

Appellant submitted a June 17, 2009 note in which Dr. Richard E. Wood, a Board-certified thoracic surgeon, reported that a biopsy, conducted on May 6, 2009, revealed a pleural mass “consistent with thymoma.”

In a surgical report dated June 26, 2009 and a note dated August 5, 2009, Dr. Wood diagnosed malignant thymoma, right lung cancer. He noted that appellant has a history of “heavy exposure to asbestos but I cannot conclude that this is work related.”

On July 14, 2009 Dr. William Herlihy, a Board-certified pathologist, presented findings on examination and diagnosed a malignant thymoma.

By decision dated November 19, 2009, the Office denied the claim because, although it accepted the employment factors appellant deemed responsible for his condition, the medical evidence of record did not establish that his condition was caused by these employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁵

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Id.*; *Nancy G. O’Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.

ANALYSIS

The Office accepted the employment factors appellant deemed responsible for his condition. Appellant's burden is to demonstrate that these employment factors caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be established by probative, rationalized medical opinion evidence. The Board that finds appellant has not submitted sufficient probative medical opinion evidence supporting his claim and, consequently, has not established he sustained an injury in the performance of duty causally related to his employment.

The reports signed by Drs. Herlihy and Wood have little probative value on the issue of causal relationship because they lack an opinion, supported by adequate rationale, explaining how the conditions they diagnosed were caused by the accepted employment factors.⁷

Dr. Herlihy's July 14, 2009 pathology report diagnosed malignant thymoma, but offered no opinion regarding the cause of this condition.

Dr. Wood stated that, despite appellant's "history of heavy exposure to asbestos," he could not conclude that appellant's condition was work related. Accordingly, this evidence does not establish the requisite causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.⁸ Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹ The fact that a condition manifests itself or worsens during a period of employment¹⁰ or that work activities produce symptoms revelatory of an underlying condition¹¹ does not raise an inference of causal relationship between a claimed condition and identified employment factors.

⁷ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

⁸ *Edgar G. Maiscott*, 4 ECAB 558 (1952).

⁹ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹⁰ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹¹ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

Because appellant has not submitted medical opinion evidence that explains how the accepted employment factors caused or aggravated a firmly-diagnosed medical condition, the Board finds that appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established he sustained an injury in the performance of duty causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2010
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