

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BERNARD FOSTER and DEPARTMENT OF THE NAVY,  
MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 00-341; Oral Argument Held December 13, 2000;  
Issued February 15, 2001*

Appearances: *Bernard Foster, pro se; Sheldon G. Turley, Jr., Esq.,  
for the Director, Office of Workers' Compensation Programs.*

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DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 1, 1998 on the grounds that appellant no longer had any disability causally related to his April 22, 1983 employment injury.

On April 25, 1983 appellant, then a 42-year-old marine mechanic, filed a traumatic injury claim (Form CA-1) alleging that he sustained a skin condition when a liquid spilled onto his arms while he was working on a piping system on April 22, 1983.<sup>1</sup>

The Office accepted appellant's claim for solvent dermatitis and dermatographism.

The Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Reynold C. Wong, a Board-certified dermatologist, to determine whether appellant had any continuing disability causally related to his April 22, 1983 employment injury. In a February 23, 1988 medical report, Dr. Wong found that appellant was no longer disabled due to his employment injury.

The Office received a June 26, 1992 medical report from Dr. Emil A. Tanghetti, a Board-certified dermatologist and appellant's treating physician, indicating that he was unable to complete a work restriction evaluation form because he could not determine what sort of activity would elicit appellant's persistent urticarial eruption.

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<sup>1</sup> The Board notes that appellant's claim form is not in the record and Part A of the claim is missing. Appellant was terminated from the employing establishment effective July 15, 1983 due to unauthorized absences.

By letter dated September 17, 1996, the Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Alvin H. Clair, a Board-certified dermatologist, for a second opinion examination.

In an October 14, 1996 medical report, Dr. Clair found that there was no causal relationship between appellant's current condition and his April 1983 employment injury.

In a notice dated September 16, 1997, the Office advised appellant that it proposed to terminate his compensation based on Dr. Clair's opinion. The Office also advised appellant to submit medical evidence supportive of his continued disability within 30 days.

By decision dated February 3, 1998, the Office terminated appellant's compensation effective March 1, 1998 on the grounds that Dr. Clair's opinion established that appellant was no longer disabled due to his April 22, 1983 employment injury. On March 10, 1998 appellant appealed the Office's decision to the Board.

By order dated June 18, 1998, the Board granted appellant's May 2, 1998 request to dismiss his appeal.

In a letter dated August 6, 1998, appellant requested that the Office reconsider its decision.

By decision dated June 18, 1999, the Office denied appellant's request for modification.

The Board finds that the Office properly terminated appellant's compensation effective March 1, 1998 on the grounds that appellant no longer had any disability causally related to his April 22, 1983 employment injury.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup>

In terminating appellant's compensation, the Office relied on the opinion of Dr. Clair, a Board-certified dermatologist. In his October 14, 1996 report, Dr. Clair provided his objective findings of dermatographism and thickening of the toenails. He diagnosed dermatographism by observation, onychomycosis based on clinical findings and urticaria by history. Dr. Clair stated that he could not connect the 1983 injury either appellant's urticaria or dermatographism. He further stated that there were no subjective complaints that did not correlate with the objective findings, but he noted that there were objective findings, *i.e.*, onychomycosis which may explain appellant's subjective complaints. Dr. Clair concluded that appellant had no work restrictions and noted appellant's medical treatment. His opinion regarding causal relationship is rationalized and based on an accurate factual and medical background.

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

In support of his continued employment-related disability, appellant submitted the September 29, 1997 medical treatment notes of Dr. Robert McClure, a Board-certified dermatologist, indicating that he had treated appellant since September 12, 1991 and that appellant came to him with a diagnosis of chronic urticaria secondary to a chemical exposure in 1983. Dr. McClure stated that appellant continued to have chronic urticaria requiring daily use of an oral antihistamine. He further stated that, because of the potential sedating effects of the antihistamine, appellant was unable to perform any work where the possible sedation would be a risk to himself or others. Dr. McClure concluded that to this extent appellant continued to be disabled. He failed to provide any medical rationale explaining how or why appellant's disability was caused by the April 1983 employment injury.

In further support of his continued disability, appellant submitted the September 25, 1997 medical treatment notes of Dr. Sergio A. Grando, a dermatologist. In his notes, Dr. Grando noted that appellant had chronic urticaria. He further noted that this diagnosis was based on appellant's history and belief that his condition was related to an accident he had in the past when he was working at a nuclear reactor. Dr. Grando stated that he did not have any data to agree or disagree with appellant's belief. He concluded by noting appellant's medical treatment when his condition became exacerbated. Dr. Grando's report is insufficient to establish continued employment-related disability inasmuch as he was unable to opine specifically that appellant's condition was caused by the April 22, 1983 employment injury.

In response to the Office's January 8, 1998 letter requesting that he submit a supplemental report, Dr. Grando stated that appellant's medication would not render him totally disabled. He provided his November 13, 1997 examination findings, which included an exacerbation of chronic urticaria. Dr. Grando opined that he did not think that appellant's current condition was caused by the April 22, 1983 employment injury, but that he did not have any data to support his belief.

Appellant submitted Dr. Tanghetti's April 7, 1993 and March 24, 1999 medical treatment notes indicating that appellant had an itch and chronic urticaria of uncertain etiology. In his March 24, 1999 treatment notes, Dr. Tanghetti noted that this itch and urticaria developed after appellant's exposure to some drainage waste from a nuclear reactor. He stated that the time sequence would suggest that appellant's exposure had something to do with his conditions. Dr. Tanghetti further stated that he would concur with this since appellant did not have a history of having these conditions prior to that event. He concluded that appellant had a work-related injury that occurred after his exposure years ago.

The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to establish causal relationship.<sup>4</sup> Dr. Tanghetti failed to provide any medical rationale for his opinion that appellant's current conditions were caused by the April 22, 1983 employment injury. Therefore, his treatment notes are insufficient to establish continued employment-related disability.

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<sup>4</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The Board finds that Dr. Clair's report is sufficient to carry the weight of the medical evidence on the relevant issue of causal relationship inasmuch as it contains medical rationale in support of his conclusion that appellant is no longer disabled due to his April 22, 1983 employment injury. Because the Office provided an adequate basis for its determination that appellant ceased to have residuals of his April 22, 1983 employment injury on or after March 1, 1998, the Office met its burden of proof to terminate appellant's compensation.

The June 18, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 15, 2001

Michael J. Walsh  
Chairman

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member