United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 17-1982**
	)	**Issued: July 11, 2018**
DEPARTMENT OF THE NAVY, NAVAL SAFETY CENTER, Norfolk, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 25, 2017 appellant filed a timely appeal from a September 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof to establish a pulmonary condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On April 21, 2017 appellant, then a 60-year-old safety and occupational health manager, filed an occupational disease claim (Form CA-2) alleging that, on May 29, 2015, he first became aware of mold in his work space behind the peeling wallpaper in his office. He first realized his

[1] 5 U.S.C. § 8101 *et seq.*

pulmonary condition was caused or aggravated by his federal employment on March 28, 2017 due to the mold (Aspergillus). Appellant was last exposed to the alleged conditions on April 25, 2017, when he was reassigned to another workspace.

In an April 7, 2017 form, Dr. Melissa Fischesser, a Board-certified internist, referred appellant for civilian medical care for intermittent asthma.

By development letter dated April 28, 2017, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to the attached questionnaire and provide additional medical evidence, including a well-rationalized medical report from a physician, to establish that his work-related exposure resulted in a diagnosed condition. OWCP afforded appellant 30 days to submit the requested information. No additional information was received from appellant.

OWCP received statements from the employing establishment dated May 9 and 23, 2017, which indicated that appellant was exposed to mold (penicillium/Aspergillus) in his office of 12,000 spores/m. The employing establishment indicated that appellant worked in the affected office on a compressed work schedule of nine hours for five days one week and four days the next. Appellant began occupying the office in May 2015. A completed copy of a March 16, 2017 spore trap report was attached along with abatement measures and safety data sheets.

By decision dated May 31, 2017, OWCP denied appellant's occupational disease claim. It found that the evidence of record was insufficient to establish that the factors of his federal employment occurred as described and there was no medical evidence which contained a medical diagnosis in connection with the claimed factors.

In a May 31, 2017 statement, appellant indicated that he was exposed to penicillium/Aspergillus mold spores in his office beginning in May 2015 on a daily basis.

In a May 25, 2017 medical report, Dr. Robert N. Walter, an internist specializing in pulmonary disease, noted that appellant was referred to him by Dr. Fischesser for evaluation of possible asthma or reactive airway disease. He reported that appellant had a two-year exposure to a high level of mold in his office that was recently discovered and documented in conjunction with one year of wheezing in the morning and evening and mild dyspnea on exertion (DOE) with ascending stairs. Appellant also reported two episodes of bronchitis in last year. Dr. Walter provided examination findings and diagnosed mild persistent asthma, uncomplicated. He indicated that appellant's history and pulmonary function tests were consistent with mild persistent asthma. Dr. Walter opined that appellant's exposure to Aspergillus very likely contributed to his development of symptoms and asthma given the time course, the lack of previous respiratory problems, and the documented obstructive defect on spirometry with improvement with a bronchodilator.

On June 12, 2017 appellant requested reconsideration.

May 25, 2017 pulmonary function test results were received along with a July 27, 2017 electronic mail concerning an Indoor Air Quality Investigation performed by the Industrial Hygiene Department of the Naval Medical Center which revealed a trace to high concentrations of Cladosporium and moderate concentration of Ulocladium.

By decision dated September 6, 2017, OWCP modified its prior decision to reflect fact of injury was established in that appellant was exposed to mold (penicillium/Aspergillus), but the claim remained denied on the basis that causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the asserted claim involves a traumatic injury or an occupational disease.

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift.[3] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

Causal relationship is a medical issue. The medical evidence required to establish causal relationship is rationalized medical evidence.[5] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

[2] *Supra* note 1.

[3] 20 C.F.R. § 10.5(ee).

[4] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

It is undisputed that appellant was exposed to a high level of mold in his office. However, the Board finds that he has failed to submit sufficient medical evidence to establish that his diagnosed medical conditions were causally related to his occupational exposure.

On April 7, 2017 Dr. Fischesser referred appellant for civilian medical care for a diagnosis of intermittent asthma. However, she offered no opinion that his intermittent asthma was employment related.[8] Therefore, this report is insufficient to meet appellant's burden of proof.

In his May 25, 2017 report, Dr. Walter noted the history of appellant's occupational exposure to high level of mold in his office for two years with one year of symptoms of wheezing in the morning and evening and mild DOE with ascending stairs. He diagnosed mild persistent asthma, uncomplicated. Dr. Walter opined that appellant's exposure to Aspergillus very likely contributed to his development of symptoms and asthma given the time course, the lack of pervious respiratory problems, and the documented obstructive defect on spirometry with improvement with a bronchodilator. The Board finds that, although Dr. Walter supported causal relationship, he did not provide medical rationale explaining the basis for his opinion regarding the causal relationship between appellant's work exposure to high level of mold and his mild persistent asthma.[9] The Board has held that, when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.[10] The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.[11] Dr. Walter did not explain the process by which exposure to mold or other allergens over the course of two years caused the diagnosed asthma or explained why such condition would not be due to any nonwork factors. Without medical reasoning explaining how appellant's employment exposure might have caused appellant's asthma, Dr. Walter's report is insufficient to meet his burden of proof.[12]

Consequently, the Board finds that appellant has failed to submit sufficient medical evidence to establish that his accepted work exposure to high levels of mold caused or aggravated a diagnosed pulmonary condition.

[8] *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[10] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

[11] *Steven R. Piper*, 39 ECAB 312 (1987).

[12] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish a pulmonary condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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