United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 11-549**
	)	**Issued: December 14, 2011**
DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Columbus, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 3, 2011 appellant filed a timely appeal from a December 16, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision which denied her claim for an employment-related injury. 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed asthma and chronic obstructive pulmonary disease (COPD) in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On November 3, 2010 appellant, then a 70-year-old supervisory field office assistant, filed an occupational disease claim (Form CA-2) alleging that she developed chronic bronchitis

[1] 5 U.S.C. § 8101 *et seq.*

as a result of exposure to mold at her workplace. She first became aware of her condition on January 1, 2008 and realized it was caused by her federal employment on August 31, 2010. Appellant stopped work on March 31, 2010.

By letter dated November 5, 2010, OWCP requested additional evidence to support her claim and allotted 30 days for submission. Appellant submitted mold analysis reports dated April 26 and August 10, 2006 and September 23, 2008 which demonstrated evidence of mold in her workplace.

In an undated narrative statement, appellant noted that mold was discovered in her place of work over 20 years ago. She stated that mold would fall out of the air system, which consisted of open large pipes located throughout the office with vents on each side, onto the furniture. Appellant concluded that the mold was airborne. Steps were taken to eliminate the mold but were unsuccessful. Inspections were made and reports were filed. Supervisors were aware of the mold situation. Appellant stated that she suffered from sinus and bronchial infections for many years. In the last few months her nostrils and eyes would begin to burn upon entering the work building. By the end of the day, an unbearable headache would occur and then develop into nausea. Appellant reported losing a significant amount of weight. She self-medicated, visited physicians, family clinics and emergency rooms.

In a March 24, 2010 memorandum, appellant notified the employing establishment of her retirement effective March 31, 2010. She stated that her retirement was due to health reasons. Appellant discussed her work environment with her pulmonary physician and provided him with a list of the types of molds found in the office. The physician stated that they were not life threatening, but certainly were not good for her and possibly left her with a weak immune system.

In an August 12, 2010 e-mail message, the employing establishment indicated that it had reviewed the historical mold sampling data collected at the workplace and concluded that it had not demonstrated a widespread population of mold within the facility. It noted that there was no established standard for the acceptable level of mold organisms in the workplace, that some employees may be more susceptible to specific molds than other employees and that it was unreasonable to expect to maintain near-zero levels of molds in the average workplace.

In an August 31, 2010 medical report, Dr. James A. Rish, a Board-certified internist specializing in critical care medicine and pulmonary diseases, reported that he had treated appellant for asthma and COPD for a number of years. He typically saw her every six months and as needed. In 2009, appellant had one office visit. In 2010, she required three office visits, two of which were of an acute nature.

A September 13, 2010 correspondence from Heather Bohon of Internal Medicine Associates of West Point-Cox listed dates of service and the reason for appellant's visit. The September 2, 2009 entry revealed that appellant was seen for asthmatic bronchitis.

In a November 28, 2010 letter, appellant advised that she spent 40 hours a week, 52 weeks a year in her workplace and the rest of her time at home where there was no mold. She

stated that another individual had to be taken out of the building because of the condition and that she had not experienced another bronchitis attack since she retired in March 2010.

By decision dated December 16, 2010, OWCP denied appellant's claim on the grounds that the medical evidence submitted was not sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing 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, and that an injury[3] was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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 implicated employment factors.[6] 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.[7]

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an occupational disease in the performance of duty. The record reflects that she

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[2] 5 U.S.C. §§ 8101-8193.

[3] OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[4] *See Ellen L. Noble*, 55 ECAB 530 (2004). *See also J.C.*, Docket No. 09-1630 (issued April 14, 2010). .

[5] *Id. See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[6] *See D.N.*, Docket No. 10-1762 (issued May 10, 2011).

[7] *See Victor J. Woodhams*, 41 ECAB 345 (1989). *See also D.E.*, Docket No. 07-27 (issued April 6, 2007)

has asthma and COPD and that there is evidence of mold within her workplace. However, appellant has not established that her asthma and COPD are causally related to this exposure in her employment.

In support of her claim, appellant submitted an August 31, 2010 medical report by Dr. Rish, who reported that he had treated her for asthma and COPD for a number of years, typically seeing her every six months and as needed. In 2009, she had one office visit. In 2010, appellant required three office visits, two of which were of an acute nature. Dr. Rish failed to directly address the issue of causal relationship or provide a rationalized medical opinion explaining how factors of her federal employment, such as exposure to mold, caused or aggravated her asthma and COPD or how her conditions arose. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] Lacking thorough medical rationale on the issue of causal relationship, the medical report of Dr. Rish is insufficient to establish that appellant sustained an employment-related injury.

The September 13, 2010 correspondence from Ms. Bohon listing appellant's dates of treatment for various conditions, including asthmatic bronchitis, does not constitute medical evidence as she is a lay person and is not competent to render medical opinion.[9]

Appellant contends that, because medical studies have shown that mold could cause asthma and COPD and because the mold analysis reports dated April 26 and August 10, 2006 and September 23, 2008 established the presence of mold at her workplace, common sense dictates that her asthma and COPD were caused by the mold in her workplace. However, causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[10] As found above, the medical evidence is insufficient to establish the claim. Similarly, appellant's submission of mold analysis reports discussing the presence of mold in her workplace is insufficient to establish causal relationship. The Board has held that the mere fact that her symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.[11]

Because appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

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.

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[8] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[9] *See James A. Long,* 40 ECAB 538, 542 (1989).

[10] *See Steven S. Saleh*, 55 ECAB 169 (2003); *Robert G. Morris*, 48 ECAB 238 (1996). *See also D.E.*, *supra* note 7.

[11] *Id. See also Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she developed asthma and COPD in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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