

On November 2, 2001 appellant, then a 69-year-old electrician, filed a claim alleging that while on temporary duty in Vietnam from October to November 1972 he was exposed to Agent Orange which caused him to develop diabetes in 1999. He became aware of his condition on July 1, 1999. Appellant retired on January 3, 1987.

In support of his claim, appellant submitted notes from South Texas Veterans Administration Medical Center dated February 13 and August 10, 2001 for treatment for type 2 diabetes mellitus, dry mouth and nocturia, chronic foot pain and impotence. He was diagnosed with diabetes mellitus improved with oral agent, persistent lumbar pain with sciatica and neuropathy from frost bite to feet. In a statement dated November 2, 2001, appellant referenced a commendation for service in an overseas hostile environment from October to November 1972.

On November 27, 2001 the employing establishment controverted the claim. The employing establishment noted that appellant failed to submit medical evidence which indicated that he had been exposed to Agent Orange or that his diagnosed diabetes was causally related to any alleged exposure to Agent Orange.

By letter dated January 11, 2002, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

On February 3, 2002 appellant noted that, during the period October to November 1972, he was stationed at Bien Hoa Base in South Vietnam. He was tasked with 24-hour around the clock assembly and maintenance of aircraft. Appellant noted that the area around Bien Hoa was dense with foliage and Agent Orange had been used to deforest the land before constructing the base and was regularly used which resulted in long-standing contamination of the region. He alleged that he had continuous exposure to Agent Orange through inhalation for 60 days, 24 hours per day due to the currents and monsoon rains. Appellant advised that Agent Orange was aerosolized and sprayed penetrating and contaminating him and impregnating both the structure and contents of his living quarters and tainting food and water supply. He also indicated that the Bien Hoa base was known as a regular storage depot for canisters of Agent Orange. Appellant referenced Public Law 102-4 "Agent Orange Act of 1991" which found limited/suggestive evidence of association between exposures to herbicides and type 2 diabetes.

In a decision dated February 13, 2002, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish that his diabetes condition was caused by the implicated factors of employment.

In a letter dated July 30, 2002, appellant request reconsideration and submitted additional evidence. In a May 6, 2002 report, Dr. John A. Campa, III, a specialist in disability evaluations, noted treating appellant for diabetes mellitus which was controlled by diabetic diet and medial oral hypoglycemic agents.¹ He reviewed the evaluation of the scientific and medical information compiled by the National Academy of Sciences regarding the health effects of exposure to Agent Orange and appellant's statement of his assignment at the Bien Hoa base in South Vietnam. Dr. Campa opined that the proximate cause of appellant's type 2 diabetes mellitus was occupational exposure to Agent Orange/herbicides while employed with the federal government at the Bien Hoa base in South Vietnam from October to November 1972. Dr. Campa indicated that his opinion was substantiated by a National Academy of Sciences report which established a causal link between exposure to Agent Orange/herbicides and type 2 diabetes mellitus. He stated that there was a known distribution and dispersion of Agent Orange/herbicides in North and

¹ The Board notes that Dr. Campa is appellant's son

South Vietnam and appellant's medical records supported "presumptive exposure to Agent Orange/herbicides by virtue of appellant's employment in an exposed and contaminated work setting and the ubiquitous and otherwise aerosolized nature of Agent Orange/herbicides in the region." In a July 2, 2002 report, Dr. Eduardo Javier, a Board-certified family practitioner, diagnosed diabetes mellitus on July 30, 2000 and prescribed glycerides. He noted that appellant was in Vietnam from October to November 1972, when the region had been sprayed with Agent Orange and that appellant ate or drank contaminated food. Dr. Javier indicated that, although appellant was not directly sprayed with Agent Orange, his noninsulin diabetes was related to his Agent Orange exposure.

Appellant submitted employing establishment medical records dated April 4, 1968 to June 16, 1989. These records address treatment for various conditions including a thumb injury, diarrhea and a sore throat. A treatment note dated December 4, 1972 noted that appellant returned from South East Asia one week prior and was treated for diarrhea.

In a decision dated January 27, 2003, the Office denied modification of the February 13, 2002 decision.

By letter dated January 12, 2004, appellant requested reconsideration and submitted additional evidence, including a travel itinerary dated October 27, 1972 from Kelly Air Force base to Bien Hoa Vietnam. Also submitted was an affidavit from Ruben M. Vasquez, a coworker, dated January 8, 2004. He noted that he traveled to Vietnam with appellant in October 1972 and that appellant worked in Vietnam from October to November 1972.

In a January 26, 2004 decision, the Office denied modification of the January 27, 2003 decision.

In a letter dated July 2, 2004, appellant requested reconsideration. He submitted an affidavit from Mario C. Trevino, a coworker, dated February 4, 2004. Mr. Trevino noted that he traveled to Vietnam with appellant in October 1972 and appellant worked in Vietnam October to November 1972.

In an August 4, 2004 decision, the Office denied modification of its January 26, 2004 decision.

On November 29, 2004 appellant appealed to the Board. He submitted a November 29, 2004 brief asserting that he submitted sufficient evidence to establish that he was on a temporary-duty assignment in Vietnam from October to November 1972 and that his diagnosed diabetes mellitus was causally related to his exposure to Agent Orange during his assignment in Vietnam. In an order issued December 1, 2005, the Board granted the Director's request to remand the case and cancel oral argument. The Director indicated that further development was required to determine the level of Agent Orange exposure.²

By letter dated January 26, 2006, the Office advised appellant of the type of factual and medical evidence needed to establish his claim. It requested that appellant submit a detailed

² Docket No. 05-414 (issued December 1, 2005).

history of how he was exposed to Agent Orange, how often he was exposed and to describe all exposures to herbicides and pesticides outside his federal employment. In a letter of the same date, the Office requested that the employing establishment provide documents relevant to appellant's travel to Vietnam, when the grounds of the Bien Hoa base were sprayed with Agent Orange and address whether food and drinking water were contaminated with Agent Orange.

