



injury. Appellant handled boxes covered in dust while working in a warehouse that was over 50 years old.<sup>1</sup>

By letter dated February 22, 2007, the Office advised appellant that the evidence of record was insufficient to establish his claim. It requested that he submit factual evidence, including clarification as to whether he was claiming a traumatic injury or an occupational disease. The Office also requested medical evidence, including a rationalized medical report from an attending physician which described appellant's symptoms, results of examination and tests, a diagnosis, treatment provided and an opinion on whether his federal employment contributed to his condition. It requested that the employing establishment respond to his allegations and provide information regarding his workplace exposure.

Appellant submitted a January 4, 2007 medical report from Dr. C. Clay Danenhower, a Board-certified anatomic and clinical pathologist, and report dated January 11 to 29, 2007 reports from Dr. Steven H. Kirtland, a Board-certified internist. The physicians advised that appellant sustained systemic cryptococcus of the lungs with central nervous system involvement.

A January 11, 2007 report from Dr. Richard P.M. Koehler, a Board-certified surgeon, stated that appellant sustained acute and chronic inflammation and fungal organisms consistent with cryptococcus.

In an undated narrative statement, appellant related that his claim should be treated as an occupational disease claim since he experienced coughing, shortness of breath and choking symptoms six to eight months prior to December 6, 2006. He provided a history of his medical treatment from December 8, 2006 to March 1, 2007. Appellant described his work duties and environment.

A December 8, 2006 report from Dr. Andrew D. Glass, a Board-certified osteopath, found that appellant had a cough, which he suspected was due to a viral infection. Appellant also experienced chronic sweats.

In reports dated December 22, 2006, Dr. Rudolph H. Knaack, a Board-certified family practitioner, stated that appellant had a chronic cough, fever and bronchitis. Appellant was a long-term smoker at significant risk for lung cancer.

In progress notes dated December 27, 2006 to January 5, 2007, Dr. Paul A. Zaveruha, a surgeon, stated that appellant had lesions on both lungs, which were highly suspect for lung carcinoma.

In reports dated December 14, 2006 and February 20, 2007, Dr. Brian G. Waite, a Board-certified family practitioner, advised that appellant had acute bronchitis.

In a December 24, 2006 report, Dr. Bonnie C. Davis, a Board-certified radiologist, advised that masses on appellant's right lung and in the pulmonary parenchyma were likely neoplasm.

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<sup>1</sup> Appellant retired from the employing establishment on December 31, 2006.

On March 19, 2007 the employing establishment controverted appellant's claim. It advised that a recent site inspection revealed no evidence of bird droppings as claimed in the work area. The warehouse was deemed an acceptable environment in which to conduct business.

In an April 2, 2007 report, Dr. Kirtland stated that appellant's systemic cryptococcal infection in both lungs and central nervous system was a fungal organism often found in bird and pigeon guano. He advised that appellant was inoculated through inhalation. Dr. Kirtland noted that appellant denied being exposed to birds at his home. Appellant's only known exposure was at work where there were apparently birds in the roof of the warehouse. Dr. Kirtland opined that it was possible appellant was inoculated by inhaling fecal elements from the birds.

By decision dated May 14, 2007, the Office denied appellant's claim. It adjudicated the claim as an occupational disease and found that he did not sustain an injury in the performance of duty. The Office found that appellant failed to establish that he was exposed to bird droppings at work, as alleged.

On June 6, 2007 appellant requested an oral hearing before an Office hearing representative.

In a March 27, 2008 decision, an Office hearing representative affirmed the May 14, 2007 decision. He found the evidence insufficient to establish that appellant was exposed to bird droppings at work.

By letter dated May 21, 2008, appellant, through counsel, requested reconsideration. He submitted letters dated April 4 to 28, 2008 from employees, supervisors and his wife. They advised that they saw bird droppings in the employing establishment's warehouse where he worked.

In an October 10, 2008 letter, the employing establishment acknowledged the presence of bird droppings in its warehouse. However, no employee raised a health concern or was denied personal protection equipment to mitigate any exposure.

On October 10, 2008 the Office requested that an Office medical adviser review a statement of accepted facts and the medical evidence of record to determine whether the bird droppings in appellant's work area would reasonably cause or contribute to the claimed fungus condition. It also requested that the medical adviser provide a diagnosis related to the employment factors.

