

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MATTIE WHITFIELD and DEPARTMENT OF THE AIR FORCE,  
ROBINS AIR FORCE BASE, GA

*Docket No. 02-310; Oral Argument Held September 16, 2003;  
Issued October 2, 2003*

Appearances: *Marc Whitfield*, for appellant; *Miriam D. Ozur, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant is entitled to compensation for wage loss after April 15, 1996.

The case was before the Board on a prior appeal.<sup>1</sup> The Board reviewed a decision of the Office of Workers' Compensation Programs dated April 28, 1999, which terminated compensation for wage loss and medical benefits as of April 15, 1996. With respect to compensation for wage loss, the Board determined that the Office had met its burden of proof to terminate compensation for wage loss based on the probative medical evidence of record. The Board also found that the Office had failed to meet its burden with respect to termination of medical benefits and, therefore, appellant remained entitled to medical benefits for the accepted aggravation of sinusitis. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

By letter dated April 28, 2000, appellant requested reconsideration of her claim. Appellant submitted additional evidence; the medical evidence included a brief report dated April 9, 1996 from Dr. Loren Stahl, an internist, who stated that appellant had allergy problems and appellant reported that her environment at work triggered burning in her mouth and throat, along with congestion. Dr. Stahl opined that "this is probably occupationally related to dust" in her work area and he recommended that appellant be moved to an area that was less allergenic. Appellant also submitted an April 28, 2000 letter from an industrial hygienist regarding appellant's work areas.

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<sup>1</sup> Docket No. 99-2477 (issued January 5, 2000).

In a decision dated June 13, 2000, the Office reviewed the merits of the claim and denied modification. Appellant requested reconsideration and by decision dated August 6, 2001, the Office again denied modification.

The Board finds that appellant has not established entitlement to compensation for wage loss after April 15, 1996.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.<sup>2</sup>

In its prior decision, the Board held that the medical evidence established that appellant's employment-related disability had ceased as of April 15, 1996. An attending allergist, Dr. David Plaxico, reported an essentially normal examination in January 1996. The Board noted that the possibility of a further aggravation upon return to work does not itself establish continuing entitlement to compensation for wage loss. Since the Office met its burden of proof to terminate, the burden has shifted to appellant to submit sufficient medical evidence to establish disability after April 15, 1996, causally related to her employment injury.

Appellant did not submit any probative medical evidence with respect to an employment-related disability after April 15, 1996. Dr. Stahl's report is dated April 9, 1996 and he does not provide a reasoned opinion on the relevant issue. Dr. Stahl does not provide a history, a description of appellant's work environment or her employment duties. He noted that appellant reported allergy symptoms, without clearly indicating whether appellant was disabled for work. Dr. Stahl's recommendation that appellant be moved to another area does not itself establish disability; as noted above, if his recommendation is based on a fear of future aggravation due to employment exposure, appellant does not have a continuing employment-related disability.<sup>3</sup> Moreover, his opinion that the reported symptoms were "probably" related to occupational dust exposure is of limited probative value. The opinion of a physician on causal relationship must be one of reasonable medical certainty and must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate background.<sup>4</sup> The Board finds that Dr. Stahl does not provide a reasoned medical opinion with respect to an employment-related disability as of April 15, 1996.

The remainder of the evidence submitted does not constitute probative medical evidence on the issue presented. For example, the letters from an industrial hygienist are of no medical value as the individual is not a physician under the Federal Employees' Compensation Act.<sup>5</sup> The

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<sup>2</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

<sup>3</sup> *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

<sup>4</sup> *See Thomas A. Faber*, 50 ECAB 566, 569 (1999).

<sup>5</sup> Section 8101(2) of the Act provides that a physician includes, "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law." 5 U.S.C. § 8101(2).

record does not contain a physician's report with a complete factual and medical history and a reasoned opinion that appellant was disabled due to the employment injury on or after April 15, 1996. It is appellant's burden of proof and she has not met her burden in this case.

Appellant has argued that she was deprived of due process with respect to her claim. The record, however, does not contain any relevant evidence to support this argument. The Board has found that certain Office determinations, such as a termination based on a refusal of suitable work, must be accompanied by procedural safeguards that ensure a claimant has notice and an opportunity to be heard prior to the termination.<sup>6</sup> The instant case is not, however, a suitable work case nor are there procedural rights at issue. The argument that the employing establishment should have made a job offer to appellant is not within the scope of the Act or the Board's jurisdiction. The issue in this case is a medical issue and must be resolved by medical evidence. Appellant also argues that the Office shares responsibility in the development of the evidence and certainly the Board has recognized this principle.<sup>7</sup> The burden of proof, however, remains with appellant and there must be sufficient relevant and probative evidence submitted before the Office undertakes additional development of the evidence. In this case, appellant did not submit sufficient medical evidence on the issue of an employment-related disability after April 15, 1996. The Board accordingly finds that she did not meet her burden of proof and the Office properly determined that she was not entitled to continuing compensation for wage loss.

The decision of the Office of Workers' Compensation Programs dated August 6, 2001 is hereby affirmed.

Dated, Washington, DC  
October 2, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> See, e.g., *Marie Fryer*, 50 ECAB 190 (1988).

<sup>7</sup> See *Mary A. Wright*, 48 ECAB 240, 242 (1996).