United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 09-2156**
	)	**Issued: August 3, 2010**
TENNESSEE VALLEY AUTHORITY, PARADISE FOSSIL PLANT, Drakesboro, KY, Employer	)	

Appearances:
Ronald K. Bruce, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 26, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated October 23, 2008 and June 26, 2009 denying his occupational disease claim. Pursuant to 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 his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On August 8, 2008 appellant, a 52-year-old yard mechanical technician, filed an occupational disease claim form (CA-2) alleging that he developed pneumoconiosis as a result of employment duties. He retired on January 4, 2008 and learned of his occupational lung disease on April 3, 2008 when he reviewed a report of his chest x-ray.

In a letter dated August 27, 2008, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to describe the exposure he believed caused or contributed to his claimed condition, and to provide a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to how the employment exposure caused or aggravated the diagnosed condition.

In an undated statement, appellant advised that he worked more than 40 hours per week at the employing establishment from 1979 until he retired on January 4, 2008. He worked on belt lines, transfer stations, coal hoppers and in the coal breaker building and coal conditioning building, where he was exposed to coal dust on a daily basis. Appellant stated:

> "You could see the coal dust in the air; on all of the equipment; and it would build up several inches deep on beams in the plant. I would have this dust on my skin and on my clothing. I would blow coal dust out of my nose. On occasion I wore a paper mask. I was also exposed to welding fumes and smoke."

From 1977 to 1979, appellant worked for TK Jessup at a surface coal mine, where he was exposed to coal dust daily. He was employed by Modem Welding Company from approximately 1975 to 1977 as a welder, where he was exposed to welding smoke and fumes daily. Appellant stated that he had some shortness of breath that had progressively worsened. He was never a smoker.

The record contains a January 10, 2008 report of a chest x-ray, which was interpreted by Dr. Matthew A. Vuskovich, a treating physician, who indicated by placing a checkmark in the "yes" box that it revealed parenchymal abnormalities consistent with pneumoconiosis.

In a July 1, 2008 report, Dr. Brian Chaney, Board-certified in the field of family medicine, related that appellant had experienced shortness of breath in the past. On examination, the lungs were clear with no wheezes or rales. Dr. Chaney diagnosed dyspnea (difficulty breathing) and recommended pulmonary function testing. The record contains a July 8, 2008 spirometry report.

By decision dated October 23, 2008, the Office denied appellant's claim. It accepted that the work exposures occurred as alleged but found that the medical evidence failed to demonstrate that the claimed condition was causally related to the established exposures. On November 4, 2008 appellant requested an oral hearing.

In an October 30, 2008 report, Dr. Stephen Adams, Board-certified in the field of family medicine, reviewed appellant's claim and employing establishment medical records at the request of the employer. Appellant reported that he was exposed extensively to coal dust duties at various times in the course of his duties as boilermaker welder, maintenance mechanic and yard mechanic. A chest x-ray was interpreted by Dr. Vuskovich of Tampa Florida as showing a 1/0 profusion of small opacities. Dr. Vuskovich found a contradiction between Dr. Chaney's statement that appellant had occasional shortness of breath in the past, but nothing recently and appellant's statement in his narrative that his shortness of breath over the past several years had progressively worsened. He noted normal spirometry results pursuant to the employing establishment medical records. Because appellant's own personal physician did not diagnose

occupationally-related lung disease, Dr. Adams opined that appellant had no basis for a compensation claim. The record contains personnel records, including health unit medical records for the period November 16, 1978 through December 17, 2004, position descriptions for positions held by appellant and a November 16, 1978 application for employment.

The employing establishment controverted appellant's claim. On October 1, 2008 it contended that his claim should be denied, as measured exposures to respirable dusts experienced by boilermakers performing the same job as appellant were below the relevant Permissible Exposure Limit (PEL) established by OSHA. Additionally, personal protective equipment such as respiratory protection was utilized on jobs in which the measured exposure exceeds the PEL. Further, a diagnosis of pneumoconiosis and obstructive airway disease was consistent with the consequences of working in a coal mine with no respiratory protection utilization. The employing establishment confirmed that appellant had been employed as described for 29 years.

Appellant submitted a statement dated April 3, 2008. He had been advised by his physician on that date that he had an occupational lung disease due to his exposure at the employing establishment.

In a report dated December 16, 2008, Dr. Chaney stated that he had been treating appellant since February 2007 and most recently examined him in July 2008, at which time he was experiencing dyspnea. He opined that appellant's exposure to coal dust and other substances related to his occupation "caused some of his underlying lung disease." Dr. Chaney stated that "given the increase in shortness of breath in a nonsmoker makes it more likely that occupational exposure is the underlying cause for his symptoms."

