

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

M.S., Appellant)
and) Docket No. 08-1766
DEPARTMENT OF THE NAVY, NAVAL) Issued: January 9, 2009
COMMAND, Bremerton, WA, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 6, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated January 10 and February 22, 2008 finding that he did not establish an injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit issues of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained hypersensitivity pneumonitis due to employment-related exposures.

FACTUAL HISTORY

On September 26, 2007 appellant, then a 53-year-old safety and occupational health manager, filed an occupational disease claim alleging that he developed hypersensitivity pneumonitis due to employment exposures on August 31, 2007.

In a letter dated October 9, 2007, the Office requested additional factual and medical evidence in support of appellant's claim and allowed him 30 days for a response. On

October 18, 2007 appellant stated that his cubicle at work tested positive for mold spores and, on August 31, 2007, he experienced tightening in his chest muscles and pain. He submitted an emergency room diagnosis from Dr. Katherine Pryde of chest pain of undefined origin.

The employing establishment submitted a report on mold which found few spores and well under the limits for health risks

By decision dated January 10, 2008, the Office accepted that the employment-related exposures occurred but denied appellant's claim finding that the medical evidence was not sufficient to establish a diagnosed condition.

Appellant requested reconsideration on February 8, 2008. Dr. David Feig completed a report on January 17, 2008 noting that appellant experienced chest discomfort and breathing difficulties. Dr. Feig stated that appellant had profound nasal symptoms including sensitivities to mold and dust mites. Dr. Caviness stated that appellant had time-related symptoms of allergies with cough, chest tightening at his work site in the employing establishment which resolved when appellant was not in that building.

By decision dated February 22, 2008, the Office reviewed appellant's claim on the merits.¹

LEGAL PRECEDENT

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 a disease or condition for which compensation is claimed; (2) a factual statement identifying the 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. The medical opinion 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.²

ANALYSIS

Appellant alleged that he developed hypersensitivity pneumonitis due to employment exposures on August 31, 2007. He submitted documentation from the employing establishment that there were low levels of mold in his workstation. Dr. Katherine Pryde diagnosed chest pain of undefined origin. This statement is not sufficient to meet appellant's burden of proof as Dr. Pryde did not offer any opinion that appellant's chest pain was related to his employment exposure to mold.

¹ The Board notes that although the Office stated that it had not reviewed the merits of appellant's claim, in fact the Office weighed the probative value of the evidence rather than just the relevance and so conducted a merit review.

² *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

In a report dated January 17, 2008, Dr. David Feig stated that, appellant experienced chest discomfort and breathing difficulties. He stated that appellant had profound nasal symptoms including sensitivities to mold and dust mites. Dr. Feig did not describe appellant's employment exposures and did not offer any opinion of whether these exposures were sufficient to cause appellant's symptoms. He also failed to offer a clear diagnosis of appellant's condition. Due to these deficiencies, Dr. Feig's report is not sufficient to establish that appellant developed hypersensitivity pneumonitis due to employment exposures to mold.

Dr. Caviness stated that appellant had time-related symptoms of allergies with cough, chest tightening at his work site in the employing establishment which resolved when appellant was not in that building. A temporal relationship alone is insufficient to establish causal relationship.³ Dr. Caviness did not indicate that he was aware of the amount of mold at the employing establishment, did not offer a clear diagnosis and did not offer an opinion that appellant's employment-related exposures resulted in hypersensitivity pneumonitis.

CONCLUSION

The Board finds that appellant has not submitted sufficiently detailed medical evidence based on a proper history of exposure to establish that he developed or aggravated a medical condition due to his accepted employment-related exposures to mold.

³ *Louis R. Blair, Jr.*, 54 ECAB 348, 350 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 22 and January 10, 2008 decisions of the Office of Workers' Compensation Programs' are affirmed as modified.

Issued: January 9, 2009
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