United States Department of Labor
Employees' Compensation Appeals Board

B.F., Appellant	)	
and	)	**Docket No. 09-2157**
	)	**Issued: June 15, 2010**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 26, 2009 appellant filed a timely appeal from a September 11, 2008 merit decision of the Office of Workers' Compensation Programs, denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a large cell lymphoma causally related to his federal employment.

FACTUAL HISTORY

On May 25, 2006 appellant, then a 39-year-old maintenance worker, filed an occupational disease claim (Form CA-2) alleging that a diagnosed large cell lymphoma was causally related to his federal employment. His work history noted that from 1989 to 1996 he worked as an equipment cleaner at the employing establishment and, commencing in 1998, he worked as a pipefitting worker and a general maintenance worker.

In a statement received by the Office on June 13, 2006, appellant noted that he became aware of causal relationship between his condition and employment on July 7, 2005 when talking to an oncologist. He reported he was initially treated in February 2005 with a diagnosis of lymph node enlargement, but on June 2, 2005 he was diagnosed with anaplastic large cell lymphoma. With respect to employment factors, appellant alleged that he was "exposed to numerous types of heavy metals and chemical toxins in liquid and solid form, including exposures to ionizing radiation in high and low radiation areas, working closely with physically contaminated nuclear liquids and solids." He noted his exposure to cleaning solvents, including benzene.

The employing establishment submitted a June 8, 2006 response from the health unit officer-in-charge, who reported appellant's documented occupational exposure to radiation over 13 years was 4.538 roentgen equivalent in man (rem). The officer stated this was less than the federal annual limit of 5 rem for occupational exposure, and reported appellant's highest annual exposure was 0.894 rem. A July 7, 2006 report from an employing establishment Radiation Effects Advisory Board (REAB) (composed of two Board-certified radiologists and a Board-certified neurologist) stated that appellant was exposed to ionizing radiation from February 1, 1990 to December 23, 1994, and January 13, 1999 to October 17, 2005. The REAB reported that appellant was individually monitored for radiation exposure by thermoluminescent dosimeter (TLD). According to the REAB, using a computer model developed by the National Institute for Occupational Safety and Health (NIOSH), the probability of causation for chronic exposure to 4.530 rem to induce lymphoma was 2.24 percent. The REAB opined that appellant's anaplastic large cell lymphoma was not caused by exposure to ionizing radiation in federal employment.

In a report dated August 4, 2005, Dr. Carol Sawmiller, a surgeon, stated that appellant was diagnosed with an aggressive lymphoma in April 2005. She advised that appellant should avoid future occupational exposure to radiation and chemicals. On June 28, 2006 Dr. Sawmiller stated that appellant had been exposed to numerous chemicals, heavy metals and radiation. She reported that appellant was exposed to lead, PCB's, rubber, chromates and resins, as well as jet fuel, paint and oil. Dr. Sawmiller stated, "Exposure to various chemicals is known to increase the risk of developing various cancers, including lymphoma and leukemia." She reiterated that appellant had been advised to avoid chemical and radiation exposure.

The employing establishment submitted a June 29, 2006 report from Dr. Larry Smick, an osteopath,[1] who reviewed appellant's statements regarding chemical exposure. Dr. Smick noted that benzene was a potential carcinogen, but appellant's exposure was below the level to cause adverse health effects, and benzene "is not linked with confidence to lymphoma, but rather is linked to leukemia, another type of blood cancer." He also noted the time period between exposure and diagnosis was not typical for developing cancer. Dr. Smick concluded that it could not be established on a more probable than not basis that appellant's condition was caused by exposure to carcinogens in the workplace.

By decision dated November 21, 2006, the Office denied the claim for compensation. It found the medical evidence was not sufficient to meet appellant's burden of proof.

[1] The report was cosigned by an industrial hygienist.

Appellant requested a hearing before an Office hearing representative, which was held on April 18, 2007. At the hearing a Mr. Farmer testified that appellant was exposed to significant amounts of radiation, as he worked on the inside of a nuclear reactor. The employing establishment submitted a May 15, 2007 letter from a compensation administrator, reiterating the employee's position that appellant's occupational radiation exposure from 1990 to 2005 was less than the federal limit for a single year.

