

result of exposure to Agent Orange and other poisonous substances in the performance of duty.¹ He stated that, from 1965 through 1975, he was exposed to Agent Orange while working on crash-damaged helicopters returned from Vietnam. Appellant allegedly “beat the bellies” of the helicopters and removed floorboards, exposing a large amount of dust and dirt, which covered his clothing.

On October 24, 2008 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 claimed conditions. It specifically advised appellant to obtain an opinion from his doctor as to whether his chemical exposure at the employing establishment caused or contributed to his diagnosed conditions.

The employing establishment controverted appellant’s claim, contending that there was no record of the existence of Agent Orange in the helicopters worked on at the Corpus Christi Army Depot. Further, appellant did not submit medical evidence supporting that his illness was caused by the alleged exposure.

In a letter dated November 14, 2008, appellant stated that the helicopters that he was required to clean were not decontaminated before returning from Vietnam, as verified by 40 witnesses on his web site. In support of his allegation, he noted the employing establishment’s statement that it had “attempted to clean the aircraft” prior to sending them back to the United States.

Appellant submitted an April 18, 2008 report from Dr. Pedro P. Torres, a Board-certified surgeon, who diagnosed colon cancer, with liver metastasis. Dr. Torres stated that appellant had undergone colon surgery and an illiostomy on January 23, 2008. He did not address the cause of appellant’s condition; nor did he address the conditions of stroke or peripheral neuropathy. In an April 18, 2008 loan discharge application, Dr. Torres stated that appellant was totally and permanently disabled due to advanced colon cancer with liver metastasis.

¹ Appellant filed three 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 No. xxxxx560, 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 No. xxxxxx009. In a decision dated July 15, 2008, the Board affirmed the Office’s October 24, 2007 decision denying the claim, finding that the medical evidence was insufficient to establish that he sustained the claimed conditions in the performance of duty. (Docket No. 08-361, issued July 15, 2008). In a January 7, 2005 claim, File No. xxxxxx270, appellant alleged that he developed Type II diabetes, as well as skin cancers, weakness, body aches, peripheral neuropathy and damage to his teeth, as a result of chemical exposure while overhauling helicopters in the performance of duty. In a decision dated September 17, 2008, the Board affirmed the Office’s July 2, 2007 decision, finding that the evidence failed to establish that appellant developed diabetes or peripheral neuropathy in the performance of duty. (Docket No. 07-1911, issued September 17, 2008). Appellant’s claims, including the instant claim, have been consolidated under Master File No. xxxxxx270.

The record contains an April 14, 2008 loan discharge application from Dr. Emile Salloum, a Board-certified internist, who indicated that appellant was totally disabled due to stage IV colon cancer and chemotherapy.

In a letter dated November 12, 2008, appellant demanded “presumptive evidence” for his exposure to Agent Orange. He contended that his conditions should be presumed to have been caused by his exposure to Agent Orange, and that his civil rights had been violated because he has not received the same treatment as Vietnam veterans who were exposed to Agent Orange.

On November 20, 2008 appellant described in detail his duties as an aircraft mechanic and quality assurance specialist.² He stated that, beginning May 28, 1967, when he was promoted to the position of aircraft repairer, his duties included cleaning and inspecting the helicopter tail boom for final closure. It was during this time period, while cleaning the aircraft, uninstalling and installing seats, inspecting heaters and defrosters, looking under carpeting for missing parts, that he was unknowingly exposed to Agent Orange. Appellant further alleged that the employing establishment intentionally concealed the existence of Agent Orange from the employees.

The record contains a July 31, 1990 report from Frank Woodward, the employing establishment’s safety and health director. Mr. Woodward 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.

Appellant submitted numerous reports and articles describing the use of Agent Orange in Vietnam and its effect on military personnel. He also cited reference to web sites which allegedly provided information on Agent Orange contamination.

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. Mr. Martinez, 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.

