

claim and remanded the case for further development of the medical evidence.¹ The facts and the circumstances of that decision are incorporated herein by reference.

On March 14, 2003 appellant filed an occupational disease claim alleging that he experienced lightheadedness and was unable to function normally as a result of his exposure to his workplace environment. He alleged that the air he breathed on a daily basis was filled with dust, irritating particles and allergens.

Dr. Richard Rubin, a Board-certified internist, treated appellant for complaints of vertigo and congested sinuses and opined that his condition was clearly exacerbated by his work environment, based on repeated trials of absence and return to work. Dr. Gavin Setzen, a Board-certified otolaryngologist, diagnosed chronic allergic rhinosinusitis and opined that appellant's symptoms were caused by mold, dust and mite exposure at work. Dr. Scott Osur, a Board-certified allergist and immunologist, diagnosed perennial allergic rhinitis, with a significant component of vasomotor rhinitis, in which irritants such as dust and other particulate matter can irritate nasal symptoms on an irritative rather than allergic basis. He also concluded that the below average relative humidity in appellant's work area contributed to his respiratory symptoms. Noting that his symptoms increased within several hours of returning to work, Dr. Osur opined that appellant's condition was exacerbated by his work environment.

By decision dated June 12, 2003, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his diagnosed condition was causally related to exposure in the workplace. On June 14, 2004 an Office hearing representative affirmed the Office's denial of appellant's claim. By decision dated May 31, 2005, the Office denied modification of the hearing representative's June 14, 2004 decision. The Office accepted as established that there was low humidity and dust in the work environment. However, the Office found that the medical evidence was not well rationalized and did not support a causal link between established work factors and a diagnosed medical condition. On March 23, 2006 the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

Appellant sought review by the Board. By decision dated December 8, 2006, the Board found that the case was not in posture for a decision. Noting that the evidence of record supported appellant's occupational disease claim, the Board remanded the case to the Office for further development of the medical evidence. The Board instructed the Office to prepare a statement of accepted facts and refer appellant for a second opinion examination, in order to obtain a rationalized opinion as to whether his current condition was causally related to factors of his federal employment.

On remand, the Office referred appellant, together with a statement of accepted facts and the entire medical record, to Dr. Krishnan Raghavan, a Board-certified internist, for a second opinion examination and an opinion as to whether he suffered from any diagnosed condition that could be related to his federal employment. In an undated report of his March 19, 2007 examination, Dr. Raghavan reviewed appellant's medical history, noting that his symptoms began shortly after he started working at the employing establishment. He reported that

¹ Docket No. 06-1395 (issued December 8, 2006).

appellant experienced an initial episode of lightheadedness in early 2002. Dr. Raghvan's examination revealed patent nasal passages. There were no adventitious sounds in the lungs. The chest was resonant to percussion and showed equal expansion. Dr. Raghavan noted that the indoor air quality study performed at the employing establishment in April 2003 showed levels of dust well below limits that would be considered safe for daily exposure. Objective data included a March 26, 2007 report of a computerized tomography scan of the thorax, which showed no evidence for adenopathy or confluent parenchymal disease. A March 23, 2007 pulmonary function test showed normal pulmonary function. Dr. Raghavan diagnosed chronic rhinosinusitis. He indicated that appellant was currently in stable health without limitation on his activities and with no ongoing symptoms. Dr. Raghavan stated:

“The initial episode in May 2002 happened at work. Review of the information available, including the opinions of his doctors, the testing so far and the report of the indoor air-quality study at his former workplace, does not confirm that any exposure at work was the cause of his symptoms.”

In a May 9, 2007 work capacity evaluation, Dr. Raghavan stated that appellant was capable of performing his usual job.

By decision dated July 27, 2007, the Office denied modification its May 31, 2005 decision. The Office found that the medical evidence did not establish that appellant's condition was caused by factors of employment.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.³ In an occupational disease claim, to establish that an injury was sustained in the performance of duty, 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

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.115(e), (f) (1999). *See Gary M. DeLeo*, 56 ECAB 656 (2005). *See also Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

Section 8123 of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁵

ANALYSIS

On March 14, 2003 appellant filed an occupational disease claim alleging that he experienced lightheadedness and was unable to function normally as a result of his exposure to his workplace environment. He alleged that the air he breathed on a daily basis was filled with dust, irritating particles and allergens and that his chronic allergic rhinosinusitis was exacerbated by his work environment. By decision dated July 27, 2007, the Office affirmed its May 31, 2005 denial of appellant's claim. Relying on Dr. Raghavan's second opinion report, the Office found that the medical evidence failed to establish that appellant's condition was caused by factors of employment.

The Board finds that there is an unresolved conflict in medical opinion between Dr. Raghavan, the Office's referral physician and appellant's treating physicians. Dr. Raghavan diagnosed chronic rhinosinusitis and indicated that appellant was currently in stable health without limitation on his activities and with no ongoing symptoms. He stated that his review of the information available, including the opinions of his physician's, the testing so far and the report of the indoor air-quality study at appellant's former workplace, did not confirm that any exposure at work was the cause of his symptoms. By contrast, appellant's physicians opined that his work environment was responsible for his diagnosed condition. Dr. Rubin opined that his conditions of vertigo and congested sinuses were clearly exacerbated by his work environment, based on repeated trials of absence and return to work. Dr. Setzen diagnosed chronic allergic rhinosinusitis and opined that appellant's symptoms were caused by mold, dust and mite exposure at work. Dr. Osur diagnosed perennial allergic rhinitis, with a significant component of vasomotor rhinitis, in which irritants such as dust and other particulate matter can irritate nasal symptoms on an irritative rather than allergic basis. He concluded that the below average relative humidity in appellant's work area contributed to his respiratory symptoms. Noting that his symptoms increased within several hours of returning to work, Dr. Osur opined that appellant's condition was exacerbated by his work environment.

Section 8123 of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁶ The case, therefore, will be remanded for an impartial medical specialist to resolve the conflict in the medical opinions. On remand,

⁴ *Victor J. Woodhams, supra* note 3.

⁵ 5 U.S.C. § 8123(a); *see also Charles S. Hamilton*, 52 ECAB 110 (2000); *Leonard M. Burger*, 51 ECAB 369 (2000); *Shirley L. Steib*, 46 ECAB 39 (1994).

⁶ *Id.*

the Office should refer the case record and a statement of accepted facts to an appropriate physician pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision due to a conflict in medical opinion.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: June 20, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board