

FACTUAL HISTORY

On June 5, 2006 appellant, then a 42-year-old contract specialist, filed an occupational disease claim alleging that her asthma had been aggravated by mold from a window near her rotating workstation. She first became aware of her condition August 24, 2005 and related it to her employment on January 15, 2006. Appellant did not stop work. The employing establishment noted remedial action to get rid of the mold was still underway.

In a September 5, 2005 emergency room report, Dr. Mark R. Anderson, an examining Board-certified emergency room physician, diagnosed dyspnea with acute bronchitis and exacerbation of her asthma. Under history of present illness, he reported that appellant had been diagnosed with pneumonia.

In a September 10, 2005 emergency room report, Dr. Bradley D. Robertson, an examining Board-certified family medicine physician, stated that appellant was seen due to complaints of chest discomfort and shortness of breath. Under history, he stated that appellant had been diagnosed with pneumonia and had been seen in the emergency room earlier that month. Appellant related that “she would feel better and then it seems to come back.” Dr. Robertson diagnosed atypical chest pain and acute bronchospasm.

On June 22, 2006 the Office notified appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit within 30 days a medical narrative from her treating physician, which contained a diagnosis and a rationalized opinion as to the cause of her condition.

On July 26, 2006 Dr. Christopher J. Wrenn, an examining physician Board-certified in allergy and immunology, noted appellant’s severe asthma problem began in August 2005 and that she had been seen in the emergency room three times. He stated that appellant’s work site had been “found to be very moldy and intense remediation for that started in May this year and [appellant] had another asthma attack.” Dr. Wrenn reported that skin tests revealed that appellant had severely positive results to various items including mold. Appellant was diagnosed with allergic rhinitis, recurrent laryngitis by history, secretory otitis media, congestion headache by history, recurrent angioedema/urticaria by history and hyperreactive airway disease by history. Dr. Wrenn reported that appellant’s “home environment reveals very little exposure to anything except for East Texas environmental allergens and exposure to mold at work.”

In a second report dated July 26, 2006, Dr. Wrenn noted that appellant is very reactive to mold, dust, hay, grass and weed pollens. He related:

“[Appellant] has had two episodes of asthma that persisted for long periods of time and were quite severe and has been exposed to a lot of mold. It is very possible that the exposure to the mold contributed to the two spells of asthma through which she suffered based on the historical time frame in which the spells occurred.”

By decision dated September 5, 2006, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that her diagnosed condition was causally related to the accepted exposure in the workplace.

On September 25, 2006 appellant requested an oral hearing before an Office hearing representative, which was held on February 14, 2007.

Subsequent to the hearing, the Office received a November 9, 2005 report regarding the mold problem at her work site and mold removal/remediation protocol, statements by coworkers, Betty Paul and Ashley Jett and a March 5, 2007 report by Dr. Wrenn, who reported that appellant was "very reactive to mold and dust." Dr. Wrenn opined that appellant had "a lot of symptomatology, much of it severe and life-threatening prior to mold/dust remediation in her office" and has had "very little trouble" since the remediation.

In their statements, both Ms. Paul and Ms. Jett noted that appellant appeared fine when she first arrived at work, but noted swelling in her hands and face as the day progressed. Appellant informed them that she was having trouble breathing. She also pointed out the mold under the wallpaper near her work site.

By decision dated March 30, 2007, the Office hearing representative affirmed the denial of her claim.

In a letter dated October 19, 2007, appellant requested reconsideration and submitted a September 26, 2007 report by Dr. Wrenn in support of her request. Dr. Wrenn noted that appellant was very sensitive to mold and house dust and that exposure "to either of these items for a prolonged period will increase her upper and lower respiratory tract symptoms" and he had no doubt that her work exposure was the cause of her problem.

By decision dated November 20, 2007, the Office denied modification of the hearing representative's March 30, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.² In an occupational disease

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.115(e), (f). See *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Gary M. DeLeo*, 56 ECAB 656 (2005). See also *Jacquelyn L. Oliver*, 48 ECAB 232 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

claim, to establish that an injury was sustained in the performance of duty, 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 diagnosed condition is causally related to the employment factors identified by the claimant.³

ANALYSIS -- ISSUE 1

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 Office accepted that there was mold under wallpaper near a window in appellant's work environment, but found that the medical evidence did not support a causal relationship between established work factors and a diagnosed condition. The question that remains is whether this exposure aggravated her asthma.

Dr. Wrenn treated appellant for exacerbation of her asthma. He reported on July 26, 2006 that she had "a lot of symptomatology, much of it severe and life-threatening prior to mold/dust remediation in her office" and has had "very little trouble" since the remediation. Dr. Wrenn reported in a second July 26, 2006 report that it was "very possible" that appellant's exposure to mold contributed to the two asthma attacks. His reports are speculative in nature as they state it is possible appellant's exposure to mold caused her asthma attacks at work.⁴ As Dr. Wrenn's opinion speculative and equivocal in nature, his reports are not sufficient to establish appellant's claim.

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.⁵ 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.⁶ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.⁷

As there is no medical evidence explaining how appellant's exposure to mold aggravated her asthma condition, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of her employment.

³ *R.H.*, 59 ECAB ___ (Docket No. 07-2124, issued March 7, 2008); *Victor J. Woodhams*, *supra* note 2.

⁴ *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

⁵ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007).

⁶ *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

⁷ *E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007) (to establish entitlement to workers' compensation benefits, a claimant must submit an affirmative opinion on causal relationship from a physician who supports the opinion with sound medical reasoning).

LEGAL PRECEDENT -- ISSUE 2

The Act⁸ provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁹ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.¹⁰

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹² A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹³

ANALYSIS -- ISSUE 2

Appellant disagreed with the denial of her claim and requested reconsideration. The underlying issue on reconsideration was whether she submitted sufficient medical evidence to establish that her asthma was aggravated by her employment.

In support of her claim, appellant submitted a September 26, 2007 report by Dr. Wrenn, who noted that appellant was very sensitive to mold and house dust such that he had no doubt that her work exposure was the cause of the aggravation of her asthma. This report, however did not provide any further support for causal relationship beyond that noted in the physician's two reports dated July 26, 2006. Thus, while the September 26, 2007 report is new, it is not relevant as it is duplicative of his prior reports with regard to causal relationship. Evidence or argument

⁸ 5 U.S.C. § 8101 *et seq.*

⁹ 5 U.S.C. § 8128(a). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

¹⁰ 20 C.F.R. § 10.605.

¹¹ *Id.* at § 10.606. *See Susan A. Filkins*, 57 ECAB 630 (2006).

¹² *Id.* at § 10.607(a). *See Joseph R. Santos*, 57 ECAB 554 (2006).

¹³ *Id.* at §10.608(b). *See Candace A. Karkoff*, 56 ECAB 622 (2005).

that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴

Consequently, appellant has not submitted relevant and pertinent new evidence not previously considered by the Office; nor has she shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously considered by the Office. Therefore, the Office properly denied her request for reconsideration without conducting a merit review of the claim.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she developed an occupational disease over the course of her employment. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 20 and March 30, 2007 are affirmed.

Issued: January 14, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ *L.C.*, 58 ECAB ___ (Docket No. 06-1928, issued May 31, 2007); *J.P.*, 58 ECAB ___ (Docket No. 06-1274, issued January 29, 2007).