

exposed to mold, asbestos and dust at the employing establishment. He experienced coughing, wheezing and shortness of breath. By letter dated July 14, 2003, the Office accepted his claim for aggravation of chronic persistent asthma.

On January 13, 2004 appellant filed a claim alleging that he sustained a recurrence of disability (Form CA-2a) on January 8, 2004. He stopped work on that date. By decision dated April 6, 2004, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to his employment-related aggravation of chronic persistent asthma.

On July 20, 2004 appellant filed a claim for compensation (Form CA-7) alleging that he was totally disabled during the period June 18 through August 17, 2004. He submitted leave records which indicated that he was on leave without pay during the claimed period due to his asthma and therapy. Appellant submitted a June 29, 2004 disability certificate from Dr. Michael B. Foggs, a Board-certified allergist and immunologist, who indicated that appellant could not return to work beginning June 18, 2004 until further notice because his asthma was unstable. In addition, appellant submitted leave slips for time missed from work during the claimed period. Dr. Foggs' July 6, 2004 narrative report noted that his repeated requests to have appellant removed from his current work environment due to multiple life-threatening asthma attacks at work had been denied by the employing establishment. He noted that appellant experienced chronic persistent bronchial asthma that required an aggressive medical regime to control the disease process which had been aggravated by exposure to irritants and aeroallergens in the workplace. Dr. Foggs confirmed appellant's allergic hypersensitivity to mold spores. He explained that these aeroallergens were in very high concentrations in damp environments and may be released into the ambient atmosphere when debris is generated, disturbed or allowed to sit. He further explained that noxious and/or toxic cleaning agents were well known to trigger appellant's asthma symptoms and that protection of the workplace airspace was a standard established by the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA). Dr. Foggs requested that appellant be removed from any workplace environment that exposed him to mold spores, dampness and/or noxious and toxic irritants before an ominous outcome occurred. A July 19, 2004 disability certificate of Dr. Arnulfo V. Vielgo, a Board-certified internist, indicated that appellant was unable to work from June 18 through August 17, 2004 and that he could return to work on August 18, 2004. Dr. Vielgo stated that appellant was totally incapacitated due to recurrent asthma.

In a letter dated August 10, 2004, the employing establishment controverted appellant's claim for compensation, noting that its facility underwent a complete cleaning prior to appellant's return to full-duty work on January 7, 2003 and that his position did not require him to come into contact with any toxic cleaning agents.

By letter dated August 26, 2004, the Office advised appellant that his claim for compensation for the period June 18 through August 17, 2004 was not payable as was no medical evidence showing that he had attended visits with his physician or that he was totally disabled for work during the claimed period due to his work-related injury. The Office further advised that appellant should file a Form CA-2a if he was claiming that his asthma caused him to stop work or required him to obtain medical care resulting from a worsening of his accepted employment injury without an intervening cause.

On August 30, 2004 appellant filed a Form CA-7 claiming compensation for the period August 18 through September 3, 2004. He submitted Dr. Foggs' February 14, 2003 report, which stated that appellant's chronic persistent asthma was clearly exacerbated by conditions in his work environment which included high concentrations of dust. Dr. Foggs addressed appellant's medications and the December 12, 2002 pulmonary function test results which he found consistent with asthma. Appellant also submitted Dr. Vielgo's August 27, 2004 disability certificate which revealed that he should not return to his normal work environment because it triggered severe life-threatening bronchi spasms.

By letter dated September 9, 2004, the Office advised appellant that the evidence submitted was insufficient to establish that he was totally disabled from August 18 through September 3, 2004. The Office further advised that he should file a Form CA-2a if he was alleging that his asthma caused him to stop work or required him to seek medical treatment resulting from a worsening of the accepted employment injury without an intervening cause.

On September 11, 2004 appellant filed a Form CA-7 alleging that he was totally disabled from September 4 through 17, 2004. On September 19, 2004 he filed a Form CA-7 alleging that he was totally disabled from September 18 through October 1, 2004. In an October 4, 2004 letter, the Office reiterated that appellant's claim was not payable at that time as he failed to submit sufficient medical evidence to establish his claim. The Office also reiterated that he should file a Form CA-2a if the previously noted circumstances applied to his claim.

On October 1, 2004 appellant filed a Form CA-7 contending that he was totally disabled from October 2 through 15, 2004. On October 17, 2004 he filed a Form CA-7 contending that he was totally disabled from October 16 through 29, 2004. Appellant submitted Dr. Vielgo's October 11, 2004 disability certificate, which reiterated his prior finding that appellant should not return to his usual work environment because it would trigger a severe life-threatening asthma attack. By letter dated October 25, 2004, the Office reiterated its findings regarding the CA-7 forms appellant previously filed.

On October 31, 2004 appellant filed a Form CA-7 for the period October 30 through November 12, 2004. In a November 5, 2004 letter, the Office again reiterated its findings regarding the CA-7 forms appellant previously filed.

On November 9, 2004 the Office received appellant's Form CA-2a dated October 15, 2004 in which he alleged that he sustained a recurrence of disability on June 18, 2004. By letter dated November 17, 2004, the Office advised appellant that the evidence of record was insufficient to establish his claim. The Office further advised him about the type of factual and medical evidence he needed to submit to establish his claim.

Appellant submitted Dr. Foggs' December 6, 2004 report in which he stated that appellant's asthma condition was stable except when he was exposed to indoor irritants and allergens such as mold spores which he encountered on a daily basis at the employing establishment. Dr. Foggs noted that, when appellant was extricated from his workplace, his asthma was doing fine. Appellant's condition was confirmed by radioallergosorbent and pulmonary function testing and, since he had been away from the workplace, he was able to substantially streamline his asthma medication regime. Dr. Foggs opined that it was apparent

that appellant was capable of being an active member of the workforce if he was allowed to work in a clean environment that was not loaded with unacceptable irritants and allergens such as mold spores.

