment-related pathology based on appellant's lack of symptoms or clinical findings. In a work capacity evaluation for cardiovascular and pulmonary conditions (Form OWCP-5b) of even date, he indicated that appellant was able to perform her usual job without restriction. In a supplemental report dated June 4, 2016, Dr. Colle opined that her skin condition had resolved and that she could resume her usual employment.

In a report dated September 19, 2016, Dr. Lance discussed appellant's history of employment exposure to chemicals used to develop x-rays as well as other chemicals and cleaning agents. He noted that "[Appellant] was chronically exposed by inhalation and dermal contact; [appellant] continues to have bronchospasms and respiratory inflammations when exposed to chemicals." Dr. Lance found that she had "chronic sinusitis, tinnitus, vertigo, allergic rhinitis, non-allergic rhinitis," and gastroesophageal reflex disease. He opined that appellant's residual symptoms resulted from exposure to chemicals in the workplace. Dr. Lance noted that she had attempted to perform clerical work, but was unsuccessful as she continued to be exposed to dust, fumes, and other environmental irritants. He advised that a prior physician had diagnosed chronic rhinitis and pruritus and indicated that there was no treatment for contact dermatitis "other than avoidance or treatment as it occurs." Dr. Lance opined that she had been treated by various professionals and that her diagnoses were chronic rhinitis, chronic sinusitis, vertigo, tinnitus, gastroesophageal reflux disease, pruritus, and joint pain. He further opined that appellant was totally disabled from work due to workplace exposure to chemicals that "significantly inhibit[ed] her ability to perform daily activities."

On February 9, 2017 OWCP determined that a conflict in medical opinion existed between Dr. Lance and Dr. Colle and referred appellant to Dr. James Seward, a Board-certified dermatologist, for an impartial medical examination. It prepared a statement of accepted facts (SOAF), noting that she had five established employment-related exposures to flumes, odors, and/or chemicals from May 2001 to May 2002.[6]

In a report dated March 1, 2017, Dr. Seward reviewed appellant's history of injury and her current complaints of pain in her joints, dry eyes, weakness, and gastrointestinal issues. On examination he found mild dry skin on the hands, face, and body, but no dermatitis. Dr. Seward diagnosed contact dermatitis by history with no current evidence of the disease.

In a report dated March 15, 2017, Dr. Seward opined that appellant had mild dry skin on examination due to low humidity without any dermatitis or skin disease. He concluded that she had no objective findings of an active skin disease requiring further treatment and that any past

[6] In the SOAF, OWCP noted that appellant had five documented chemical exposure incidents: from May to June 2001 she was exposed to paint fumes, which caused the condition of paint fume inhalation. On May 22, 2001 appellant was exposed to noxious odors while the mammography room was painted, on December 13, 2001 she was exposed to chloroform from a spill in the employees work area, on April 2, 2002 she was exposed to odors related to the draining of a sprinkler system, on April 22, 2002 she was exposed to perfume fumes in her work area, and on May 14, 2002 she was exposed to fumes from paint stain applied to a door in the medical records area.

contact dermatitis had resolved. Dr. Seward opined that appellant could work without limitations from a dermatologic standpoint.

On April 4, 2017 OWCP referred appellant to Dr. Emeka M. Eziri, a Board-certified pulmonologist, for a second opinion examination.

In an April 25, 2017 report, Dr. Eziri reviewed appellant's history of injury and discussed her current complaints of "progressive fatigue and weakness…." On examination he found no rales, rhonchi, or wheezing, and normal respiratory effort. Dr. Eziri performed a pulmonary function test (PFT) which demonstrated moderate restrictive lung disease. He diagnosed bronchitis and pneumonitis as a result of exposure to chemicals, gas, fumes, and vapors, as well as occupational exposure to toxic agents in other industries, Sicca syndrome with lung involvement, and an abnormal PFT revealing moderate restrictive lung disease. Dr. Eziri noted that appellant had a "paucity of pulmonary complaints" and recommended a gastrointestinal and rhematological evaluation. In a Form OWCP-5b of even date, he indicated that appellant was unable to perform her usual job.

