

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of FRANCIS T. TUCKER and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Boston, MA

*Docket No. 03-1963; Submitted on the Record;  
Issued October 9, 2003*

---

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed squamous cell carcinoma of the left ear and throat in the performance of duty.

On February 5, 2003 appellant, then a 62-year-old biological science technician, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he developed squamous cell carcinoma of the left ear and throat while showering in contaminated water at the laboratory building where he worked. Appellant stated that he first became aware of his condition on September 15, 2001. He stopped work on November 5, 2001.

In a letter dated March 11, 2003, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office noted that appellant should submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted a narrative statement, dated March 24, 2003, in which he indicated that he routinely showered at the laboratory and had done so with an open cut on his ear and was subsequently diagnosed with squamous cell carcinoma. He stated his belief that the water system was contaminated with toxic chemicals, which caused his cancer and noted that coworkers experienced other health problems. Appellant also submitted literature on squamous cell carcinoma.<sup>1</sup>

Appellant submitted a material data safety sheet, dated December 1, 1997, which described the composition and handling of the chemical product Corrshield. In statements dated June 9, 1999 to October 18, 2002, appellant's coworker, Kenneth Mathias, indicated that the

---

<sup>1</sup> In addition, appellant submitted a medical note, dated March 28, 2003, which advised that he was treated for a left knee injury.

water in the laboratory research building where appellant was showering contained chemical carcinogens, which were used to treat the chilled water system. Mr. Mathias indicated that appellant showered in this water with an open cut on his ear after performing his laboratory duties and was exposed to harmful chemicals, which may have caused his cancer. Mr. Mathias further noted that he believed that the chilled water system had contaminated the domestic water supply. Also submitted were system review summaries for on site service for the laboratory building where appellant worked, dated December 10, 1999 to September 19, 2000, which advised that there was a significant leak in the chilled water system.

The medical evidence submitted includes pathology reports, dated August 24, 2001 and October 17, 2002, which diagnosed squamous cell carcinoma of the right ear helix and parotid gland. A report from Dr. Gary S. Rogers, a Board-certified dermatologist, dated September 26, 2001, diagnosed squamous cell carcinoma of the right helix and provided operative reports indicating that he performed Mohs micrographic surgery on October 31 and December 12, 2001. In a report dated September 23, 2002, Dr. George Holmes, an internist, diagnosed cancer of the neck and advised that appellant would need extensive treatment including surgery and radiation.

On June 12, 2003 the Office issued a decision denying appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>2</sup> The Office found the medical evidence was not sufficient to establish that his medical condition was caused by the implicated employment factors.

The Board finds that appellant has not met his burden of proof in establishing that he developed squamous cell carcinoma of the left ear and throat causally related to employment factors.

An employee seeking benefits under the Act 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.<sup>3</sup>

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) 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

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup> The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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 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.<sup>5</sup>

In the instant case, it is not disputed that appellant was employed as a biological science laboratory technician, who has been diagnosed with squamous cell carcinoma of the left ear and throat. However, he has not submitted sufficient medical evidence to support that the diagnosed squamous cell carcinoma was causally related to the alleged employment factors or conditions.

The relevant medical evidence includes a September 26, 2001 report in which Dr. Rogers diagnosed squamous cell carcinoma of the right helix and operative reports noting that he performed Mohs micrographic surgery on October 31 and December 12, 2001. Dr. Rogers' reports, however, do not address the cause of appellant's condition. Similarly, in a report dated September 23, 2002, Dr. Holmes diagnosed cancer of the neck and advised that appellant would need extensive treatment including surgery and radiation. However, he did not provide any opinion regarding the cause of appellant's condition. Finally, the pathology reports dated August 24, 2001 and October 17, 2002, which diagnosed squamous cell carcinoma of the right ear helix and parotid gland do not address the cause of appellant's condition. As none of the above-mentioned reports contain any explanation regarding the cause of appellant's carcinoma, they are insufficient to meet his burden of proof.<sup>6</sup>

With regard to the publications submitted by appellant, the Board notes that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.<sup>7</sup>

The remainder of the evidence, including statements from Mr. Mathias, a material safety data sheet and system review summaries for on-site service indicate that the chilled water system had a leak. The Board has long held, however, that an award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor his belief that his condition was caused, precipitated or aggravated by his federal employment is sufficient to establish causal relationship.<sup>8</sup> Causal

---

<sup>4</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Id.*

<sup>7</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>8</sup> *See Donald E. Ewals*, 51 ECAB 428 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1999).

relationships must be established by rationalized medical opinion evidence.<sup>9</sup> Appellant failed to submit such evidence and the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated June 12, 2003 is hereby affirmed.

Dated, Washington, DC  
October 9, 2003

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>9</sup> *Leslie C. Moore, supra* note 5.