United States Department of Labor
Employees' Compensation Appeals Board

ALETA L. DOW, Appellant **and** **DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION, Washington, DC, Employer**	)	**Docket No. 04-2154** **Issued: June 10, 2005**

Appearances:
Aleta L. Dow, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On August 24, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated May 18, 2004 which terminated her claim for medical and wage-loss benefits effective May 16, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office properly terminated appellant's medical and wage-loss benefits effective May 16, 2004 on the grounds that her conditions or disability was no longer related to her accepted employment injuries.

FACTUAL HISTORY

Appellant claimed that, on February 1, 1996, she sustained upper respiratory congestion, a skin rash, headaches with dizziness, memory loss and confusion and the inability to control her emotions, causally related to bad air quality while on the premises of the employing

establishment. Laboratory results demonstrated that the presence of toxigenic fungus, Stachbotrys chartarum, and elevated levels of another fungus, aspergillus fumigatus was present in the building. Stachbotrys was found in the fitness center and the fumigatus was found in a limited number of samples in a few areas of the building.

The Office accepted appellant's claim for the following condition, inhalation of noxious fumes and aggravation of preexisting reactive airway disease. Appellant had a preexisting reactive airway disease prior to the initial implicated exposure. At the time appellant was in receipt of medical benefits for this injury, she maintained that she sustained brain damage due to the toxins which entered her brain *via* the steroidal inhaler she used while at the employing establishment.

On January 25, 1999 Dr. David Polefka, a clinical psychologist, examined appellant and reported adjustment disorder with mixed anxiety and depressed mood, delayed onset chronic post-traumatic stress disorder (PTSD), and a mental disorder not otherwise specified due to toxic substance exposure. He recommended further diagnostic work-up and assessments needed to be done. Appellant expressed that she was totally disabled but had a bright outlook.

In an October 10, 2002 pulmonary function test, computerized interpretation noted that there was mild obstructive lung defect with airway obstruction confirmed by the decrease in flow rate at 50 percent and 75 percent of the flow volume curve. The examiner, a registered respiratory therapist, noted that appellant's lungs were within normal limits, that diffusion capacity was within normal limits that the FEV^1 changed by eight percent, and the FEF 25-75 changed by 31 percent, which would be interpreted as a mild response to bronchodilator.

In an October 25, 2002 report, a licensed psychiatric social worker noted that appellant was under regular treatment with her for PTSD. Her symptoms were triggered by paperwork and dealing with people. The social worker claimed that appellant was totally disabled.

In support of her allegations appellant submitted a September 16, 2002 report from Dr. Richard A. Nelson, a Board-certified neurologist, who stated as history that appellant was diagnosed with PTSD in 1992 and had difficulties with brain functions, including memory, concentration and attention. He noted that she had had exposure to fungi and that she had been treated for asthma. Dr. Nelson stated that "there is the likelihood of a low grade cognitive impairment being present," and that she "may well have some hearing defect that will have to be looked at more in detail." He speculated that "this may well represent a chest abnormality associated with the fungal infections."

On April 21, 2003 the Office determined that a second opinion Board-certified toxicologist be consulted for a second opinion to determine whether appellant remained disabled due to her accepted condition or whether she had a subsequent consequential brain injury. The Office referred appellant, together with questions to be answered and a statement of accepted facts, to Dr. Scott D. Phillips, a Board-certified toxicologist, for clarification.

