

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE S. MEDLOCK and DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE, Oklahoma City, Okla.

*Docket No. 97-1724; Submitted on the Record;
Issued May 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 1, 1993 on the grounds that she had no further condition or disability due to her accepted employment injury of aggravation of chronic obstructive lung disease; and (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether appellant has established that she had continuing disability after July 1, 1993 causally related to her accepted employment injury.

In the instant case, appellant filed an occupational disease claim on July 22, 1993 alleging that she sustained asthma and chronic obstructive lung disease causally related to factors of her federal employment. Appellant stopped work in June 1993 and did not return.

Appellant received treatment from Dr. Philip R. Corsello, a Board-certified internist specializing in pulmonary disease. In a report dated November 21, 1994, he diagnosed "smoking-induced chronic asthmatic bronchitis in association with chronic rhinosinusitis" and opined that environmental exposures to irritants and allergens during the course of her federal employment aggravated her chronic lung disease. In a report dated December 12, 1994, Dr. Corsello recommended that appellant no longer perform her usual employment due to exposure to an "unpredictable internal environment" but instead work only inside in a "clean air environment, as free as possible from dust and allergens."

On November 20, 1994 the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Jonathan Schwartz, a Board-certified internist specializing in pulmonary disease, for a second opinion evaluation. In a report dated February 2, 1994, Dr. Schwartz diagnosed severe chronic obstructive pulmonary disease (COPD) and chronic rhinitis. He further noted appellant's long history of smoking and that she continued to smoke. Dr. Schwartz opined that appellant's severe COPD was not "caused, accelerated or precipitated" by her federal employment but that it was "possible that exposure to heat, cold, humidity and

dusty conditions may cause brief exacerbations of chronic lung disease....” He further stated, “I do not think that her employment significantly aggravated her disease process, rather, that her continued cigarette smoking was the major cause and continued aggravation of her lung disease.” Dr. Schwartz also found that appellant’s employment did not permanently aggravate her condition and that she was not disabled from work.

By decision dated March 1, 1994, the Office denied appellant’s claim on the grounds that the evidence did not establish that she sustained an injury in the performance of duty.

In a decision dated April 12, 1995, an Office hearing representative set aside the Office’s April 12, 1995 decision and remanded the case for resolution of the conflict in medical opinion between Dr. Corsello and Dr. Schwartz.

On May 12, 1995 the Office referred appellant to Dr. Robert Baird, a Board-certified internist specializing in pulmonary disease, for an impartial medical examination. In a report dated May 22, 1995, he reviewed the medical records and the statement of accepted facts, listed findings on examination and discussed the results of objective tests. Dr. Baird diagnosed COPD likely secondary to appellant’s long history of smoking and noted that she had a history of sinus disease. He found that appellant’s severe obstructive lung disease was due to cigarette smoking and not employment conditions but that her employment “in the field (80 [percent] of the time) does indeed aggravate her condition since she works in environments which may well make her breathing more difficult.” Dr. Baird stated that appellant would experience an employment-related aggravation of her condition when exposed to dust and other irritants. He further stated:

“However, if she is not exposed to these conditions, I do not believe there would be aggravation of her underlying chronic lung disease. I do not believe the aggravation should be considered permanent in the sense that it would only cause exacerbations when exposed to areas that would provide irritation to her airways (for example, significant dust and smoke).”

Dr. Baird concluded that appellant had not sustained a permanent aggravation of her lung condition due to her employment and could work in an office setting.

On August 30, 1995 the Office informed appellant that it had accepted her claim for aggravation of COPD.

In a supplemental report dated August 31, 1995, Dr. Baird stated that any employment-related aggravation of appellant’s COPD would cease within hours of exposure. He opined:

“I do not believe that the employment factors caused the chronic obstructive pulmonary disease to become permanent and worse than it be through normal deterioration process of the underlying disease. I do believe that [appellant] sustained a temporary aggravation which ceased as of the date she ceased working.”

By decision dated October 17, 1995, the Office found that appellant's employment-related aggravation of her COPD ceased as of June 30, 1993 and terminated her compensation benefits and authorization for medical treatment effective July 1, 1993. In a decision dated August 2, 1996, an Office hearing representative affirmed the Office's October 17, 1995 decision.

By letter dated March 24, 1996, appellant requested reconsideration and submitted additional medical evidence. In a decision dated April 1, 1997, the Office denied modification of its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 1, 1993.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

Under the Federal Employees' Compensation Act,⁴ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁵ However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.⁶

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷ The Board finds that Dr. Baird's opinion, which is based on a proper factual and medical history, is well rationalized and supports that appellant's aggravation of her COPD ceased by July 1, 1993, the date the Office terminated her compensation. He accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding appellant's condition which comported with his findings.⁸ Dr. Baird

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

⁶ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁷ *Leanne E. Maynard*, 43 ECAB 482 (1992).

⁸ *See Melvina Jackson*, 38 ECAB 443 (1987).

provided medical rationale for his opinion by explaining why work factors aggravated appellant's condition and why the aggravation ceased when she stopped work. Accordingly, the Board finds that the Office discharged its burden of proof to justify termination of appellant's compensation after July 1, 1993.

The Board further finds that the Office properly terminated appellant's authorization for medical benefits effective July 1, 1993.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. The Office met this burden through the report of Dr. Baird, who found that appellant had no residual condition caused by her aggravation of COPD and provided rationale in support of that conclusion.

The Board further finds that appellant has not established that she had continuing disability after July 1, 1993 causally related to her accepted employment injury.

Given that the Board has found that the Office properly relied upon the opinion of the impartial medical examiner, Dr. Baird, in terminating compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.¹⁰ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹¹

Appellant submitted a report from Dr. Corsello dated June 26, 1996, in which he stated that appellant's workplace contributed "to her respiratory state at this time" and recommended that she not return to her employment.¹² In a report dated August 29, 1996, he discussed appellant's exposure to environmental irritants in the course of her employment and stated:

"I could only speculate that these recurrent acute episodes might have culminated in some degree of residual damage to her airways and lung parenchyma, while at the same time acknowledging that the overriding cause of her pulmonary [condition], once again, has been cigarette smoking."

⁹ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹⁰ *George Servetas*, 43 ECAB 424 (1992).

¹¹ *John M. Tornello*, 35 ECAB 234 (1983).

¹² Appellant further submitted what she alleged to be a transcript of a conversation between an unidentified person and Dr. Baird revealing an alleged prejudice on his behalf against workers' compensation patients. The transcript of the alleged conversation is not relevant to the issue at hand as it has not been established as factual and further does not relate to appellant.

Dr. Corsello's opinion that work factors may have caused residual damage to appellant's lung condition is speculative and equivocal in nature and thus of little probative value.¹³ Further, as he was on one side of the conflict that Dr. Baird resolved, his additional reports are insufficient to overcome the weight accorded to Dr. Baird's report as the impartial medical specialist or to create a new conflict.¹⁴

The decisions of the Office of Workers' Compensation Programs dated April 1, 1997 and August 2, 1996 are hereby affirmed.

Dated, Washington, D.C.
May 13, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹³ *Connie Johns*, 44 ECAB 560 (1993).

¹⁴ *Dorothy Sidwell*, 41 ECAB 857 (1990).