In an October 28, 2008 report, Dr. Lois J. Weaver, an Office medical adviser, stated that according to the National Center for Disease Control (CDC), cryptococcus neoformans was a type of fungus found in soil, usually in association with bird droppings and was commonly spread by them, especially pigeon droppings. She stated that, in contrast, appellant's far more rare cryptococcus neoformans, variety *C. gattii*, was found in samples from soil and on trees, wood chips, swabs of footwear and cars according to an accompanying CDC article. Dr. Weaver opined that given these numerous possibilities for tree, wood, soil and environmental dispersal of cryptococcus neoformans *gattii*, it was not very likely, reasonable or medically probable that appellant's *C. gattii* infection was caused, acquired or contributed to by the claimed exposure to bird droppings at the employing establishment.

By decision dated October 29, 2008, the Office affirmed the March 27, 2008 decision as modified. It found the evidence sufficient to establish that appellant was exposed to bird droppings while performing his work duties at the employing establishment; however, the medical evidence was insufficient to establish that he sustained a medical condition causally related to the accepted exposure.

In a February 2, 2009 letter, appellant, through counsel, requested reconsideration. In a December 8, 2008 report, Dr. Robert M. Rakita, a Board-certified internist, opined that appellant's cryptococcal disease in both lungs and nervous central system was more likely than not due to exposure to birds at work. He stated that appellant was exposed to birds both outside and inside the warehouse where he worked and did not have any other significant exposure elsewhere. Dr. Rakita advised that cryptococcus was a fungal organism typically associated with contaminated areas containing birds and bird droppings.

By decision dated March 13, 2009, the Office denied appellant's request for reconsideration. It found that the evidence submitted was duplicative in nature and of diminished probative value and, thus, insufficient to warrant further merit review of his claim.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his 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.<sup>4</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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.

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<sup>2</sup> The Board notes that the Office actually conducted a merit review of appellant's claim. The Office found that Dr. Rakita's December 8, 2008 report was of diminished probative value, as it was not based on an accurate factual background and objective findings. In making this finding, the Office based its decision on the probative value and evidentiary weighing of Dr. Rakita's medical opinion and, thereby, reviewed the merits of appellant's claim.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

The medical evidence required to establish a causal relationship 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.<sup>6</sup> Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment, is sufficient to establish a causal relationship.<sup>7</sup>

### ANALYSIS

The Office accepted that appellant was exposed to bird droppings while working as a supply technician at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that his fungus condition was caused or aggravated by the accepted work exposure.

Dr. Kirtland advised that appellant sustained cryptococcal infection in both lungs and central nervous system. He stated that the condition was a fungal organism found in bird and pigeon guano. In an April 2, 2007 report, Dr. Kirtland opined that it was "possible" appellant was infected by inhaling fecal elements from birds at work. On December 8, 2008 Dr. Rakita stated that appellant's cryptococcal disease was "more likely than not" due to his exposure to birds while working at the employing establishment. Both physicians stated that appellant had no other known significant exposure to birds. Neither Dr. Kirtland nor Dr. Rakita adequately explained how the diagnosed conditions were causally related to the established work-related exposure. Their use of the words "possible" and "more likely than not" regarding causal relation are equivocal and are insufficient to establish appellant's claim.<sup>8</sup>

Dr. Weaver's October 28, 2008 report advised that it was not very likely, reasonable or medically probable that appellant's cryptococcus neoformans of the *C. gattii* variety was caused, acquired or contributed to by the established employment-related exposure to bird droppings. She did not relate his condition to the established employment factor. The Board finds, therefore, that Dr. Weaver's report is insufficient to establish appellant's claim.

None of the remaining medical evidence from Dr. Danenhower, Dr. Koehler, Dr. Glass, Dr. Knaack, Dr. Zaveruha, Dr. Waite and Dr. Davis provides any opinion addressing the causal relationship between the diagnosed pulmonary and respiratory conditions and the established employment-related exposure.<sup>9</sup>

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<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>8</sup> *Id.*

<sup>9</sup> *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a fungus condition causally related to the accepted factor of his federal employment as a supply technician. Appellant did not meet his burden of proof.

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a fungus condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 13, 2009 and October 29, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 6, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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