

On November 5, 2008 appellant, a 67-year-old human resource assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained nasal stuffiness, cough, eye irritation, wheezing, skin irritation, muscular aches and shortness of breath while working. She alleges that these symptoms affected her short-term memory, collapsed her muscles and

damaged her nerves. Appellant also alleges that she was exposed to black mold at her place of work. She alleged that the employing establishment's ventilation ducts were contaminated. Appellant alleged that the contamination was not visible and that no precautions were taken because no one was aware of the contamination. She first became aware of her condition on February 14, 2005 and realized her condition was caused by her employment on September 15, 2008.

On February 5, 2005 Dr. Eugene C. Lai, a Board-certified neurologist, reported findings on examination, a review of appellant's medical history and diagnosed pain.

On February 20, 2005 Dr. Anthony M. Masaryk, a Board-certified diagnostic radiologist reported that a magnetic resonance imaging (MRI) scan of appellant's spine revealed evidence of prior surgery at the L2-3 and L4-5 levels. He noted the presence of degenerative changes and evidence of neural impingement at both levels.

Also on February 20, 2005 Dr. Sami M. Aboumatar, a Board-certified neurologist, presented findings on examination, a review of appellant's medical history and diagnosed radiculopathy and bilateral polyneuropathy of unknown etiology.

Appellant submitted a February 22, 2005 report in which Dr. Frederick Dixon, Board-certified internist, reported that an echocardiogram produced an "essentially normal study."

In a February 24, 2005 report, Dr. Donovan H. Sigerfood, a Board-certified internist, diagnosed fever of unknown etiology with polyneuropathy and muscular weakness in appellant's lower extremities, ataxia, hyperthyroidism and lumbar disc disease.

In a February 26, 2005 report, Dr. Marlin E. Sandlin, a Board-certified diagnostic radiologist, reported that an MRI scan of appellant's lumbar spine revealed spondylosis, disc protrusion at L4-5 and disc extrusion at the L2-3 level. He also reported that an MRI scan of appellant's cervical spine revealed spondylosis with "moderate-to-marked" spinal stenosis.

On March 11, 2005 Dr. Sandlin reported that an MRI scan of appellant's spine revealed cervical spondylosis without stenosis. Moreover, an MRI scan of appellant's lumbar spine revealed degenerative changes at multiple levels.

In a March 15, 2005 report, Dr. Lai, a Board-certified neurologist, reported findings on examination, reviewed appellant's history of injury and diagnosed viral meningoencephalitis.

Appellant submitted a March 17, 2005 report, Dr. Thomas A. Hill, a Board-certified neurologist, diagnosed gait dysfunction, hypothyroidism and spinal stenosis.

In an April 10, 2005 report, Dr. Howard B. Weiss, Board-certified in physical medicine and rehabilitation, diagnosed polyradiculopathy with lower extremity paraparesis, possible encephalomyelitis, possible transverse myelitis, gait dysfunction, urinary retention and possible loss of bowel control, depression and hypothyroidism.

By note dated November 3, 2008, Dr. Dale Ericsson, a Board-certified neurologist, reported that he was treating appellant for a chronic inflammatory demyelinating polyneuropathy

(CIDP) like syndrome after she sustained an illness resembling viral encephalitis. He opined that the symptoms were “consistent with toxic mold syndrome.”

In a December 3, 2008 note, appellant relates that she was unaware that black mold exposure was an issue until third parties inquired if she had been tested for black mold exposure. She reported that following an August 2008 airplane ride she searched the internet for “black mold” and reported that the symptoms “fit [her] to a ‘T.’” Appellant noted that it was only after September 15, 2008 that she learned that she tested positive for black mold.

Appellant submitted a December 4, 2008 report from Dr. Dennis G. Hooper, anatomic and clinical pathologist, in which she tested positive for two mycotoxins. Dr. Hooper recommended testing her residence and place of employment for the presence of these toxins.

By decision dated January 6, 2009, the Office denied the claim because the evidence of record did not establish that appellant sustained an injury as defined by the Federal Employees’ Compensation Act.

In a January 26, 2009 note, Dr. Ericsson noted treating appellant for CIDP following viral encephalitis and exposure to toxic mold. He noted that she initially had acute inflammatory demyelinating polyneuropathy with quadriplegia that was “probably [the] result of toxic mold exposure.”

