

overhauling helicopters in the performance of duty.¹ On February 9, 2005 he alleged that his medical conditions were due, in part, to his exposure to asbestos. Appellant retired on February 5, 1988.

This case is before the Board for the second time. By decision dated June 12, 2006, the Board set aside a July 11, 2005 decision of an Office hearing representative, which denied appellant's hearing request. The Board remanded the case to the Office for an oral hearing on the issue of timeliness.²

Appellant submitted a copy of a letter dated December 27, 2004 to Congressman Soloman Ortiz, wherein he alleged that, from 1965 through 1975, he was exposed to harmful chemicals and asbestos while working on crash-damaged helicopters returned from Vietnam. He allegedly "beat the bellies" of the helicopters and removed floorboards, exposing a large amount of dust and dirt, which covered his clothing. Appellant also claimed to have found "pools of chemicals" in the belly of the helicopters, when he removed the floorboards. He alleged that he developed Type II diabetes as a result of exposure to Agent Orange.

By decision dated March 10, 2005, the Office denied appellant's claim as untimely. On March 22, 2005 appellant requested an oral hearing, contending that he had just discovered, within the last year, that his diabetes was related to Agent Orange exposure. In a decision dated July 11, 2005, an Office hearing representative denied appellant's hearing request, on the grounds that his claim was a duplicate of his March 2, 1988 claim (No. A50-0040560), which was denied on November 3, 1989 on the grounds that it was untimely.³ By decision dated June 12, 2006, the Board set aside the July 11, 2005 decision and remanded the case to the Office for an oral hearing on the issue of timeliness.⁴ Appellant subsequently modified his request to a review of the written record.

In statements dated July 22 and August 18, 2006, appellant reiterated his allegation that he was exposed to asbestos fibers, as well as dirt and other chemicals, while cleaning helicopter engines. He stated that the employing establishment lied to its employees about the existence of Agent Orange until 1992. Appellant submitted an undated statement from Aron Ellis Alexander,

¹ The record establishes that appellant filed two other separate claims for conditions sustained which allegedly resulted from his exposure to Agent Orange. He initially filed a claim on March 2, 1988 under file number A50-0040560, alleging that he developed fatigue, depression, a skin condition, a rapid heart beat, stress and anxiety due to his exposure. By decision dated March 31, 1992, the Board affirmed the Office's denial of the claim on the grounds that it was not timely filed (Docket No. 91-1047, issued March 31, 1992). On August 6, 2007 appellant filed an occupational disease claim alleging that he developed colon and liver cancer as a result of exposure to Agent Orange under file number DX2000009. In a decision dated October 24, 2007, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that he sustained the claimed conditions in the performance of duty. Appellant disagreed with the Office's decision and appealed to the Board. The matter is currently before the Board on appeal (Docket No. 08-361).

² Docket No. 06-122 (issued June 12, 2006). On December 17, 2006 the Board corrected the June 12, 2006 decision to strike a sentence which inadvertently affirmed the Office's March 10, 2005 decision.

³ The Office's November 3, 1989 decision was affirmed by the Board on March 31, 1992. (Docket No. 91-1047, issued March 31, 1992).

⁴ *Supra* note 2.

a coworker, reflecting that he was exposed to significant amounts of asbestos, dirt and debris while cleaning helicopters from Vietnam, during the last half of the 1960s.

By decision dated March 22, 2007, the Office hearing representative set aside the July 11, 2005 decision, finding that appellant made a timely claim for Type II diabetes and peripheral neuropathy. The representative remanded the case to the Office for a determination as to whether appellant was exposed to Agent Orange at the time, place, and in the manner alleged, and if so, whether Type II diabetes and, by logical association, peripheral neuropathy, was related to the exposure.