On July 24, 2017 OWCP requested that Dr. Eziri address whether appellant was capable of performing her regular job and describe the physical limitations, if any, resulting from the accepted employment-related exposure. It also requested that he discuss whether appellant's gastrointestinal or rheumatological conditions were related to the work event of May 14, 2002.

In a supplemental report dated August 9, 2017, Dr. Eziri summarized his April 25, 2017 report, noting that since that there was a scarcity of pulmonary complaints he had recommended a gastrointestinal and rheumatological workup. He opined that appellant's gastrointestinal and rhematological complaints were unrelated to her accepted employment injury. In an accompanying OWCP-5b, Dr. Eziri found that she could perform her usual job without restrictions.

On September 29, 2017 Dr. Lance noted that appellant had a history of exposure at work to darkroom chemicals and other chemicals and cleaning agents and that she "continued to have bronchospasms and respiratory inflammations when exposed to chemicals." He diagnosed connective tissue disease, chronic sinusitis, tinnitus, vertigo, allergic rhinitis, and nonallergic rhinitis and opined that the residual symptoms were the result of exposure to chemicals in the workplace. Dr. Lance found that appellant was totally disabled from work.

In an October 25, 2017 letter, OWCP advised appellant that it proposal to terminate her wage-loss compensation and medical benefits because she no longer had residuals of her accepted employment injury. It afforded her 30 days to submit additional evidence and argument if she disagreed with the proposed termination.

In response, appellant resubmitted reports previously of record and the results of diagnostic testing dated November 12, 2006 and March 22, 2011.

On May 27, 2016 and January 20, 2017 Dr. Lance treated appellant for coughing, chest congestion, and wheezing. He diagnosed allergic rhinitis, cough, and maxillary sinusitis. In reports dated March 28 and May 12, 2017, Dr. Lance diagnosed conjunctivitis in the right eye, back pain, and fatigue.

In an August 7, 2017 report, Dr. Annette W. Lynn, a Board-certified dermatologist, treated appellant for bumps on her cheeks, around mouth and chin that was very itchy. She diagnosed contact dermatitis.

On November 3, 2017 appellant challenged the proposed termination of her wage-loss compensation and medical benefits. She asserted that there were discrepancies and contradictions in OWCP's referral physician reports and these physicians were influenced by OWCP. Appellant advised that the opinions of her treating physicians should be given greater weight than the second opinion and referee physicians who only saw her one time and provided superficial opinions. She provided a summary of her medical care since 2002 and asserted that her accepted injury/illness continued and had resulted in systemic connective tissue disorder.

By decision dated April 10, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date, finding that the opinions of Dr. Seward and Dr. Eziri constituted the weight of the medical evidence and established that she had no further disability or need for medical treatment causally related to the accepted May 14, 2002 employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.[7] It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[8] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[9] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[10] 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.[11]

Section 8123(a) of FECA[12] provides that if there is disagreement between the physician making the examination for OWCP and the employee's physician, the Secretary shall appoint a third physician, known as a referee physician or impartial medical specialist, who shall make an examination.[13] This is called a referee examination and OWCP will select a physician who is

[7] *M.M.*, Docket No. 17-1264 (issued December 3, 2018); *Curtis Hall*, 45 ECAB 316 (1994).

[8] *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989).

[9] *See G.H.*, Docket No. 18-0414 (issued November 1, 2018); *Del K. Rykert*, 40 ECAB 294-96 (1988).

[10] *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[11] *R.P.*, Docket No. 18-0900 (issued February 5, 2019); *Calvin S. Mays*, 39 ECAB 993 (1988).

[12] 5 U.S.C. § 8123(a).

[13] *Id.* at 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

qualified in the appropriate specialty and who has no prior connection with the case.[14] Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[15]

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to medical benefits effective April 10, 2018 for the accepted condition of contact dermatitis. The Board further finds, however, that it has not met its burden of proof to terminate her wage-loss compensation for the accepted condition of an aggravation of allergic rhinitis.

Regarding the accepted condition of contact dermatitis, on prior appeal, the Board found that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 13, 2010. It found that a conflict in medical opinion existed between Dr. Amrol, an OWCP referral physician, and Dr. Lance, her attending physician, regarding whether she had continuing disability and residuals of her accepted employment injury.

