



## **FACTUAL HISTORY**

On September 1, 2008 appellant, a 67-year-old supervisory budget analyst, filed an occupational disease claim alleging that she sustained a pulmonary injury in the performance of duty as a result of exposure to polychlorinated biphenyls (PCBs), asbestos and mold spores. Dr. Robert E. Cox, Board-certified in pulmonary disease and an OWCP second opinion physician, found there was no evidence that appellant's condition, which met the case definition for mycobacterial pulmonary disease, was in any way related to occupational exposure to smoke, PCBs, asbestos or mold. He added that a differential diagnosis of hypersensitivity pneumonitis was unlikely due to the x-ray characteristics, but even if she had the disease, it would not be related to mold exposure in the late 1990s because she did not develop symptoms until 2007.

In a decision dated September 21, 2009, OWCP denied appellant's claim for benefits. Noting that her physicians had provided no opinion on the issue of causal relationship, it found that Dr. Cox's opinion was unequivocal and established that appellant's pulmonary disease was not related to her occupational exposure.

On August 10, 2010 appellant requested reconsideration. She submitted, among other things, a June 11, 2010 report of Dr. Janette Harbottle Hope, Board-certified in family medicine, found that appellant's exposure to a heavily damaged workplace was the most likely cause of her mycobacterium avium intracellulare (MAI) infection and hypersensitivity pneumonitis. Dr. Hope explained that appellant's history was unremarkable for lack of exposure to other common sources of mycobacteria. Further, she noted that appellant's symptoms started in 1999, while exposed to a heavily water-damaged building at work, and progressed over the years, as was typical for her illness. "Therefore, based on her clinical and exposure histories, it is my opinion that the cause of [appellant's] MAI and hypersensitivity pneumonitis is exposure to mold spores and a heavily water damaged workplace from January 1997 through the end of 1999."

In a decision dated September 1, 2010, OWCP denied appellant's request for reconsideration. It found that Dr. Hope's report was new but repetitious and "does not provide new and relevant evidence establishing that the claimant's diagnosed conditions are medically related to her work exposure."

On appeal, appellant's representative argued that Dr. Hope's opinion on causal relationship was new and relevant. He asked the Board to remand the case to OWCP for a merit review.

## **LEGAL PRECEDENT**

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>2</sup> An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument

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<sup>2</sup> 5 U.S.C. § 8128(a).

not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup>

A request for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.<sup>4</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### ANALYSIS

Appellant sent her August 10, 2010 request for reconsideration within one year of the OWCP's September 21, 2009 merit decision denying her claim for workers' compensation benefits. Her request was therefore timely. The question for determination is whether appellant's request met at least one of the three standards for obtaining a merit review of her case.

OWCP denied appellant's claim for benefits on the issue of causal relationship. None of her physicians had offered an opinion on whether her pulmonary condition was causally related to the accepted occupational exposures. Dr. Cox, a second opinion physician who was Board-certified in pulmonary disease, offered an unequivocal opinion negating causal relationship.

To support her request for reconsideration, appellant submitted the June 11, 2010 report of Dr. Hope, who is Board-certified in family medicine, offered an opinion that the cause of appellant's MAI and hypersensitivity pneumonitis was exposure to mold spores and a heavily water-damaged workplace from January 1997 through the end of 1999. This opinion directly addressed the grounds upon which OWCP denied appellant's claim and clearly tended to support the element of causal relationship. As was noted in denying appellant's request for reconsideration, Dr. Hope's report was new and had not previously been considered.

For these reasons, the Board finds that Dr. Hope's June 11, 2010 report constituted relevant and pertinent new evidence not previously considered by OWCP. It satisfied one of the three standards for obtaining a merit review of her case. The Board finds that she is entitled to a merit review. The Board will set aside OWCP's September 1, 2010 decision denying appellant's request for reconsideration and will remand the case for a merit review. After such further development of the evidence as might be necessary, OWCP shall issue an appropriate final decision on appellant's entitlement to workers' compensation benefits.

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<sup>3</sup> 20 C.F.R. § 10.606.

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608.

**CONCLUSION**

The Board finds that OWCP abused its discretion by denying appellant's August 10, 2010 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 1, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: October 13, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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