By decision dated July 10, 2007, the hearing representative affirmed the November 21, 2006 Office decision, finding the medical evidence was insufficient to establish the claim.

In a June 24, 2008 letter, appellant requested reconsideration of his claim. He submitted a June 24, 2007 report from Dr. Sawmiller, stating appellant's "work environment was more likely than not causal to his disease. See references below." Dr. Sawmiller provided citations to two articles from medical journals regarding benzene.

By decision dated September 11, 2008, the Office reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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.[4]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[5] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[6] Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining

[2] 5 U.S.C. §§ 8101-8193.

[3] 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4] *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[5] *See Robert G. Morris*, 48 ECAB 238 (1996).

[6] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[7]

ANALYSIS

Appellant was diagnosed with anaplastic large cell lypmphoma and he submitted statements identifying the employment factors he believed contributed to his condition. He listed exposure to chemicals in cleaning agents and other substances, heavy metals and radiation. As to the factual evidence, it is not disputed that appellant worked with solvents, cleaning agents and fuels, and therefore was exposed to the chemicals contained in these products. The record contains labels, data sheets and other documents relating to chemical and metal exposure.

With respect to radiation exposure, the employing establishment and appellant differed as to the degree of exposure. The employing establishment asserted that, based on available documentation, appellant was exposed to relatively low levels of radiation totaling approximately five rem over a 15-year period. A witness for appellant, Mr. Farmer, stated that appellant was exposed to significant amounts of radiation as he worked at times inside a nuclear reactor. He did not provide a specific number of rem exposure. The record does establish that appellant was exposed to some radiation during his federal employment. The Board notes that appellant did not submit sufficient medical evidence with a probative opinion on causal relationship between the diagnosed lymphoma and occupational exposures.

Appellant's burden of proof includes the submission of a rationalized medical opinion on the issue of causal relationship that is based on a complete and accurate background. He submitted the reports of Dr. Sawmiller in support of his claim. Dr. Sawmiller stated briefly in a June 28, 2006 report that exposure to "various chemicals is known to increase the risk" of certain cancers, including lymphoma. She did not provide a detailed factual or medical background addressing appellant's exposures in his federal employment. Moreover, Dr. Sawmiller's opinion on causal relationship is couched in generalities. In a June 24, 2007 report, she generally referred to the work environment as being more likely than not the cause of appellant's disease and referenced two medical journal articles on benzene. Again, Dr. Sawmiller did not provide any detailed factual and medical background or clearly state a medical explanation addressing how appellant's exposures caused or contributed to the large cell lymphoma.[8] The Board also notes that Dr. Smick, whose opinion was apparently sought by the employing establishment, opined that the lymphoma was not causally related to benzene exposure in federal employment. With respect to radiation exposure, the physicians on the employing establishment's radiation board opined that appellant's condition was not caused by radiation exposure, noting the level of exposure and the probability of causation.

On appeal, appellant contends that Dr. Sawmiller is the only physician of record qualified to offer a medical opinion on the issue and that her reports establish that employment factors were more likely than not the cause of his condition. As noted, Dr. Sawmiller's opinion is not of sufficient probative value to meet appellant's burden of proof. Appellant asserts the Office is requiring a physician to "observe objectively the working conditions believed causal to an

[7] *Id.*

[8] *See D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007).

injury." The Board notes that the opinion of the physicians of record should provide a detailed factual background describing the nature and extent of any employment exposure believed to have contributed to a medical condition. That is especially true in the instant case, as appellant has identified a range of possible employment factors. The fact that the etiology of the disease is obscure does not shift the burden of proof to the Office.[9] Appellant must submit affirmative medical opinion based on the material facts in evidence with rationale stated to a reasonable degree of medical certainty. The June 28, 2006 report of Dr. Sawmiller provides a brief two-page recitation of appellant's treatment. The June 24, 2007 report is one page with a brief statement on causal relation. The Board finds appellant did not meet his burden of proof in this case.

CONCLUSION

The Board finds appellant did not meet his burden of proof to establish a lymphoma condition causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 11, 2008 is affirmed.

Issued: June 15, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[9] *See Lucrecia M. Nielsen*, 42 ECAB 583 (1991).