

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**DON F. CLARDY, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Daytona Beach, FL, Employer**

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**Docket No. 04-1657  
Issued: December 21, 2004**

*Appearances:*  
Ronald S. Webster, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On June 16, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 22, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he developed a loss of lung capacity and chronic fatigue syndrome in the performance of duty.

**FACTUAL HISTORY**

On April 1, 2002 appellant, then a 48-year-old radiologist and ultrasound technician, filed an occupational disease claim for compensation (Form CA-2), alleging that he developed a loss of lung capacity and chronic fatigue syndrome as a result of breathing toxic molds, mildews and chemicals in the workplace. He first became aware of his lung condition on March 5, 2002. Appellant stopped work on June 4, 2001 and retired on October 16, 2002.

Appellant submitted several statements noting that he developed a loss of lung capacity and chronic fatigue syndrome as a result of long term exposure to toxic molds, mildews and chemicals which were present at the William Chappell, Jr., Veterans Administration Outpatient Clinic where he worked. He indicated that the employing establishment removed employees and patients from the outpatient clinic to portable buildings so as to stop exposure to environmental hazards; however, he was not offered the option to leave the facility. Appellant noted that he had bronchial asthma as a child.

Appellant submitted reports from Dr. Thurman Gillespy, Jr., a Board-certified orthopedic surgeon, dated May 13 and June 24, 1998. He treated appellant for a back injury sustained on May 8, 1998 which occurred when he helped remove a patient from an x-ray table. An operative report dated August 4, 1998 noted that appellant underwent a cardiac catheterization and was diagnosed with severe single vessel coronary artery disease in the left coronary artery. Reports were submitted from Dr. Glenn H. Rayos, a Board-certified internist, dated October 31 to November 2, 2001, who noted appellant's treatment for coronary artery disease and advised that he was status post myocardial infarction in 1998 and had a history of asthma as a child. Appellant complained of worsening shortness of breath, dyspnea on exertion and numbness in his hands bilaterally. In a report dated November 14, 2001, Dr. David M. Ferriss, a Board-certified internist, noted examining appellant for a disability retirement. Appellant reported increasing shortness of breath and dyspnea on exertion over the past few years and was concerned that his lung condition may be related to sick building syndrome. A December 3, 2001 report from Dr. Roger L. Patterson, an employing establishment clinical psychologist noted treating appellant on two occasions for stress resulting from conflicts with a supervisor. Other psychiatric records from December 4, 2001 revealed that appellant was treated for anxiousness, interrupted sleep, low self-esteem and anger due to disability retirement litigation.

Appellant came under the treatment of Dr. Mohammad A. Latif, a Board-certified internist, who treated him on March 5 and December 31, 2002 for persistent sinus drainage, shortness of breath, wheezing, swelling in the legs/feet and back pain. He provided a history of working in a sick building for several years. Dr. Latif noted a history of heart attack in 1996, a stint replacement twice in 1998 and a back injury in 1998. The physician performed a pulmonary function test which revealed a forced expiratory volume in the first second (FEV<sub>1</sub>) of 46 percent. He opined that appellant was totally disabled due to the above diagnosed conditions. On December 31, 2002 Dr. Latif indicated that the facility where appellant worked was declared a sick building and the air conditioning system exposed him to toxic chemicals, bacteria, fungi and other harmful organisms. He noted appellant's symptoms of sinus drainage, shortness of breath, wheezing, swelling of the legs, tingling of the hands, back pain, short term memory loss, weight gain and depression. Dr. Latif opined that appellant's symptoms could be related to his job. The physician indicated that, although he had prior respiratory problems including asthma as a child, his symptoms were exacerbated by the toxic molds and organisms at work. A pulmonary function test dated April 15, 2002 revealed that there was no obstructive lung defect indicated by the forced vital capacity (FVC) and forced expiratory volume in one second (FEV<sub>1</sub>/FVC) ratio, there was moderate restrictive lung defect and mild decrease in diffusing capacity.

The employing establishment submitted an air quality investigation report dated September 24, 1997 which revealed moderate to low levels of fungi and bacteria in the roof-

mounted heating and air conditioning units and noted a significantly elevated concentration of airborne fungi. The investigation concluded that the sampling results and reported symptoms were consistent with microbiological amplification caused by localized infestation of fungi, which was present in various air handling units and duct work. Also submitted was an undated agency statement regarding air quality which indicated that there was a problem with the air handling system and that sampling surveys detected some evidence of mold and airborne fungi from unmaintained air handling units which caused an odor in the employing establishment. However, there was no evidence that any particular matter isolated by the tests was considered toxic. All samples were within acceptable levels as defined by the National Institute for Occupational Safety Hygienist and the Occupational Safety and Health Administration (OSHA). In an April 13, 1998 memorandum, the employing establishment noted that there was a group lawsuit filed against the owners of the outpatient clinic. Leslie Ellis, a supervisory human relations specialist, submitted a statement dated April 17, 2002 which recounted her conversation with Dr. Patterson regarding appellant's claim. He reported that he supervised appellant since 1997 and indicated that he had multiple medical problems, including a history of a myocardial infarction, trunkal obesity and shortness of breath; however, none of these conditions affected his ability to perform his job. Dr. Patterson indicated that all of appellant's medical complaints preexisted 1997 and the physician saw no evidence of exacerbation of medical symptoms caused by the air quality at the clinic. In a letter dated May 20, 2002, Ms. Ellis advised that in 1997 and 1998 a number of occupational disease claims were filed by employees and these cases were processed as third party cases as the employing establishment did not own the facility. She noted that no other employees who worked with appellant in the radiology section filed a claim. Ms. Ellis indicated that the building in which appellant worked had a highly publicized problem with the air handling system. On June 28, 2002 Ms. Ellis reiterated that appellant has not been physically present in the facility since June 4, 2001 which he alleged caused his health conditions and that no employees who worked in the same area as appellant reported similar symptoms.