The record contains a February 11, 2005 report from Dr. Scott C. Woska, a Board-certified psychiatrist, who indicated that he had been treating appellant for chronic illnesses, including diabetes, stroke, high blood pressure, and multiple basal cell carcinomas, and was considering peripheral neuropathy as a provisional diagnosis. Dr. Woska stated that appellant had been a soldier in Vietnam.⁵ In a report dated May 2, 2005, Dr. Glenn M. Morgenstern, a Board-certified internist, diagnosed Type II diabetes mellitus, hypertension, hyperlipidemia controlled, and tinea pedis. He noted that appellant was in no acute distress. The record also contains a prescription refill slip, reflecting that, on May 14, 2008, appellant was given a prescription for gabapentin. The document states that gabapentin may be used to treat nerve pain conditions, such as diabetic neuropathy, peripheral neuropathy and trigeminal neuralgia.

On April 27, 2007 the Office informed appellant that the information submitted was insufficient to establish his claim, and advised him to submit a comprehensive report from a physician, which contained a diagnosis and a reasoned opinion as to the cause of his conditions. In an April 27, 2007 letter, it asked the employing establishment to comment on the accuracy of appellant's allegations regarding his exposure to Agent Orange, and to provide information as to the safety policy related to his job duties.

On May 3, 2007 appellant submitted an occupational disease claim, alleging that he developed peripheral neuropathy due to his exposure to Agent Orange. He alleged that he and coworkers were exposed to Agent Orange when they overhauled helicopters, which were filled with dirt that was saturated with the poisonous substance. In a letter dated May 15, 2007, the Office informed appellant that his claim for peripheral neuropathy was being consolidated with his claim for Type II diabetes.⁶ It reiterated its request for additional factual and medical evidence to support appellant's claim for diabetes and peripheral neuropathy.

Appellant submitted an affidavit dated May 17, 2006, stating that he worked for the employing establishment from January 19, 1966 to February 5, 1988, when he retired. In 1966 he worked on the defueling team, removing jet fuel from battle-damaged helicopters that had been used to spray Agent Orange in Vietnam. Warning signs were posted on the helicopters indicating that they were contaminated, but employees were never informed as to the type of contamination, and were not provided with any protective breathing equipment. Appellant

⁵ The record reflects that appellant did not serve as a soldier in the Vietnam War.

⁶ The Office also consolidated appellant's prior claim (No. 500040560) into the instant claim, so that all evidence from that case would be available for review.

alleged that he was exposed to significant amounts of debris, including red sand and dirt, grasses and weeds, and pools of black chemicals, on a daily basis. In late 1967, he worked in the cleaning shop, where he was exposed to boiling vats of chemicals. Appellant was also exposed to asbestos fibers, which were released into the air when asbestos strips were removed from helicopter engines. He claimed that he suffered from Type II diabetes as a result of his exposure to these substances.

Reiterating his claim that he was repeatedly exposed to Agent Orange while cleaning aircraft, appellant contended that he was entitled to the same benefits as those awarded to Vietnam soldiers who developed Type II diabetes due to their exposure to Agent Orange. He submitted a statement dated June 16, 2007 from Jose Garcia, a coworker, who reported that he was exposed to “all kinds of chemicals” when he worked on aircraft returned from Vietnam in the late 1960s. Appellant submitted numerous reports from the Government Accountability Office (GAO) and news releases pertaining to civilian exposure to Agent Orange in Vietnam. The record also contains appellant’s personnel records from November 22, 1965 through October 30, 1989.

On May 8, 2007 the employing establishment controverted appellant’s claim, alleging that it was untimely. On May 21, 2007 Rosie Flores, of the employing establishment, stated that there were “no records that any of the helicopters returning from Vietnam contained any chemicals.” She confirmed that appellant repaired and overhauled helicopters returning from Vietnam from January 19, 1966 through November 3, 1973. The employing establishment stated that appellant came into contact with fuels, fumes and solvents normally associated with such work.

An Office note from Raquel B. Amaya reflects the contents of an April 7, 1989 telephone conversation with Allan Martinez, a packaging specialist with the employing establishment who was responsible for checking incoming aircraft during the Vietnam era, stated that helicopters were decontaminated at the point of origin. The aircraft arrived with a “6X6 tag” and a manifest sheet attached to the outside, acknowledging that decontamination had occurred prior to departure from Southeast Asia. Mr. Martinez indicated that, by the time appellant or any other shop personnel would have received them, the helicopters would already have been thoroughly cleaned by the cleaning shop and inspected by customs. He remembered seeing white powder in an aircraft only once, noting that safety personnel were called in to remove it. Mr. Martinez also stated that white cake blocks of rat poison were found in some aircraft. However, personnel did not touch the blocks directly, but rather used protective gloves, or red ribbons, which were attached to the blocks, to remove them from the aircraft.

