

disease or illness was caused or aggravated by his employment on November 9, 2006. He did not stop work.

The Office received November 13, 2006 treatment notes and a duty status report from Dr. Gracia Santos, Board-certified in internal medicine, who related that, on October 18 and 19, 2006, appellant was exposed to black mold while repairing a leaky ice machine. Dr. Santos also related that appellant questioned whether he was provided with the proper type of respiratory protection as he began to experience respiratory problems after completing the task. She diagnosed bronchitis and indicated that he also had chronic obstructive pulmonary disease (COPD)¹ and that he had stopped smoking cigarettes nine years earlier after having a 40-year history of heavy smoking. Dr. Santos recommended light duty and no exposure to fumes, dust or chemicals.

By letter dated December 15, 2006, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence. In a separate December 14, 2006 letter, it requested that the employing establishment submit additional evidence.

In a January 11, 2007 statement, Linda Lamp, a workers' compensation program specialist with the employing establishment, indicated that appellant was exposed to the mold, for approximately 1½ hours without the proper personal protective equipment (PPE). She also indicated that he was exposed for another 12½ hours with proper equipment.

The Office received evidence that included mold sample results dated November 14 and 19 and a November 18, 2006 mold report. It also received statements from various individuals, including a November 16, 2006 memorandum from Susan Anderson, a union president and a November 21, 2006 memorandum from Fernando Rivera, a safety office employee, who advised that wipe samples were taken on October 30, 2006, in the area to test for mold spores. Mr. Rivera indicated that raw data results revealed that the mold spore totals were below the acceptable levels with the exception of an exhaust grill inside the kitchenette. He alleged that there was no indication that employees involved in the clean up were adversely affected from exposure to mold spores. Mr. Rivera also noted that appellant performed work on October 18 and 19, 2006 and then filed an occupational disease claim in November 2006.

The Office received documents pertaining to infection control and a "Risk Assessment Matrix" with guidelines for construction and copies of training materials related to proper spore removal techniques, a copy of appellant's position description and a January 10, 2007 statement from Jill Shattel, an industrial hygienist, who indicated that he was exposed to penicillium, aspergillus sp, stachbotrys chartarum and aspergillus versicolor.

Dr. Michael M. Rezaian, a Board-certified internist, provided several reports and treatment notes dating from November 2006 to January 2007. In his January 3, 2007 report, he noted that while working for the employing establishment appellant "was exposed to mold and had to close the room, wear surgical mask and remove stuff with a shop vac." In Dr. Rezaian's January 10, 2007 report, he opined that appellant had reactive arthritis and spondyloarthropathy,

¹ The record reflects that appellant has preexisting COPD.

sacroiliac joint inflammation. He advised that in view of appellant's positive "HLA-B27" this was "most likely the cause of his symptoms. Dr. Rezaian relates significant exposure to mold."

In a letter dated December 28, 2006, appellant indicated that he worked for the employing establishment for more than 33 years in various positions that exposed him to dust, dirt and chemicals, including asbestos. He noted that the incident involving the drywall removal from the surgical suite took several hours over the course of two days and that the mold was very visible. Appellant alleged that he was not provided with the proper protective equipment while removing the mold. He indicated that his PPE was comprised of a blue paper suit, bonnet, booties and a surgical mask, which was not the proper respiratory protective gear. Appellant also indicated that he had smoked since he was 6 years old, inhaling at the age of 10 and finally stopped smoking 9 years ago. He also indicated that he had COPD from smoking, which was mild and for which he was not receiving any treatment. A November 13, 2006 chest x-ray, read by Dr. David L. Lawrence, a Board-certified radiologist, revealed no clinically significant cardiac or pulmonary abnormalities and a stable chest. The Office also received an additional report dated November 13, 2006 from Dr. Santos, who diagnosed COPD with exacerbation and indicated that appellant had a history of occupational exposure to molds.

On February 8, 2007 the Office requested that an Office medical adviser provide an opinion with regard to whether appellant's COPD was caused or aggravated by his exposure to black mold at work. In a February 21, 2007 report, the Office medical adviser reviewed appellant's history and noted that he had a history of smoking for approximately 40 years and had a history of COPD, that was "clearly secondary to many years of smoking cigarettes. Pulmonary function tests have confirmed the COPD on three occasions." He also indicated that appellant was treated for emphysema and recurrent bronchitis infections that predated his brief exposure to black mold. The Office medical adviser opined that "because of his very brief and protected exposure to black mold and because of his long-standing emphysema as a result of smoking since [nine] years of age, it would be my conclusion that [appellant's] symptoms are the result of his history of smoking cigarettes and the resultant emphysema." He concluded that there was "no evidence that his COPD could be caused or aggravated by the exposure to the black mold on October 18 or 19, 2006."