On January 3, 2005 appellant filed CA-7 forms alleging that he was totally disabled during the period December 25, 2004 through January 21, 2005. By letter dated January 5, 2005, the Office requested that appellant and the employing establishment submit information regarding the cleanup of mold spores at the employing establishment's facility.

In a January 25, 2005 letter, the employing establishment noted the results of air monitoring and bioaerosol sampling which was performed throughout its facility on October 3, 2002 and stated that the cleanup of its facility was completed as of December 13, 2002. The employing establishment further stated that Dr. Foggs was informed about the completion of the cleanup and appellant returned to full-duty work effective January 13, 2003. The employing establishment concluded that, as a mail processing clerk, appellant was not responsible for handling toxic cleaning agents. The employing establishment submitted the October 3, 2002 test results which found fungi indoors and outdoors, specifically, *Cladosporium*, the most common environmental mold. *Cladosporium* was the most dominant species in 6 of the 10 airborne samples taken. The other forms of fungi present at the employing establishment did not cause concern at the levels monitored when compared to OSHA guidelines. The report recommended that the cleanup of visible mold be conducted by qualified contractors and that the source of water infiltration be investigated and rectified to minimize future mold growth.

On February 24, 2005 appellant filed CA-7 forms alleging that he was totally disabled from January 22 through March 4, 2005. He submitted Dr. Vielgo's February 22, 2005 disability certificate. On March 16, 2005 appellant filed CA-7 forms alleging that he was totally disabled from March 5 through April 1, 2005. He filed another Form CA-7 on March 23, 2005 alleging that he was totally disabled from March 5 through April 29, 2005. On April 1, 2005 appellant filed a Form CA-7 contending that he was totally disabled from April 2 through 15, 2005. In a May 19, 2005 Form CA-7, appellant alleged that he was totally disabled during the period April 16 through 29, 2005.

On April 25, 2005 the employing establishment advised the Office that a mold problem had not recurred since the 2002 cleanup. The employing establishment further advised that the problem which was roof flashings was repaired and the affected surfaces were cleaned and repainted with mold resistant paint. In addition, the heating/ventilation/air condition (HVAC) system ducts were cleaned and repainted with mold and mildew resistant paint.

By decision dated April 25, 2005, the Office found the medical evidence of record insufficient to establish that appellant was totally disabled during the period June 18, 2004 through April 29, 2005 due to his accepted employment-related aggravation of chronic persistent asthma.¹

¹ On appeal appellant has submitted new evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,² the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁴ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁵ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁶

To meet this burden appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical 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 factor(s). 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.⁷

ANALYSIS

The Office accepted appellant's claim for aggravation of chronic persistent asthma. The Board finds, however, that he failed to establish that his accepted condition resulted in disability for work and medical treatment on intermittent dates during the period June 18, 2004 through April 29, 2005. He submitted Dr. Foggs' June 29, 2004 disability certificate which found that he could not return to work beginning June 18, 2004 until further notice because his asthma was unstable. He also submitted additional certificates from Dr. Vielgo which indicated that appellant should not return to his normal work environment because it triggered a severe

² 5 U.S.C. §§ 8101-8193.

³ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

⁴ See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment as such).

⁵ See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

life-threatening asthma attack. The Board finds that the certificates of Dr. Foggs and Dr. Vielgo are insufficient to establish total disability for the claimed period because they did not explain with adequate rationale how appellant's disability for work was caused or aggravated by his employment-related asthma condition.⁸ Similarly, Dr. Vielgo's certificates are insufficient to establish appellant's claim because he did not explain how appellant's usual work environment would cause a severe life-threatening asthma attack.⁹

Dr. Foggs stated that appellant's chronic persistent bronchial asthma was aggravated by his regular exposure to irritants and aeroallergens while working at the employing establishment. He indicated that appellant was not exposed to irritants outside the workplace and that there was no evidence of any other contributing causes of his asthma aggravation. He noted that appellant's condition was doing fine when he was not working at the employing establishment. In a July 6, 2004 report, Dr. Foggs explained that aeroallergens were in very high concentrations in damp environments and could be released into the ambient atmosphere when debris is generated, disturbed or allowed to sit. He added that noxious and/or toxic cleaning agents were well known to trigger appellant's asthma symptoms. The Board notes, however, that the employing establishment submitted evidence pertaining to the 2002 cleanup of irritants and allergens in the facility where appellant worked. The employing establishment noted that Dr. Foggs was advised of the completion of the cleanup before appellant returned to full-duty work in January 2003 and indicated that no mold problem had occurred since the 2002 cleanup and the problem roof flashings had been repaired. The affected surfaces and HVAC system ducts had been cleaned and repainted with mold and mildew resistant paint. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.¹⁰ Dr. Foggs did not provide sufficient rationale to support his conclusion that appellant was exposed to molds or other allergens during the period of claimed disability. His February 14, 2003 report was authored over a year prior to the claimed disability commencing June 18, 2004 and is not relevant to this claim.

As appellant has failed to submit rationalized medical evidence establishing that his disability during the period June 18, 2004 through April 29, 2005 resulted from the effects of his employment-related aggravation of chronic persistent asthma, the Board finds that he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to wage-loss compensation for total disability on intermittent dates during the period June 18, 2004 through April 29, 2005 due to his accepted employment-related aggravation of chronic persistent asthma.

⁸ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁹ *Id.*

¹⁰ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board