

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT A. BOYLE and DEPARTMENT OF THE NAVY,
NAVAL AIR WEAPONS SYSTEM COMMAND, China Lake, CA

*Docket No. 02-2177; Submitted on the Record;
Issued January 27, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty.

On February 14, 2000 appellant, then a 39-year-old electronics technician, filed a notice of occupational disease alleging that he ingested contaminated water from a water cooler at work. The record indicates that appellant was cleaning a water cooler in June 1999 and found large quantities of black matter, which he treated with bleach and saved in a container and had tested by a private laboratory in August 1999. Appellant submitted a February 11, 2000 laboratory report from Dr. Eric D. Erickson stating:

“While cleaning a drinking water cooler [appellant] found the water to contain large quantities of black matter. This water was treated with bleach (as part of the cleaning process) and saved in the bottom of a five-gallon water jug. Because of potential health concerns, it was decided to obtain chemical analysis of this water sample. Hence, on August 5, 1999 the water was brought to our laboratory and two samples of this water were collected.

“The most prominent cause of health problems from drinking water involves biological organisms. Conventional analytical tools for detecting and identifying these organisms requires that they be grown in the laboratory. Unfortunately, because the water sample had been treated with bleach, it is a safe assumption that there is no longer any living organism in the water, and hence, it is not possible to continue to grow these organisms in the laboratory. Therefore, we did not perform any of the routine testing for biological organisms.

“Volatile and semi-volatile organics are commonly monitored in drinking water to ensure that specified toxins are not present in the water. However, the storage of this sample at room temperature and in a plastic container with large amounts of headspace for an extended period of time before bringing the sample to the

laboratory precluded the ability to obtain reliable information about these organic species. Hence, these tests were not performed on this sample.”

Dr. Erickson also found that the water contained levels of toxic metals above drinking water standards and stated that it may be the result of collection of materials on the particulates, but that it may also be the result of contaminated bleach used to pretreat the water.

An inspection performed by appellant’s employing establishment concluded that there was no evidence of any mold or *stachybotrys atra* in the building.

Appellant also submitted a report from his treating physician, Dr. Gary J. Ordog, Board-certified in emergency medicine, dated March 23, 2000. Dr. Ordog discussed appellant’s symptoms and diagnosed “neurological syndrome with denervation-type injury due to toxic-induced apoptosis, signs and symptoms and laboratory confirmation of chronic fatigue immune dysfunction syndrome, fibromyalgia, chemical-induced immune dysfunction syndrome, mycotoxicosis, mold exposure and thermoactinomyces-induced sinusitis, bronchitis and pneumonitis” and ruled out *stachybotrys* toxicity and lupus. In an addendum report dated April 13, 2000, he stated:

“I heard some disturbing news, that you were considering denying my patient’s claim. May I reiterate that this case is definitely work related. The fact that *stachybotrys* or toxigenic molds were not found is due to the fact that I was not allowed to look for it. To the best medical probability it was found in the water cooler. All of the patient’s signs and symptoms confirm this.... Trichothecenes are the chemicals produced by the toxigenic molds. The patient does not have lupus, the positive ANA’s were due to trichothecenes.”

By decision dated June 15, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim, finding the medical evidence of record was insufficient to establish causal relationship between appellant’s ingestion of water from the water cooler and the diagnosed conditions.

By letter dated June 15, 2001, appellant requested reconsideration and submitted a June 15, 2000 report from Dr. Ordog. When asked by the Office how convinced he was, in spite of his observation that *stachybotrys* or toxigenic molds were not found in the water, that appellant was exposed to this mold, Dr. Ordog replied:

“One hundred percent. Environment is mold amplifier with water intrusion at water source. *Stachybotrys* is found [less than] 10 percent of the time, even when present because testing sites are inadequate. *Stachybotrys* mold is sticky and black less than 10 percent of the time, even when it is present, the air samples are negative. Patient has the signs and symptoms of mold toxicity and mycotoxicosis. P[atien]t has laboratory tests proving mold and *stachybotrys* exposure. P[atien]t has ancillary tests *e.g.* immunological, confirming mycotoxicity. Training, experience, education and research support this.

