

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEAN KAPPNER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEICAL CENTER, Murfreesboro, TN

*Docket No. 02-1756; Submitted on the Record;
Issued April 17, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed a pulmonary condition due to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On April 18, 2001 appellant, then a 40-year-old diagnostic radiologic technologist, filed a notice of occupational disease alleging that he developed a pulmonary condition and tested positive for tuberculosis as a result of his federal employment. By letter dated June 27, 2001, the Office notified appellant that additional factual and medical information was needed to support his claim. He did not submit any additional information.

By decision dated September 14, 2001, appellant's claim was denied.

By letter dated September 18, 2001, appellant requested reconsideration and submitted treatment notes, a factual statement and a copy of a prescription. He indicated that he is a computerized axial tomography scan technologist and is exposed to patients with tuberculosis (TB) and other diseases on a daily basis and that his TB tests have always been negative in the past.

By decision dated May 20, 2002, appellant's request for reconsideration was denied.

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed a pulmonary condition due to factors of his federal employment.

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.¹

In this case, appellant attributed the positive results of his tuberculosis test to his daily exposure to patients with the condition. In support of his claim, he submitted a factual statement, progress notes, a copy of a prescription and a report of the accident. The accident report indicates that appellant's TB skin test on March 16, 2001 was positive.

Appellant has, therefore, established both a medical condition and identified the employment factors to which he attributed his condition. He has not, however, submitted a rationalized medical report providing an opinion on the causal relationship between the positive results of the test and his employment factors. Appellant's burden includes providing a physician's rationalized medical opinion establishing causal relationship between the condition and his employment.² The physician's progress notes and copies of a prescription are insufficient to discharge appellant's burden of proof. Since the medical evidence submitted does not establish a causal relationship between his condition and his federal employment, appellant has not met his burden of proof in establishing his claim.

The Board further finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting 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.³ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁴

In support of the September 18, 2001 request for reconsideration, appellant submitted progress notes, a factual statement and a copy of a prescription. The only new evidence submitted is the factual statement as the other documents were already in the record. Appellant's burden includes submitting medical evidence establishing a causal relationship between his

¹ *Haydee Martinez*, Docket No. 01-833 (issued October 29, 2001).

² *Id.*

³ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁴ 20 C.F.R. § 10.608(a).

condition and factors of his federal employment.⁵ The factual statement submitted with the request is irrelevant in establishing causal relationship and is, therefore, insufficient to reopen his case for merit review. As appellant's request does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

The May 20, 2002 and September 14, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 17, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ *Supra* note 1.