In an August 12, 2002 letter, the Office advised appellant of the type of factual and medical evidence needed to establish his claim. The Office requested that he submit a physician's reasoned opinion addressing the relationship of his lung condition and specific employment factors.

On February 19, 2003 appellant indicated that he was exposed to toxic chemicals, bacteria and fungi 10 to 11 hours per day while working in the radiology department. The clinic opened in 1986 and he was the longest "on station" employee at the clinic when he became ill and retired. Also submitted was an x-ray of the spine dated November 12, 2002 which revealed straightening of the normal cervical lordosis secondary to a muscle spasm. An electromyography (EMG) dated January 3, 2003 revealed bilateral median neuropathy at the distal wrist.

In a February 21, 2003 letter, Richard Babb, an employing establishment compensation specialist, indicated that during appellant's tenure at the employing establishment there were problems with the ventilation system but no specific toxin was ever identified. He noted that there was never a single reported case of chronic fatigue syndrome.

On May 7, 2003 the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that his conditions were caused by employment factors.

On March 22, 2004 appellant requested reconsideration and submitted additional medical evidence and a February 26, 2004 deposition from Dr. Latif. The physician described his treatment of appellant since 2002 and diagnosed asthmatic bronchitis, chronic obstructive pulmonary disease, a history of heart disease and diabetes. Dr. Latif opined that appellant's asthma progressed and his condition deteriorated because he continued to work in the environment with antigens. The physician indicated that there was no way to prove that bacteria was not causing the disease. Dr. Latif concluded that appellant was permanently disabled.

In a decision dated April 22, 2004, the Office denied modification of the May 7, 2003 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation 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>1</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 diagnosed condition is causally related to the employment factors identified by the claimant. 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>2</sup>

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 the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. The mere fact that a disease or condition manifests

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<sup>1</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>2</sup> Solomon Polen, 51 ECAB 341 (2000).

itself or worsens during a period of employment<sup>3</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>4</sup> does not raise an inference of causal relation between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.<sup>5</sup>

### ANALYSIS

It is not disputed that appellant worked at the employing establishment and was exposed to environmental factors such as that noted in the employing establishment's air quality investigation report of September 24, 1997. The Board finds, however, that he has not submitted sufficient medical evidence to support that his diagnosed conditions are causally related to the employment factors implicated.

The reports from Dr. Rayos noted appellant's treatment for coronary artery disease and advised that he was status post myocardial infarction in 1998 and had a history of asthma as a child. He noted that appellant complained of worsening of shortness of breath, dyspnea on exertion and numbness in his hands bilaterally. The physician's reports were prepared in connection with appellant's application for disability retirement and did not address how or why the implicated employment factors caused or aggravated any of his medical conditions.<sup>6</sup> As these reports made a rationalized opinion on causal relationship, they are of diminished probative value.

In a report dated November 14, 2001, Dr. Ferriss noted examining appellant for increased shortness of breath and dyspnea on exertion. He indicated that appellant was concerned that his lung condition may be related to sick building syndrome. However, Dr. Ferriss failed to provide a fully rationalized opinion explaining how this or any other implicated exposure caused appellant's disability. The Board has held that speculative and equivocal medical opinions on causal relationship have diminished probative value.<sup>7</sup> Dr. Ferris did not provide any reasoning or rationale addressing the causal relationship between appellant's conditions and employment factors.<sup>8</sup>

Dr. Latif similarly failed to provide a rationalized medical opinion explaining the medical basis by which the diagnosed conditions were caused or aggravated by the implicated

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<sup>3</sup>*William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>4</sup>*Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>5</sup>*Robert G. Morris*, 48 ECAB 238-39 (1996).

<sup>6</sup> See *Raj B. Thackurdeen*, 54 ECAB \_\_\_\_ (Docket No. 02-2392 issued February 13, 2003) (decisions of other agencies regarding disability are not binding on the Office simply because the standards for establishing work-related disability under the Act, which governs the Office and the Board, are not the same as the standards set for disability retirement or social security benefits).

<sup>7</sup> See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

<sup>8</sup> See *Jimmie H. Duckett*, 52 ECAB 332 (2001).

employment factors. On March 5, 2002 he noted that appellant worked in a “sick building” for several years, but essentially repeated the work conditions as reported by appellant without providing his own opinion regarding whether this or any other workplace exposure caused or aggravated the diagnosed conditions. On December 31, 2002 Dr. Latif indicated that his symptoms were exacerbated by toxic molds and organisms. He stated that appellant’s symptoms could be related to his job. This opinion on causal relationship is speculative and not well explained.<sup>9</sup> Dr. Latif’s February 26, 2004 deposition opined that appellant’s asthma progressed and his condition deteriorated because he continued to work in an environment with antigens. Again, however, Dr. Latif did not provide a full explanation of the medical basis and reasoning for his conclusion on causal relationship between appellant’s diagnosed conditions and any workplace exposures.<sup>10</sup> While he indicated that continuing exposure to antigens would worsen asthma, but he did not explain why this happened in appellant’s case. Additionally, while Dr. Latif generally attributed an exacerbation of appellant’s conditions to the work environment, he did not address evidence, such as the 1997 air quality report submitted by the employing establishment, indicating that test samples were within acceptable levels.<sup>11</sup>

The remainder of the medical evidence does not provide an opinion on the causal relationship between appellant’s job and his claimed condition.

For these reasons, appellant has not met his burden of proof.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he developed a loss of lung capacity and chronic fatigue syndrome in the performance of duty.

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<sup>9</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>10</sup> *Id.*

<sup>11</sup> See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member