“Claimant does suffer from *stachybotrys* toxicity. Serology tests are positive, ancillary tests are positive and the environment shows mold and mold

amplification. Signs and symptoms are consistent with it. Serology positive, proves exposure. Exposure occurs in worksite, where stachybotrys is growing. It is producing mycotoxins also proven by immune suppression, etc.”¹

Appellant also submitted three witness statements stating that appellant collected samples of mold from a safety grill, not from a water cooler and put them in sealed containers.

By decision dated September 10, 2001, the Office denied appellant’s request, finding that the evidence submitted was insufficient to warrant modification of the previous decision.²

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty.

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 not sufficient to establish causal relation.³

In this case, appellant submitted medical evidence from his attending physician, Dr. Ordog, who diagnosed neurological syndrome with denervation-type injury due to toxic-induced apoptosis, chronic fatigue dysfunction syndrome, fibromyalgia, chemical-induced immune dysfunction syndrome, mycotoxicosis, mold exposure and thermoactinomyces-induced sinusitis, bronchitis and pneumonitis. Appellant attributed his systemic condition to drinking contaminated water at work. He stated that, in June 1999, he took a sample of water from the water cooler, cleaned it with bleach and in August 1999 had it tested by a laboratory. The witness statements appellant submitted, however, indicate that appellant collected samples of mold from a safety grill at work, not from the water cooler. Appellant has established the existence of a medical condition; however, the source of the water sample and the way in which it was collected is questionable. He acknowledged that he collected the water in June 1999, cleaned it with bleach and only in August 1999 brought it to the laboratory. The laboratory report indicates that routine testing for biological organisms was not performed on the water, since it had been treated with bleach and there were no longer any living organisms contained in the water. The report also states that, since the sample was stored at room temperature for an

¹ Dr. Ordog’s report was translated since it was illegible.

² The Board also has jurisdiction over a December 11, 2001 decision regarding attorney’s fees; however, appellant is only appealing the Office’s September 10, 2001 decision, thus the Board will only address this issue.

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

extended period of time before it was brought into the laboratory, it was impossible to obtain reliable information about the organic species. The physician did find that the water contained high levels of toxic metals above drinking water standards; however, he was unable to determine whether this was a result of the collection of materials on the particulates or a result of possible contaminated bleach used to pretreat the water. The Board also notes that the inspections conducted by appellant's employing establishment found that there was no evidence of any mold or stachybotrys in the building.

Appellant's attending physician, Dr. Ordog opined that appellant's condition was work related. In his report dated April 13, 2000 he stated: "this case is definitely work related. To the best medical probability it [mold] was found in the water cooler. All of the patient's signs and symptoms confirm this." Dr. Ordog's statements, however, are speculative as to the source of the toxins found in appellant's bloodstream. His stated conclusion on causal relationship appears speculative. Dr. Ordog did not witness the collection of the water sample and its testing and acknowledges that he is not certain of the source of the toxins. He concluded that appellant's condition is work related without providing sufficient medical opinion to support his conclusion. In his second report dated June 15, 2001, Dr. Ordog noted that stachybotrys is rarely detected, even when present, because testing sites are inadequate. He also stated that air samples may be negative even when the mold is present. He concluded that appellant had the symptoms evidencing mold exposure and that training, experience, education and research supported this. Dr. Ordog's conclusions, however, again appear speculative and unsupported by medical rationale. He was unable to conclude with certainty that stachybotrys did exist at appellant's worksite. The Board notes that the investigations by appellant's employing establishment found no evidence of mold or stachybotrys in the building.

The Board finds that Dr. Ordog's opinions are inconclusive and not sufficient to relate appellant's diagnosed conditions to the drinking water at his work. The Board also notes that the method of obtaining the water sample, the extended period of time that elapsed before the water was tested, and the fact that appellant was only seen taking a sample of mold from a safety grill and not from the water cooler, diminish the probative value of the supporting medical evidence.

The Board finds that appellant has not met his burden of proof in establishing that his systemic conditions are a result of his federal employment and the Office properly denied his claim.

The September 10, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 27, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member