By decision dated March 8, 2007, the Office denied the claim for compensation as the medical evidence was insufficient to establish that appellant sustained an injury as alleged. It accepted that, on October 18 and 19, 2006, appellant was cutting and removing drywall, which contained black mold. However, the Office found that the medical evidence did not establish that the claimed medical condition resulted from the work-related exposure.

On April 4, 2007 appellant requested an examination of the written record. The Office received additional evidence which included copies of previously received documents, several treatment notes for his emphysema, personnel records, task force findings and numerous reports related to levels of mold in the workplace; pulmonary test results; and studies pertaining to other employees who had respiratory problems.

The Office also received an undated statement from appellant's representative who indicated that appellant's position exposed him to "years of intermediate exposure to mold and asbestos" at the employing establishment. She also indicated that appellant was not given the

protective gear until after being exposed for a full day without any protection. Appellant's representative alleged that additional medical evidence was submitted which supported that his condition was caused by the mold exposure.

In an April 9, 2007 disability certificate, Dr. Robert E. Bowen, Board-certified in internal medicine with a subspecialty in pulmonary disease, opined that appellant's "COPD [was] exacerbated by on[-]the[-]job mold exposure." In reports dated April 19, 2007, Dr. Rezaian opined that appellant developed "significant reactive arthritis upon severe exposure to mold at his place of employment. It is possible based on study cited below that this exposure caused his reactive arthritis." Dr. Rezaian referred to a case based upon a study of 34 subjects in Finland.

By decision dated September 14, 2007, the Office hearing representative affirmed the Office's March 8, 2007 decision. The hearing representative found that the medical evidence did not establish that appellant sustained a pulmonary, respiratory or arthritic work-related injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 an 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.³ 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.⁴

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) 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 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, 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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

The evidence establishes that appellant was exposed to black mold on two separate occasions at work. He submitted insufficient medical evidence, however, to establish that his pulmonary, respiratory or arthritic condition was caused or aggravated by exposure to black mold at work or any other specific factors of his federal employment.

Appellant submitted November 13, 2006 reports from Dr. Santos, who noted that on October 18 and 19, 2006, he was exposed to black mold while repairing a leaky ice machine and that he related having respiratory problems after completing the task. Dr. Santos also indicated that appellant had a history of occupational exposure to molds and diagnosed bronchitis and COPD with exacerbation. Although she indicated that appellant had a history of occupational exposure to molds, she did not render her own specific opinion regarding whether appellant had a diagnosed medical condition caused or aggravated by the workplace mold exposure. The Board finds that these reports are insufficient to establish appellant's claim.

Dr. Rezaian provided several reports and treatment notes dating from November 2006 to January 2007. In his January 3, 2007 report, he noted that, while working for the employing establishment, appellant "was exposed to mold and had to close the room, wear surgical mask and remove stuff with a shop vac." In Dr. Rezaian's January 10, 2007 report, he opined that appellant had reactive arthritis and spondyloarthropathy, sacroiliac joint inflammation. He advised that in view of appellant's positive "HLA-B27" this was "most likely the cause of his symptoms. [Dr. Rezaian] relates significant exposure to mold." In reports dated April 19, 2007, he opined that appellant had developed "significant reactive arthritis upon severe exposure to mold at his place of employment. It is possible base on [the] study cited below that this exposure caused his reactive arthritis." Other coworkers developed "immune complexes.... The high incidence of joint problems among these employees suggests a common triggering factor for most of the cases." Dr. Rezaian referred to a case based on a study of 34 subjects in Finland. The Board notes that Dr. Rezaian's support for causal relationship is couched in speculative terms and is of limited probative value.⁶ Additionally, while Dr. Rezaian referred to a case study, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.⁷ Dr. Rezaian did not explain how the case study applied to appellant's particular situation.

⁵ *Id.*

⁶ See *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal; the opinion should be expressed in terms of a reasonable degree of medical certainty).

⁷ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

In an April 9, 2007 disability certificate, Dr. Bowen opined that appellant's "COPD [was] exacerbated by on[-]the[-]job mold exposure." However, he did not explain how he arrived at this conclusion. For example, the record reflects that appellant was exposed to the mold for a few hours without protection and then was provided with some type of protection, when he removed the materials on the second day. Dr. Bowen made no discussion of how this limited exposure to the mold exacerbated appellant's preexisting COPD. This is especially important in light of the fact that appellant was a heavy cigarette smoker for around 40 years and had a prior history of COPD. Thus, this report is of limited probative value.

Appellant also submitted a November 13, 2006 chest x-ray from Dr. Lawrence. However, this report merely reported findings and did not contain an opinion regarding the cause of the reported condition. Other medical reports submitted by appellant do not address causal relationship.⁸

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.⁹ 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.¹⁰ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a pulmonary, respiratory or arthritic condition, he has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an injury in the performance of duty.

⁸ See *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2007 is affirmed.

Issued: June 8, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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