Following the Board's reversal, OWCP referred appellant to Dr. Colle for a second opinion examination. On March 14, 2016 Dr. Colle determined that she had no further employment-related skin condition based on her lack of symptoms or clinical findings. On September 19, 2016 Dr. Lance found that appellant had residual symptoms and disability. OWCP properly found a conflict between Dr. Colle and Dr. Lance and referred her to Dr. Seward, a Board-certified dermatologist, for an impartial medical examination.

In situations where there exists a conflict in the medical evidence and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of the IME, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[16]

The Board finds that Dr. Seward's opinion is entitled to the special weight of the evidence regarding the accepted condition of a temporary aggravation of chronic chemical irritant contact dermatitis. On March 1, 2017 Dr. Seward noted that appellant complained of dry eyes, weakness, and gastrointestinal problems. He found mild dry skin without dermatitis on examination. On March 15, 2017 Dr. Seward attributed appellant's dry skin to low humidity and opined that she had no residuals of her accepted condition of contact dermatitis. He provided rationale for his opinion by explaining that she had no objective findings demonstrating an active skin condition or dermatitis. The Board finds that Dr. Seward's opinion, which is well rationalized and based upon a proper factual and medical history, constitutes the special weight of the medical evidence on the

[14] 20 C.F.R. § 10.321.

[15] *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[16] *Id*.

issue of whether appellant has continuing residuals or disability causally related to her temporary aggravation of chronic chemical irritant contact dermatitis.[17]

On August 7, 2017 Dr. Lynn evaluated appellant for itchy skin and bumps on her cheeks, around her mouth and on her chin. She diagnosed contact dermatitis, but did not note any residuals or disability due to this condition. Therefore, Dr. Lynn's opinion is of no probative value and is insufficient to overcome the special weight afforded to the opinion of Dr. Seward.[18]

Regarding the accepted condition of an aggravation of allergic rhinitis, the Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and authorization for medical benefits.

OWCP referred appellant to Dr. Eziri, a Board-certified pulmonologist, for a second opinion regarding whether she had disability or residuals of her aggravation of allergic rhinitis. In an April 25, 2017 report, Dr. Eziri found that objective testing showed moderate restrictive lung disease with variable upper airway obstructive physiology. He diagnosed bronchitis and pneumonitis as a result of exposure to chemicals, gas, fumes, and vapors, occupational exposure to toxic agents in other industries, Sicca syndrome with lung involvement, and moderate restrictive lung disease. In a supplemental report dated August 9, 2017, Dr. Eziri indicated that appellant's current complaints, which were gastrointestinal and rheumatological in nature, were unrelated to the accepted employment injury and opined that she could resume her usual employment.

In a report dated September 29, 2017, Dr. Lance discussed appellant's history of exposure to chemicals and cleaning agents at work. He diagnosed connective tissue disease, chronic sinusitis, tinnitus, vertigo, allergic rhinitis, and nonallergic rhinitis. Dr. Lance opined that appellant had residuals of her accepted workplace exposure to chemicals and remained totally disabled from work.

The Board finds that a conflict in medical opinion exists between Dr. Eziri, an OWCP referral physician, and Dr. Lance, appellant's physician, regarding whether she has continuing disability or residuals of the accepted condition of an aggravation of allergic rhinitis. Section 8123 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.[19] OWCP should have resolved the conflict in medical opinion before terminating her wage-loss compensation and medical benefits.[20] As OWCP failed to resolve the conflict in medical opinion evidence, the Board finds that it has not met its burden of proof to terminate appellant's wage-loss compensation and authorization for medical treatment for the accepted condition of an aggravation of allergic rhinitis.

[17] *See L.C.*, Docket No. 18-1759 (issued June 26, 2019); *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

[18] *L.S.*, Docket No. 19-0959 (issued September 24, 2019).

[19] 5 U.S.C. § 8123(a).

[20] *R.C.*, Docket No. 18-0463 (issued February 7, 2020); *A.E.*, Docket No. 18-0891 (issued January 22, 2019).

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 10, 2018 for the accepted condition of a temporary aggravation of chronic chemical irritant contact dermatitis. The Board further finds that OWCP has not met its burden of proof to terminate her entitlement to wage-loss compensation and medical benefits for the accepted condition of an aggravation of allergic rhinitis.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: June 8, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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