

**United States Department of Labor
Employees' Compensation Appeals Board**

T.J., Appellant

and

**U.S. POSTAL SERVICE, BALTIMORE MAIN
POST OFFICE, Baltimore, MD, Employer**

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**Docket No. 23-0862
Issued: October 31, 2023**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 9, 2023 appellant filed a timely appeal from an April 6, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 6, 2023, as she no longer had disability or residuals causally related to her accepted May 15, 1989 employment injury.

FACTUAL HISTORY

On June 22, 1989 appellant, then a 31-year-old flat sorter operator, filed a claim for occupational disease (Form CA-2) alleging that she sustained an employment-related respiratory

¹ 5 U.S.C. § 8101 *et seq.*

condition. She indicated that she became aware of the condition and its relationship to her employment on May 15, 1989. OWCP accepted the claim for allergic bronchitis.

By decision dated July 25, 1997, OWCP reduced appellant's compensation, effective August 17, 1997, based on its determination that she was capable of earning wages in the constructed position of receptionist. By decision dated November 7, 1997, it denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). On January 26, 1998 OWCP issued a decision denying appellant's request for an oral hearing as she had previously requested reconsideration by OWCP. By decision dated October 28, 1998, it denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). The Board, by decision dated December 1, 2000, affirmed the October 28, 1998 decision.² The record reflects that appellant received wage-loss benefits from OWCP based on her loss of wage-earning capacity (LWEC) since June 16, 2002.

In a letter dated April 8, 2021, Dr. David L. Eisenberg, an attending Board-certified internist, advised that appellant had long-standing asthma that was currently stable. He noted that she had not had any asthma attacks or emergency room visits.

On January 14, 2022 OWCP referred appellant along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Denise Chevalier, Board-certified in allergy, asthma, and immunology, for a second opinion evaluation to determine the nature and extent of appellant's employment-related conditions and her work capacity.

In a January 31, 2022 report, Dr. Chevalier noted her review of the SOAF and the medical record. On physical and mental examination, she reported essentially normal findings except for significant difficulty hearing; pink and mildly enlarged turbinates, but non-obstructing; cloudy mucoid drainage; and somewhat dry skin. Dr. Chevalier provided assessments of chronic cough, chronic rhinitis, gastroesophageal reflux disease (GERD), glaucoma, recent stroke with hearing loss, and hypertension. She opined that the accepted condition of allergic bronchitis had resolved. Dr. Chevalier explained that appellant's allergic condition seemed to be aggravated or precipitated by her workplace exposure, likely to dusts or particulates. She further explained that since appellant had not returned to work at the employing establishment, it was unknown if she would again react to the work exposure. Dr. Chevalier advised that appellant could not perform her previous work duties due to her accepted condition, but she could work as a receptionist if she could tolerate the environment. She indicated, however, that appellant's recent stroke may hinder other work. Dr. Chevalier recommended diagnostic testing to rule out chronic sinusitis, noting that rhinitis, GERD, and chronic cough could be interrelated, and it could be difficult to discern the cause of appellant's cough. She further noted that appellant had a persistent cough 33 years away from the workplace.

On February 3, 2022 Dr. Chevalier completed a work capacity evaluation (Form OWCP-5c) indicating that appellant could not perform her usual job, but she could work four hours per day with restrictions following clearance from her neurologist related to her recent stroke.

² Docket No. 99-850 (issued December 1, 2000).

By notice dated February 8, 2022, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Chevalier's medical opinion that the accepted condition had ceased without disability or residuals. It afforded her 30 days to submit additional evidence or argument challenging the proposed action.

In an undated statement, appellant related that although she had continuing problems due to her work-related condition, she was willing to return to work. She requested, however, that OWCP not terminate her compensation benefits based on medical records from Dr. Eisenberg.

Appellant submitted medical evidence. In a March 1, 2022 chest x-ray, Dr. Rubina Shah, a Board-certified diagnostic radiologist, provided an impression of no cardiopulmonary process.