Appellant alleged that his 14th Amendment rights of equal protection had been violated, contending that he was entitled to the same benefits as those awarded to Vietnam soldiers who developed various types of cancers and Type II diabetes due to their exposure to Agent Orange. He stated that certain aircraft, specifically Cobra Helicopters (Irons), were not cleaned before

² The record contains position descriptions for quality assurance specialist and aircraft mechanic.

they arrived in his repair shop, and were “fully contaminated with Agent Orange.” Appellant also claimed that he was exposed to cancer-causing CARC paint, which was sprayed on Army helicopters in 1975.³

In a decision dated January 14, 2009, the Office denied appellant’s claim, finding that medical evidence of record was insufficient to establish that he developed peripheral neuropathy or stroke as a result of the claimed exposure.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act⁴ 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.⁵

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.⁶

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.⁷

ANALYSIS

The Office accepted that appellant was minimally exposed to Agent Orange while overhauling helicopters during his federal employment; however, his claim was denied on the grounds that he failed to establish that he had developed a diagnosed condition as a result of such

³ The record contains a memorandum to the file describing physical evidence received in the form of a 60-minute CD dated November 19, 2008. The CD includes appellant’s explanation of his claim; a TV news interview; testimonials; and pictures of headstones.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 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).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

exposure. The Board finds that the medical evidence of record is insufficient to establish that either the condition of stroke or peripheral neuropathy was caused by exposure to Agent Orange or any other chemical substance. Therefore, appellant has failed to meet his burden of proof.

The medical evidence of record consists of April 18, 2008 reports from Dr. Torres, who diagnosed colon cancer, with liver metastasis, and an April 14, 2008 loan discharge application from Dr. Salloum, who stated that appellant was totally disabled due to stage IV colon cancer and chemotherapy. 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.⁸ Moreover, neither physician addressed the conditions of stroke or peripheral neuropathy. The Board finds that these reports are insufficient to establish appellant's claim for compensation as to his conditions of stroke and peripheral neuropathy.⁹

Appellant expressed his strong belief that his peripheral neuropathy condition and stroke resulted from his exposure to Agent Orange and other chemical agents. 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.¹⁰ 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.¹¹ 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 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.

On appeal, appellant contends that the Department of Labor is violating his 14th Amendment rights for equal protection under the law by requiring him to provide medical evidence establishing a causal relationship between his claimed conditions and his exposure to Agent Orange. He argues that he should be granted the standard of "presumptive evidence" used by the Department of Veterans Affairs in determining benefits for veterans who were exposed to

⁸ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ As noted, by decision dated September 17, 2008, the Board previously affirmed the Office's July 2, 2007 decision, finding that the evidence failed to establish that appellant developed diabetes or peripheral neuropathy in the performance of duty. (Docket No. 07-1911, issued September 17, 2008).

¹⁰ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹¹ *Id.*

Agent Orange in Vietnam. However, the laws and policies that apply to the Act are separate and apart from those that apply to the Department of Veterans Affairs, or any other government entity.¹² It is the duty of the Board to apply the provisions of the Act and its implementing regulations as written. Appellant's argument for a presumption of causal relationship must be denied, as neither the Board nor the Office has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute.¹³

As noted, a claimant seeking benefits under the Act has the burden of establishing that any specific condition for which he claims compensation, is causally related to the employment injury.¹⁴ In this case, appellant was required to submit rationalized medical evidence establishing that his stroke and peripheral neuropathy were causally related to his exposure to Agent Orange.¹⁵ As he failed to produce any such medical evidence, he has failed to meet his burden of proof.

CONCLUSION

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

¹² Findings of other government agencies are not dispositive with regard to questions of disability arising under the Act. *Dona M. Mahurin*, 54 ECAB 309 (2003); *Daniel Deparini*, 44 ECAB 657 (1993).

¹³ *Timothy A. Liesenfelder*, 51 ECAB 599, 602 (2000).

¹⁴ *See supra* note 5.

¹⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2010
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