On June 23, 2003 appellant underwent a second opinion examination by Dr. Phillips who, on the same date, reported he reviewed appellant's factual and medical history, and noted that she complained of outbursts of temper, and emotional highs and lows. He noted that she first

noted her problem in 1992 and that in 1995 she began treatment for respiratory difficulties. Appellant alleged that on October 16, 1995 she arrived at the Nassif building where the heating ventilation and air conditioning poisoned the whole floor during this period and an air quality emergency was declared. She recalls a rash breaking out on her arms and belly. However no medical evidence was provided that confirmed this rash. Appellant also claimed exposure to formaldehyde and lacquer. She claimed that, when she sprayed Beconase nasal spray, a form of steroid, into her nose it allowed the mold from the Nassif building to enter her brain, causing her current complaints. Appellant later claimed exposure to nitrogen acetone and chlorine in the past. Dr. Phillips noted that appellant could perform activities of daily living, and he reported the results of all of his findings upon complete examination. He noted, after thorough examination, that appellant's neurologic examination was normal, he discussed her toxicological examination and findings, and he found no evidence of side effects to mold, no organic brain damage, no adequate temporality demonstrated, and no justified complaints related to her employment, and that she needed follow-up with her psychologist.

On a June 26, 2003 work capacity evaluation form Dr. Phillips indicated that appellant could work eight hours per day without restrictions.

On April 16, 2004 the Office issued appellant a notice of proposed termination of compensation finding that Dr. Phillips' June 23, 2003 report constituted the weight of the medical opinion evidence. Dr. Phillips had found that the results of his examination that date revealed that appellant no longer had a medical condition or disability as a result of her employment injury. He found that there was no support in the medical literature that mold or inhaled nasal steroids or a combination thereof caused neurological injury, and that appellant did not display any evidence of a neurological injury or brain injury. Dr. Phillips reported that inhalation of indoor mold did not cause brain injury, and that her current complaints were not related to her employment and that she had no impairment of activities of daily living.

In support of appellant's claim, she submitted a report from Dr. Polefka, a clinical psychologist, noted that Dr. Hugh Batty, a Board-certified internist, indicated that she had some sort of brain damage, but no objective findings or test results had been submitted that indicated appellant suffered any form of brain damage due to her exposure to the workplace toxins. However, there were no demonstrations of nor treatment for any brain damage.

By decision dated May 16, 2004, the Office terminated appellant's compensation benefits entitlement effective that date on the grounds that appellant had submitted no further evidence in response to the notice of proposed termination, and that the weight of the medical evidence of record failed to support continuing disability.

LEGAL PRECEDENT

Once the Office accepts a claim it has the burden to justify termination or modification of compensation benefits.[1] After it has been determined that an employee has disability causally

[1] *See Betty M. Regan,* 49 ECAB 496 (1998).

related to 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.[2]

Once the Office properly terminates compensation benefits, the burden of proof shifts to appellant to establish that she remains entitled to compensation benefits after that date.[3] 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 a causal relationship.[4]

Medical opinions stating that the condition is "probably" related, "most likely" related, or "could be" related are all speculative, lack medical rationale and hence are of no probative value.[5] Further, medical opinions by nurses, physicians, licensed clinical social workers, and physical therapists do not constitute probative medical opinion evidence as these individuals are not physicians under the Federal Employees' Compensation Act.[6]

ANALYSIS

The Board finds in this case that the Office met its burden of proof to terminate appellant's compensation benefits. Appellant's claim had been accepted for inhalation of noxious fumes and aggravation of preexisting reactive airway disease.

The Board finds that the report of the second opinion specialist, Dr. Phillips constituted the weight of the medical evidence and established that appellant had no disability or residuals causally related to her accepted conditions of employment. Dr. Phillips completed a review of the record and appellant's factual and medical history, discussed his findings upon examination and his interpretation of the medical implications from examination results, and he noted appellant's presenting symptoms of outbursts of temper, emotional highs and lows. He noted that appellant began treatment for respiratory problems in 1992, which was nonwork related, that in 1995 she received treatment for her problems. Dr. Phillips noted her Nassif building exposure where the vacuum system was colonized and contaminated the whole floor during the period when a general air quality emergence was declared. At that time appellant claimed that she developed a rash but no objective evidence of that was presented such as medical treatment notes. Appellant claimed that the Beconase nasal spray caused the fungi to enter her brain, causing her current complaints. Dr. Phillips found that appellant could return to work full duty for eight hours per day, and he noted that his findings revealed a normal neurological examination, a normal toxicological examination, no side effects of mold, no organic brain

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[2] *See Gary R. Sieber,* 46 ECAB 215 (1994).