At a March 31, 2009 hearing, appellant reiterated his claim that he was constantly exposed to coal dust during the course of his federal employment. He breathed it in, coughed it up and blew it out of his nose throughout an eight-hour day. Appellant was also exposed to welding smoke and fumes.

In a decision dated June 26, 2009, an Office hearing representative affirmed the October 23, 2008 decision on the grounds that the medical evidence failed to establish that appellant's claimed lung condition was causally related to the accepted exposures.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including the fact that an injury was

[1] 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged,[2] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[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) a factual statement identifying the 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.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.[5]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[6]

ANALYSIS

The Board finds that appellant has not submitted sufficient medical evidence to establish that his claimed lung condition was causally related to the accepted employment exposures. Therefore, he has failed to meet his burden of proof.

Contemporaneous medical evidence of record included a January 10, 2008 report of a chest x-ray, which was interpreted by Dr. Vuskovich, who noted parenchymal abnormalities consistent with pneumoconiosis. This report lacks probative value on several counts. Dr. Vuskovich did not provide any opinion as to the cause of the diagnosed condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.[7] Dr. Vuskovich did not describe

[2] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[3] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[4] *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[6] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

[7] *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition, or provide examination findings. There is no evidence that he ever examined appellant. Dr. Vuskovich's report is of limited probative value.

Dr. Chaney's reports lack probative value in they do not provide a specific diagnosis, are vague and equivocal and fail to explain the causal relationship between appellant's condition and the work-related exposures.[8] On July 1, 2008 he found appellant's lungs to be clear, diagnosed dyspnea and recommended pulmonary function testing. Dr. Chaney failed to provide any opinion as to the cause of appellant's diagnosed dyspnea or address how it related to his employment. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.[9]

On December 16, 2008 Dr. Chaney opined that appellant's exposure to coal dust and other substances in his occupation "caused some of his underlying lung disease" and stated that "given the increase in shortness of breath in a nonsmoker makes it more likely that occupational exposure is the underlying cause for his symptoms." The Board notes that this report was not based on a current examination, as Dr. Chaney indicated that he had not examined appellant in over five months. Moreover, his diagnosis was vague and his opinion was equivocal. Dr. Chaney failed to adequately explain the physiological process whereby appellant's accepted diagnosed condition was causally related to accepted job-related exposures. Medical conclusions unsupported by rationale are of little probative value.[10] In this case, such an explanation is important in light of the employer's assertion that measured exposures to respirable dusts experienced by boilermakers performing the same job as appellant were below the relevant PEL established by OSHA and that personal protective equipment was utilized on jobs in which the measured exposure exceeded the PEL.

The remaining medical evidence submitted in support of appellant's claim, which does not contain an opinion as to the cause of appellant's claimed lung condition, is not probative medical evidence. The medical evidence of record is not sufficient to establish that appellant contracted a pulmonary disease from his occupational exposure or that he sustained a personal injury at work.

Appellant expressed his belief that his claimed lung condition resulted from his exposure to coal dust and other fumes. The Board has held, however, 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.[11] 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.[12] Causal relationship must be

[8] *See Michael E. Smith, supra* note 7.

[9] *Supra* note 7.

[10] *Willa M. Frazier*, 55 ECAB 379 (2004).

[11] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[12] *Id.*

substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the accepted work-related exposure is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of employment.

On appeal, counsel argues that as the opinions of Dr. Adams and Dr. Chaney were in conflict, a referee examination should have been performed. Dr. Adams reviewed appellant's claim and employing establishment medical record at the request of the employing establishment. He concluded that appellant had no basis for a compensation claim, primarily because his own personal physician did not diagnose him with occupationally-related lung disease. Dr. Adams' report, however, was not based on a complete factual and medical background of the claimant, and was not supported by medical rationale explaining the nature of the relationship between appellant's diagnosed condition and the claimed exposure,[13] nor was his opinion based on an examination of appellant. Therefore, Adams' opinion is of limited probative value and is insufficient to create any conflict. The Board notes, however, that his report does not support appellant's compensation claim. Counsel also contends that the medical evidence is sufficient to establish that appellant developed a lung condition due to the accepted exposure. For reasons stated, the Board finds that the medical evidence is insufficient to establish his occupational disease claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

[13] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2009 and October 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 3, 2010
Washington, DC

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

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

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