

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>G.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 13-573</b>
	)	<b>Issued: May 17, 2013</b>
<b>DEPARTMENT OF THE NAVY, MARINE</b>	)	
<b>CORPS-STATIONS, Camp Lejeune, NC,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 15, 2013 appellant filed a timely appeal from the December 12, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim for an injury in the performance of duty. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 19, 2012 appellant, then a 39-year-old police officer, filed an occupational disease claim alleging that he suffered from shortness of breath, a tight chest, short-term memory loss, fatigue, periodic nausea, vomiting, frequent headaches and joint pain due to working in a building that contained a toxic black mold, "AS 302 Macavoy Street, MCAS New River." He indicated that he first became aware of the condition on August 1, 2012. Appellant advised that he realized it was caused or aggravated by his employment on September 28, 2012.

In letters dated October 29, 2012, OWCP requested additional factual and medical evidence from appellant and the employing establishment and requested that he submit such evidence within 30 days.

A September 14, 2012 industrial hygiene survey of the indoor air quality for building AS-302, revealed mold on several ceiling tiles. It was also noted that industrial hygiene had responded to requests concerning mold dating back to 2004.

In a November 15, 2012 statement, appellant indicated that he experienced shortness of breath, a tight chest and short-term memory loss, fatigue, nausea, vomiting, frequent headaches and joint pain. He advised that his diagnosis was unknown, but that he was subjected to prolonged exposure to high quantities of mold and mold spores at his employment. Appellant noted that the mold was highly visible on the walls throughout the entire building.

In e-mail correspondence dated November 13, 2012, Mark Moran, a supervisor and watch commander with the employing establishment, indicated that the employing establishment concurred with appellant's allegations about mold in the building. He explained that the employing establishment was forced to find a new building to facilitate employee health. Mr. Moran noted that no samples were available of mold, but confirmed that there was a significant amount of black mold present and it was visible along the edges of the walls and ceilings. He explained that appellant was a desk sergeant and he spent a significant amount of time in the building. In particular, Mr. Moran explained that appellant worked in the desk sergeant room, which had one window which was "nearly always closed," a fan and an air conditioning unit. He advised that, once the mold issue was realized, they attempted to keep appellant out of the building as much as possible by keeping him in a road unit instead of in the building. Mr. Morgan noted that dehumidifiers were also placed in the building to limit the moisture and decrease the mold issue. He also described appellant's duties.

OWCP also received several reports dating from November 1 to 14, 2012 from Dr. Michael Moulton, Board-certified in emergency medicine. In a November 1, 2012 treatment note, Dr. Moulton diagnosed exposure and returned appellant to full duty without restrictions. He advised that appellant avoid potential mold exposure. In a separate note also dated November 1, 2012, Dr. Moulton's notes indicated that appellant was exposed to mold in an old building at work. He diagnosed exposure, fatigue and nausea. The treatment notes also indicated that appellant was a smoker who smoked one-half pack per day. A November 14, 2012 spirometry test revealed that appellant had the lungs of a 69 year old. The November 14, 2012 treatment notes from Dr. Moulton noted mold exposure and referral to a toxicologist. A

November 1, 2012 chest x-ray read by Dr. Dandip Patel, a Board-certified internist, was normal. Laboratory tests dated November 1, 2012 from appellant were also submitted.

By decision dated December 12, 2012, OWCP denied appellant's claim finding that she had failed to submit the necessary medical evidence in support of his claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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, that an 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.<sup>3</sup> 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.<sup>4</sup>

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 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 the claimant. The medical evidence required to establish causal relationship, generally, is 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 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.<sup>5</sup>

### **ANALYSIS**

In the instant case, appellant alleged that he was exposed to air contaminated with mold spores at the employing establishment. The employing establishment confirmed that he was exposed while at work. OWCP properly found that the claimed employment factor -- exposure to mold at work -- occurred. However, appellant has submitted insufficient medical evidence to

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

establish that his condition was caused or aggravated by exposure to mold at the employing establishment or any other specific factors of his federal employment.

Appellant has not submitted any evidence from a physician explaining how factors of his employment, such as being exposed to air contaminated with mold spores at the employing establishment, would have caused or contributed to any lung or breathing condition.

OWCP informed appellant of the deficiencies in the medical evidence and what was needed to establish his claim in a letter dated October 29, 2012.

The Board notes that in a November 1, 2012 treatment note, Dr. Moulton diagnosed exposure and recommended that appellant avoid potential mold exposure. However, he did not address causal relationship. 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.<sup>6</sup> In a separate note also dated November 1, 2012, Dr. Moulton indicated that appellant was exposed to mold in an old building at work and diagnosed exposure, fatigue and nausea. However, he did not provide a rationalized medical explanation as to why physiologically appellant's mold exposure would have caused any medical condition. This is particularly significant in light of the fact that appellant was smoking half a pack of cigarettes per day. Part of a claimant's burden of proof is the submission of rationalized medical evidence based on a complete and accurate factual and medical background showing causal relationship.<sup>7</sup>

Other medical reports submitted are insufficient as they did not address causal relationship. These included treatment notes and diagnostic reports that did not contain a physician's opinion with regard to whether workplace mold exposure caused or aggravated a diagnosed medical condition.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's exposure to mold caused or aggravated a diagnosed medical condition, he has not met his burden of proof in establishing his claim.

On appeal, appellant indicated that he submitted evidence to support his claim. However, as noted above there is no probative, rationalized medical evidence addressing and explaining

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<sup>6</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Kenneth R. Love*, 50 ECAB 193 (1998); *Michael E. Smith*, *supra* note 6.

<sup>8</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>9</sup> *Id.*

why his workplace mold exposure caused or contributed to a diagnosed medical condition. Appellant also submitted new evidence with his appeal. However, the Board has no jurisdiction to review this evidence for the first time on appeal.<sup>10</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the 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 not met his burden of proof in establishing that he sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>10</sup> 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).