In a progress note dated March 7, 2022, Dr. Michael S. Burnim, a Board-certified internist, noted appellant's chief complaint of chronic cough, and that she presented for a work evaluation and chronic cough. He further noted her history which included asthma; chronic rhinosinusitis; dysphagia and esophageal dysfunction, status post dilation; Chiari malformation, status post decompression, GERD, benign paroxysmal positional vertigo, depression/anxiety, and post-traumatic stress disorder. Dr. Burnim indicated that appellant had been on disability for the accepted condition of allergic bronchitis since 1989 and that OWCP had determined that she was no longer disabled from work. He noted that she reported various conditions including, a chronic daily cough that produced some clear sputum two to three days per week and often worsened in the evening. Dust/mold/hand sanitizer/shoe polish/perfume/bleach triggered her cough and eye watering, but not shortness of breath or wheeze. Appellant experienced wheezing once a month in the Spring. She had occasional chest tightness with exertion but, not with shortness of breath or cough. Appellant's chronic sinusitis had improved since she had undergone sinus surgery, but she still experienced a draining sensation in the back of her throat. She denied anterior rhinorrhea and frank throat pain or itching. Appellant indicated that her dyspnea and GERD symptoms had much improved since her recent esophageal dilation.

OWCP subsequently received additional medical evidence. A report dated March 3, 2022 from Johns Hopkins Medicine provided pulmonary function study results. A March 10, 2022 letter from Dr. Eisenberg noted a review of the March 3, 2022 pulmonary function study, and indicated that it did not show asthma or emphysema.

In a March 8, 2022 report, Dr. James Womer, a pulmonologist, and Dr. Robert A. Wise, a Board-certified internist and pulmonologist, reviewed a pulmonary function study and diagnosed mild restrictive ventilatory defect.

OWCP, by decision dated April 6, 2023, terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that the medical evidence of record established that she no longer had disability or residuals causally related to her accepted May 15, 1995 employment injury. The weight of the medical evidence was accorded to the opinion of the second opinion physician, Dr. Chevalier.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ 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.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 6, 2023.

OWCP terminated appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Chevalier, the second opinion physician. In a January 31, 2022 report, Dr. Chevalier opined that appellant had no disability or residuals causally related to her accepted allergic bronchitis. She reported essentially normal physical and mental examination findings aside from significant difficulty hearing; pink and mildly enlarged turbinates, but non-obstructing; cloudy mucoid drainage; and somewhat dry skin. Dr. Chevalier provided assessments of chronic cough, chronic rhinitis, GERD, glaucoma, recent stroke with hearing loss, and hypertension. She opined that the accepted condition of allergic bronchitis had resolved. Dr. Chevalier further opined that appellant could not perform her previous work duties, but she could work as a receptionist if she could tolerate the environment.

Although Dr. Chevalier opined that appellant had no residuals of the accepted allergic bronchitis condition and appellant could work as a receptionist, she also noted that appellant's return to work as a receptionist depended on her ability to tolerate the work environment. She related that it was unknown as to whether appellant would have an allergic reaction to a workplace exposure such as her prior workplace exposure (that was likely comprised of dust and particulates) since she had not returned to work at the employing establishment. Dr. Chevalier's

³ See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ See *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁷ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

opinion regarding whether appellant had continuing employment-related disability or residuals was speculative in nature. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.⁸ The Board also notes that Dr. Chevalier recommended diagnostic testing to rule out chronic sinusitis because it was difficult to discern the cause of appellant's persistent cough which she suffered from for 33 years away from the employing establishment. The Board finds that Dr. Chevalier did not definitely conclude that appellant no longer had employment-related disability or residuals. Dr. Chevalier did not provide sufficient medical reasoning or explanation for how appellant no longer had disability or residuals due to her accepted allergic bronchitis.

The Board, therefore, finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 6, 2023, as the medical evidence of record is insufficient to establish that she no longer has disability or residuals causally related to her accepted May 15, 1989 employment injury.⁹

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 6, 2023.

⁸ *P.P.*, Docket No. 21-1163 (issued March 30, 2022); *M.G.*, Docket No. 21-0747 (issued October 15, 2021).

⁹ *See R.K.*, Docket No. 19-1980 (issued May 7, 2020); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Willa M. Frazier*, 55 ECAB 379 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 31, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board