

FACTUAL HISTORY

On September 12, 2013 appellant, then a 62-year-old retired air conditioning operator/mechanic, filed an occupational disease claim (Form CA-2) alleging that as a result of working in an area with asbestos for 20 years with no mask or protection, he suffered from asbestosis.

In an April 1, 2013 radiology report, Dr. Brigid M. Poe, a Board-certified radiologist, found blunted left lateral costophrenic angle which she suspected was most likely a function of pleural thickening, and two nodular densities in the left upper lobe. She recommended a computerized tomography (CT) scan of the chest with contrast. The CT scan was performed on April 5, 2013 by Dr. Vjekoslav Jeras, a Board-certified radiologist. Dr. Jeras found “calcified pleural plaques along bilateral hemidiaphragms as well as lateral chest walls, consistent with prior asbestos exposure.” He also found “subtle four millimeter hypodensity subcapsular location, left lobe of liver, too small to characterize, suggesting small hepatic cyst.”

By letter dated September 24, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim and listed documentation that he must submit, including medical evidence, to support his claim. Appellant submitted responses to questions detailing his work experience with asbestos.

In a November 19, 2013 decision, OWCP denied appellant’s claim, finding that he had not established fact of injury. It noted that the evidence of record did not support that the work conditions occurred as described, and also noted that appellant did not submit any medical evidence containing a medical diagnosis in connection with the injury or events.

On November 21, 2013 appellant, through counsel, requested a telephone hearing before OWCP’s Branch of Hearings and Review.

In an October 29, 2013 report, Dr. Charles Koepke, a Board-certified internist, reviewed appellant’s abdominal CT chest scan of April 2013 and noted that there were several areas of calcified pleural plaque, but no discrete nodules. He listed appellant’s diagnoses as chronic asbestosis, personal history of prostate cancer, and chronic rhinitis.

By decision dated March 21, 2014, an OWCP hearing representative noted that he conducted a preliminary review of the evidence and found that further development was necessary. He noted that OWCP should forward the claimant’s factual statement to the employing establishment to request comments and to provide a full explanation with regard to appellant’s asbestos exposure. Following the response, the hearing representative directed OWCP to make findings of fact as to whether appellant established that the alleged exposure occurred at the time, place, and in the manner alleged, and if so, should move forward with evaluating the medical evidence, and then issue a *de novo* decision.

On April 7, 2014 OWCP requested that the employing establishment provide further information regarding appellant’s exposure to asbestosis at work. A May 7, 2014 OWCP telephone memoranda related that the employing establishment had archived appellant’s records

since he last worked in 1999. The employing establishment was attempting to retrieve appellant's records, but requested a 30-day extension to do so. It provided no further response.

In a July 16, 2014 decision, OWCP determined that appellant had established that the employment factor occurred and that a medical condition had been diagnosed, but that his claim was denied because he failed to establish a causal relationship between the accepted employment factors and the diagnosed medical condition.

On July 21, 2014 appellant, through counsel, requested a telephonic hearing before the Branch of Hearings and Review.

At a hearing dated February 9, 2015, appellant testified as to his employment history and exposure to asbestos. He noted that he worked for the employing establishment from June 1978 through October 1999 where he was exposed to asbestos in the federal building. Appellant alleged that the asbestos was sprayed all over the walls and beams, and that when he changed a filter, the asbestos would fly all over the place. He testified that he began to experience a problem with his lungs in March or April 2013. Appellant's counsel argued that the October 29, 2013 report of Dr. Koepke was sufficient to meet appellant's burden of proof.

By decision dated April 27, 2015, the hearing representative affirmed the July 16, 2014 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² 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.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, 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.⁵

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes 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. The opinion of the physician must be based on a complete factual and medical background, 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.⁶

ANALYSIS

Appellant established that he was exposed to asbestos during the course of his federal employment and that he suffered from asbestosis. The Board finds, however, that appellant failed to establish a causal relationship between his asbestosis condition and his work exposure.

None of the physicians of record provided a rationalized opinion establishing a causal relationship between the accepted factors of his federal employment and his medical diagnosis. Appellant submitted diagnostic studies, specifically a radiology report by Dr. Poe and a CT scan from Dr. Jeras. Dr. Poe found blunted left lateral costophrenic angle which she suspected was most likely a function of pleural thickening and two nodular densities in the left upper lobe. Dr. Jeras found calcified pleural plaques along bilateral hemidiaphragms as well as lateral chest walls, consistent with prior asbestos exposure. However, these studies are of limited probative value as they do not address appellant's work exposure to asbestos, nor do they discuss any causal relationship.⁷ Similarly, although Dr. Koepke diagnosed asbestosis, he does not address appellant's employment history nor give any opinion on causal relationship. As such, his opinion also is insufficient to establish causal relationship.⁸

On appeal, appellant's counsel argues that the decision is contrary to fact and law. However, as noted above, the medical evidence does not establish that appellant's diagnosed condition of asbestosis was causally related to the accepted employment exposure. The reports from appellant's physicians failed to provide sufficient medical rationale based on a complete factual background explaining the reason why his diagnosed condition was caused or aggravated by the accepted employment exposure.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.⁹ As appellant did not establish that his medical condition was causally related to the accepted factor of his employment, he did not meet his burden of proof.

⁶ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

⁷ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

⁸ *Id.*

⁹ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

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.

CONCLUSION

The Board finds that appellant has not established that he has a respiratory condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 27, 2015 is affirmed.

Issued: December 16, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board