Appellant submitted a diabetes study performed under the "Agent Orange Act of 1991" which noted that there was a trend suggestive of an association between diabetes and Agent Orange. He also submitted a duplicative copy of his February 2, 2002 statement. In a statement dated February 22, 2006, appellant advised that he was not exposed to herbicides or pesticides outside his federal employment.

In a decision dated April 20, 2006, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that his medical condition was causally related to factors of his federal employment. The Office found that appellant was in Vietnam from October 30 to November 27, 1972. The Office noted that the evidence also established that several types of defoliants were stored at Bien Hoa and that fixed wing aircraft spraying of herbicides in Vietnam ended in February 1971 and the last authorized helicopter herbicide operation was on October 31, 1971.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.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) 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

³ Gary J. Watling, 52 ECAB 357 (2001).

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

ANALYSIS

It is not disputed that appellant was employed as an electrician with the Federal Government and was stationed at Bien Hoa military base in Vietnam from October 30 to November 27, 1972. The evidence of record reflects that several types of defoliants were stored at Bien Hoa, that there was residue of Agent Orange when appellant was stationed at the base and the spraying of herbicides in Vietnam ended in 1971. It is also not disputed that he has been diagnosed with type 2 diabetes mellitus. However, appellant has not submitted sufficient medical evidence to establish that his type 2 diabetes mellitus was causally related to any exposure to Agent Orange during his work in Vietnam.

Dr. Campa noted treating appellant for diabetes mellitus. He opined that the proximate cause of appellant's type 2 diabetes mellitus was the result of occupational exposure to Agent Orange/herbicides while employed with the Federal Government at the Bien Hoa base in South Vietnam from October to November 1972. Dr. Campa indicated that his opinion on causal relationship was substantiated by the National Academy of Sciences report which established a causal link between exposure to Agent Orange/herbicides and type 2 diabetes mellitus. Dr. Campa further opined that there was known distribution and dispersion of Agent Orange/herbicides in North and South Vietnam and appellant's medical records revealed a "presumptive exposure to Agent Orange/herbicides by virtue of his employment in an exposed and contaminated work setting give the ubiquitous and otherwise aerosolized nature of Agent Orange/herbicides in the region." However, the Board notes that this does not appear to be an accurate history of appellant's work exposure to Agent Orange as the evidence revealed that aircraft aerosol spraying of all herbicides in Vietnam ended in February 1971 and the last authorized helicopter herbicide operation was on October 31, 1971 nearly one year before appellant arrived in the region.⁵ The evidence does not support that appellant was exposed to aerosolized Agent Orange or herbicides during his assignment in Vietnam which commenced on October 30, 1972 as noted by Dr. Campa. The Board notes that medical opinions based on an incomplete or inaccurate history have little probative value and are insufficient to establish causal relationship.⁶ Additionally, although Dr. Campa supported causal relationship in a conclusory statement, he did not provide a rationalized opinion regarding the causal relationship between appellant's type 2 diabetes mellitus and the factors of employment believed to have caused or contributed to such condition and his opinion, as stated above, was based on an

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ In 2000, the Veterans Administration added type 2 diabetes to a list of disease presumed associated with herbicide exposure during the Vietnam war. The findings of Department of Veterans Affairs are not determinative of appellant's entitlement to benefits under the Act. *See James Robinson, Jr.*, 53 ECAB 417 (2001). Appellant bears the burden of proof to establish causal relationship.

⁶ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete and inaccurate history or which are speculative or equivocal in character have little probative value).

inaccurate history of aerosolized exposure to Agent Orange.⁷ Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Javier diagnosed diabetes mellitus on July 30, 2000. He obtained a history that appellant was stationed in Vietnam from October to November 1972 and indicated that the region was "recently sprayed" with Agent Orange and that appellant ate or drank contaminated food. Dr. Javier concluded that appellant's noninsulin diabetes was related to his Agent Orange exposure. This report is of diminished probative value as it does not recite an accurate history of appellant's work exposure to Agent Orange. As noted, the evidence indicates that aircraft aerosol spraying of all herbicides in Vietnam ended in 1971, one year before appellant arrived in the region. The evidence does not support that appellant was exposed to aerosolized Agent Orange or herbicides during his assignment in Vietnam which commenced on October 30, 1972 as noted by Dr. Javier. Dr. Javier did not provide a rationalized opinion regarding the causal relationship between appellant's type 2 diabetes mellitus and the factors of employment believed to have caused or contributed to such condition. For example, he did not explain the medical reasons by which any exposures during appellant's Vietnam assignment could cause or aggravated the claimed diabetes condition. Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence submitted by appellant include, employing establishment's medical records from April 4, 1968 to June 16, 1989 and treatment notes from South Texas Veterans Administration Medical Center dated February 13 and August 10, 2001. These records are insufficient to establish his claim because they do not provide any opinion on the causal relationship between appellant's job duties and his diagnosed type 2 diabetes mellitus. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁸ Appellant failed to submit such evidence and the Office, therefore, properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he developed diabetes mellitus type 2 causally related to factors of employment.

⁷ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board