The record contains a July 31, 1990 report from Frank Woodward, the employing establishment’s safety and health director, who stated that any residue of Agent Orange, if present on an aircraft, would not appear in powder form. Quantities available for inhalation through the aircraft cleaning process would have been minimal, given that the Army attempted to clean the aircraft prior to sending them to the United States.

In a decision dated July 2, 2007, the Office denied appellant’s claim, finding that evidence was insufficient to establish that he developed diabetes and peripheral neuropathy as a result of the claimed exposure. It accepted that appellant was exposed to typical fuels and

solvents normally associated with his work environment. Based on information from his agency, the Office also found that it was reasonable to conclude that he may have experienced minimal exposure to Agent Orange. However, it found that the medical evidence was not sufficient to establish that either claimed condition was caused by the claimed exposure.⁷

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act⁸ 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.⁹

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 condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹⁰

The medical evidence required to establish causal relationship, generally, is 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.¹¹

ANALYSIS

The Office accepted that appellant was exposed to typical fuels and solvents normally associated with his work environment and that he was minimally exposed to cake rat poison. Appellant also alleged repeated exposure to Agent Orange while working on crash-damaged helicopters returned from Vietnam. The Office accepted that the returning aircraft which

⁷ The Board notes that appellant submitted additional evidence after the Office rendered its July 2, 2007 decision. As this evidence was not considered by the Office prior to its July 2, 2007 decision, the evidence cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

⁸ 5 U.S.C. § 8101 *et seq.*

⁹ 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).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *Id.*

appellant overhauled contained residue of various toxins. The Office also accepted that it was “reasonable to conclude that it was possible that there may have been some reasonable exposure to Agent Orange to an employee at [the employing establishment] that was involved in the cleaning process.” By extension, the Board finds that appellant would have been exposed to Agent Orange in the same manner that he would have been exposed to the other accepted substances.

The medical evidence of record however is insufficient to establish that his conditions of Type II diabetes and peripheral neuropathy were caused by exposure to these substances.¹² Therefore, appellant has failed to meet his burden of proof.

Relevant medical evidence of record consists of a February 11, 2005 report from Dr. Woska, who indicated that he had been treating appellant for chronic illnesses, including diabetes, stroke, high blood pressure, and multiple basal cell carcinomas, and was considering peripheral neuropathy as a provisional diagnosis; a report dated May 2, 2005 from Dr. Morgenstern, who diagnosed Type II diabetes mellitus, hypertension, hyperlipidemia controlled, and tinea pedis, and a prescription refill slip, reflecting that, on May 14, 2008, appellant was given a prescription for gabapentin. None of these reports contains a history of exposure to Agent Orange (or any other substance), as alleged by appellant, findings on examination, or an opinion as to the cause of appellant’s claimed conditions. The Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value.¹³ The Board also notes that Dr. Woska provided an inaccurate factual history, indicating that appellant had been a soldier in Vietnam. The Board finds that these reports are insufficient to establish appellant’s claim for compensation as to his conditions of Type II diabetes and peripheral neuropathy.

Appellant expressed his strong belief that his Type II diabetes and peripheral neuropathy conditions resulted from his exposure to Agent Orange and asbestos. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁴ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁵ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant’s responsibility to submit. Therefore, appellant’s belief that his conditions were caused by the alleged exposure is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the doctor’s

¹² The Board notes that the record contains medical evidence relating to separate claims filed by appellant. *Supra* note 1. As it is not relevant to appellant’s claim for Type II diabetes and peripheral neuropathy, the Board will not address such evidence in this decision.

¹³ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁴ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁵ *Id.*

opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his claimed exposure, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he developed Type II diabetes or peripheral neuropathy as a result of conditions of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board