[3] *Daniel F. O'Donnell, Jr.,* 54 ECAB ___ (Docket No. 02-1468, issued February 28, 2003).

[4] *Id.*

[5] *Linda I. Sprague*, 48 ECAB 386 (1997); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

[6] *Vicky L. Hannis*, 48 ECAB 538 (1997); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Frederick C. Smith*, 48 ECAB 132 (1996); *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Robert J. Krstyen*, 44 ECAB 227 (1992); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Joseph N. Fassi*, 42 ECAB 231 (1991); *John H. Smith*, 41 ECAB 444 (1990); *Joseph P. Bennett*, 38 ECAB 484 (1987).

damage, no adequate temporality demonstrated and no justified complaints regarding her return to work.

Dr. Phillips completed a work capacity evaluation form indicating that appellant could work eight hours per day without restrictions. Thereafter, he noted that there was no information in the medical literature to support that mold in inhaled steroids or a combination thereof could cause neurological injury or brain injury, or that inhaled of indoor mold caused brain damage. Dr. Phillips opined that appellant's current complaints were not related to her employment and that she had no impairment of activities of daily living.

In a January 25, 1999 report, Dr. Polefka addressed only appellant's emotional conditions, which had not been accepted by the Office as being work related.[7] He claimed that she had preexisting PTSD and delayed problems due to toxins exposure. The specifically implicated toxins were not identified, nor was objective exposure data provided. Dr. Polefka recommended further medical work-up. As Dr. Polefka was a psychologist, who dealt only with emotional conditions and because he did not base his opinion on objective measurements and/or mental testing, and did not have any proof of toxin exposure or duration, other than to recognize that the air in the building was found at one point to have a general air quality emergency, and did not address the status or impact or contribution of her accepted physical conditions on her current presentation, the Board finds that his opinion on a psychiatric condition caused by an alleged organic exposure is of diminished probative value. Dr. Polefka provided diagnoses without evidence or rationale as to how they were employment related or aggravated and therefore his opinion is unrationalized.

An October 10, 2002 pulmonary function test was interpreted by a respiratory therapist and hence cannot be considered probative medical evidence as a physical therapist is not a physician under the Act.[8] An October 25, 2002 report from a licensed psychiatric social worker was also not probative as the social worker is not considered to be a physician under the Act.[9]

A September 16, 2002 report from Dr. Nelson noted that appellant had PTSD in 1992 and had brain difficulties with brain functions including memory, concentration and attention. This appears to stem from 1992, which precedes any claimed employment-related incident or exposure. Dr. Nelson stated that appellant had exposure to fungi and he speculated that there was a likelihood of a low grade cognitive impairment being present. He also speculated that she might well have some hearing defect which needed follow-up, and that these findings may well represent a chest abnormality associated with fungal infections. As Dr. Nelson's opinions are couched in speculative terms, the Board finds they are of greatly diminished probative value and are of little probative value. His report also lacks any objective evidence in support.

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[7] As brain damage was not accepted as an employment-related condition by the Office, appellant had the burden of proof to demonstrate causal relationship. *See Charlene R. Herrera,* 44 ECAB 361 (1993).

[8] *Supra* note 6.

[9] *Id.*

As the Office met its burden of proof in terminating appellant' compensation benefits, appellant had the burden to establish continuing employment-related disability and residuals.[10] Appellant resubmitted medical evidence from Dr. Polefka and Dr. Batty, which claimed that she had some sort of brain damage, but which was unrationalized and did not address causal relationship. These reports were, therefore, diminished in probative value.

CONCLUSION

The Board finds that the Office properly terminated appellant's medical and wage-loss benefits effective May 16, 2004 on the grounds that her conditions or disability was no longer related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 18, 2004 be affirmed.

Issued: June 10, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[10] *Daniel F. O'Donnell, Jr., supra* note 3.