

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment.

FACTUAL HISTORY

On April 17, 2023 appellant, then a 58-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed “asbestos” due to factors of his federal employment including breathing debris from patching and painting walls while at work. He noted that he first became aware of his condition and realized its relation to his federal employment on February 24, 2023. Appellant did not immediately stop work.

OWCP received a chest x-ray dated February 23, 2023 that revealed no active disease or chronic changes. A computerized tomography (CT) scan of the thorax dated February 24, 2023 revealed chronic findings to include a solitary pleural plaque, possible early calcification. On March 15, 2023, appellant underwent a pulmonary function test, which revealed possible restrictive lung defect.

In an April 18, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. By separate letter of the even date, it also requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond.

OWCP received a schedule for asbestos abatement from the employing establishment. It noted that as part of the periodic monitoring and assessment program it commissioned an asbestos survey to identify areas that would require abatement. The survey identified damaged asbestos above the ceiling in certain areas of the facility. The employing establishment noted that it would take approximately four months to complete the abatement. Appellant also submitted an industrial hygiene summary report dated September 30, 2021.

By decision dated July 7, 2023, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On July 24, 2023 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearing and Review. The hearing was held on November 16, 2023.³

³ Appellant through his representative requested subpoenas be issued to several of his co-workers. On October 23, 2023, OWCP denied appellant’s request for subpoenas noting that the testimony could be obtained through written affidavits or statements.

Appellant submitted articles and a fact sheet on mold and mycotoxins in indoor building materials.

By decision dated January 30, 2024, OWCP's hearing representative affirmed the July 7, 2023 decision.

OWCP received additional evidence. In support of his claim, appellant submitted a report dated February 27, 2024, by Dr. Carrie L. Carda, a Board-certified gynecologist, wherein she treated appellant on December 8, 2023 for chronic allergy symptoms, myalgia, and chronic fatigue. She related that appellant reported being exposed to mold and asbestos at his workplace, which aggravated his underlying allergies and myalgia and resulted in the development of persistent fatigue. Dr. Carda noted that in the past couple of years appellant has had an increase in symptoms secondary to increased inflammatory response from environmental irritants. She noted that appellant was employed at the employing establishment for many years and testing performed confirmed mold on the premises. On January 11, 2024 appellant tested positive for *aspergillus niger*. Dr. Carda diagnosed exacerbation of fibromyalgia and allergic rhinitis. She opined that the environmental irritants at the employing establishment contributed to appellant's declining health and significantly aggravated his symptoms and underlying conditions.

On April 2, 2024 appellant, through his representative, requested that his claim be remanded and new medical evidence be considered. He referenced an article, fact sheet, and an industrial hygiene report submitted in support of his claim and indicated that the building he worked in was shut down because *aspergillus* was found.

On April 30, 2024, appellant, through his representative, requested an oral hearing before a representative of OWCP's Branch of Hearing and Review.

By decision dated May 8, 2024, OWCP denied appellant's hearing request. It found that, because he had previously had a hearing, he was not, as a matter of right, entitled to another review by the Branch of Hearings and Review, and that his request could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

On May 17, 2024, appellant requested reconsideration.

By decision dated August 9, 2024, OWCP denied modification of the May 8, 2024 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any

⁴ *Id.*

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based upon a complete factual and medical background, 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.⁹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment.

Dr. Carda, in her February 27, 2024 report, diagnosed exacerbation of fibromyalgia and allergic rhinitis. She opined that the environmental irritants at the workplace contributed to appellant's declining health and significantly aggravated his symptoms and underlying conditions. Therefore, the Board finds that the evidence of record establishes diagnosed medical conditions.

OWCP has not reviewed the medical evidence of record regarding the issue of whether the established diagnoses are causally related to the accepted employment factors. Therefore, the case must be remanded to OWCP for consideration of the medical evidence on the issue of causal relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment.

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2024 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 24, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board