Appellant submitted a February 15, 2009 note from John S. Cipparone, Colonel, U.S. Marine Corps (retired), who reported:

“Throughout my duties as the Commanding Officer [*sic*] of UT’s NROTC from August 1997 [thru] July 2000, I did not discern any of my staff exposed to black mold since I was not aware of any visible or nonvisible conditions associated with such a hazard.”

On April 20, 2009 appellant requested reconsideration.

By decision dated May 15, 2009, the Office denied modification of its January 6, 2009 decision because the evidence of record did not establish that she was exposed to toxic substances at work and therefore the factual component of her claim had not been met.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>1</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>2</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *J.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

she claims compensation is causally related to that employment injury.<sup>3</sup> As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>4</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee 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 employment factors identified by the employee.<sup>6</sup>

### ANALYSIS

Appellant alleged that her condition was caused by exposure to black mold. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>7</sup> She has not submitted the necessary evidence to *prima facie* establish that the alleged exposure occurred in a specific time, place and manner. Appellant has not alleged the time frame of her exposure to the black mold, the location of the black mold within the employing establishment or how her exposure to the alleged mold occurred. The employing establishment denied that any black mold was present in its facilities or that any of its employees were exposed to black mold. The Board finds the evidence of record insufficient to establish that appellant sustained actual exposure to toxic substances in the course of her federal employment and therefore the factual component of her claim has not been satisfied.<sup>8</sup>

The circa 2005 medical evidence appellant submitted lacks probative value because it does not concern treatment or diagnosis of conditions caused by exposure to black mold. These medical reports lack rationalized opinions explaining how any of the conditions they diagnosed

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<sup>3</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *G.T.*, *supra* note 3; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

<sup>5</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>6</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> *See E.A.*, 58 ECAB 677 (2007); *Arthur C. Hamer*, 1 ECAB 62 (1947).

<sup>8</sup> Appellant submitted reports from a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence. 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Thus, the physical therapy reports appellant submitted have no probative medical value.

were caused by employment-related black mold exposure if any black mold exposure actually occurred while appellant was at work. Appellant's notes also lack probative evidentiary value because they do not identify employment factors she considers responsible for her condition or her alleged employment-related exposure to black mold. Thus this evidence is insufficient to satisfy appellant's burden of proof.

Dr. Hooper reported that appellant tested positive for two mycotoxins and recommended that her residence and place of employment be tested for the presence of those toxins. The record does not contain any evidence demonstrating that her residence or place of employment were tested for the presence of toxic mold nor is there evidence demonstrating that either location tested positive for toxic mold. There is no evidence of record demonstrating that appellant was exposed to black mold in the workplace and Dr. Hooper did not provide any opinion that she sustained an identifiable medical condition due to exposure to black mold.

Dr. Ericsson opined that appellant's symptoms were "consistent with toxic mold syndrome." He also opined that appellant's condition was "probably [the] ... result of toxic mold exposure." However, these are equivocal statements and therefore are of diminished probative value.<sup>9</sup> There is no evidence of record demonstrating that appellant was exposed to toxic mold in the workplace and Dr. Ericsson did not provide any opinion that appellant sustained an identifiable medical condition due to exposure to toxic mold.

Furthermore, the reports and notes from Drs. Hooper and Ericsson do not contain a rationalized medical opinion explaining how appellant's alleged condition was caused by specific employment factors.<sup>10</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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.<sup>11</sup> Dr. Hooper's and Dr. Ericsson's reports and notes are not based on an accurate history of exposure, do not reveal a basis for any exposure timeline or contain an opinion on the conditions at the employing establishment. Their reports and notes also lack opinion explaining the nature of the relationship between a diagnosed condition and specific employment factors identified by appellant. These deficiencies reduce the probative value of the physicians' opinions such that their reports and notes are insufficient to satisfy appellant's burden of proof.

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

<sup>10</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>11</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

An award of compensation may not be based on surmise, conjecture or speculation.<sup>12</sup> Appellant has the burden of establishing each element of her claim. Here, she has not produced evidence sufficient to establish the factual element of her claim and therefore the Board finds that she has not established that she sustained an injury in the performance of duty.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 15 and January 6, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 14, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> See also *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).