United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 12-1109**
	)	**Issued: December 14, 2012**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS AND BORDER PATROL, Edmonton Alberta, Canada, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 24, 2012 appellant filed a timely appeal from the March 16, 2012 merit decision denying his occupational disease claim in File No. xxxxxx385; the March 19, 2012 merit decision denying his occupational disease claim in File No. xxxxxx576; and the March 16, 2012 merit decision denying his occupational disease claim in File No. xxxxxx549. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these cases.[2]

ISSUES

The issues are: (1) whether appellant sustained a left shoulder injury in the performance of duty pursuant to his claim in File No. xxxxxx385; (2) whether he developed a respiratory

[1] 5 U.S.C. § 8101 et seq.

[2] Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received; thus, the Board has decided the appeal on the record.

condition in the performance of duty pursuant to his claim in File No. xxxxxx576; and (3) whether appellant developed a respiratory condition in the performance of duty pursuant to his claim in File No. xxxxxx549.

FACTUAL HISTORY

OWCP accepted appellant's November 28, 2007 and December 21, 2008 claims (Nos. xxxxxx846 and xxxxxx995), for acute episodic allergic bilateral conjunctivitis/rhinitis. Appellant has filed similar occupational disease claims based on employment-related exposure to toxic fumes and claims alleging an occupational shoulder injury, including those cases that are the subject of this appeal.[3] These claims have been consolidated, with File No. xxxxxx846 serving as the master file.[4]

On April 1, 2011 appellant, a 56-year-old customs and border protection officer, filed an occupational disease claim alleging that he sustained a left shoulder injury as a result of repetitive employment activities. He stated that he was required to rotate his left shoulder while fingerprinting individuals, who routinely bumped his left arm due to the configuration of his work space.[5]

In a letter dated April 18, 2011, OWCP informed appellant that the evidence and information submitted were insufficient to establish his claim. Appellant was advised to submit additional evidence, including a medical report containing a diagnosis and a reasoned opinion as to how his employment activities caused or aggravated his diagnosed condition.

Appellant submitted a January 18, 2011 report of a magnetic resonance imaging (MRI) scan of the left shoulder, reflecting an anterior glenoid labral tear.

[3] Other claims include a pending May 18, 2011 occupational disease claim (No. xxxxxx270), in which appellant alleged occupational asthma and allergic rhinitis due to employment-related exposure to jet and diesel fumes, dust and toxins and a November 18, 2010 occupational disease claim (No. xxxxxx576), in which he alleged severe sinus headaches, breathing difficulties and nausea due to employment-related exposure to jet and diesel fumes, dust and toxins. In an April 1, 2011 occupational disease claim (No. xxxxxx385), he alleged a shoulder injury as a result of repetitive fingerprinting activities.

[4] These cases have been before the Board on prior appeal. In File No. xxxxxx576, appellant appealed nonmerit decisions dated May 19 and September 29, 2011 denying his request for an oral hearing and his request for reconsideration. By order dated December 19, 2011, the Board remanded the case for consolidation of case File Nos. xxxxxx995, xxxxxx846, xxxxxx270 and xxxxxx576. Docket No. 12-69 (issued December 19, 2011). In File No. 092522549, appellant appealed a May 23, 2011 decision denying his occupational disease claim. By order dated December 19, 2011, the Board remanded the case for consolidation of case File Nos. xxxxxx549, xxxxxx995, xxxxxx846, xxxxxx576, xxxxxx385 and xxxxxx270. Docket No. 11-1458 (issued December 19, 2011). In File No. xxxxxx385, appellant appealed a June 28, 2011 decision denying his April 1, 2011 occupational disease claim. By order dated December 12, 2011, the Board remanded the case for consolidation of the case File Nos. xxxxxx385 and xxxxxx549 and consideration of the evidence in all files. Docket No. 11-1946 (issued December 12, 2011).

[5] File No. xxxxxx385. The Board notes that in his April 16, 2011 occupational disease claim in File No. xxxxxx549, appellant also alleged that he sustained a shoulder injury as a result of repetitive fingerprinting activities. As noted, File No. xxxxxx549 has been combined with the instant case file.

On May 24, 2011 OWCP again informed appellant that the evidence submitted was insufficient to establish his claim and that he should submit a rationalized medical report explaining how his claimed left shoulder condition resulted from his employment activities.

Appellant submitted a March 31, 2011 report from Dr. Christopher Lee, a treating physician, who diagnosed left shoulder anterior glenoid labral tear and Hill-Sachs deformity. In response to an inquiry by the employing establishment, Dr. Lee stated that appellant's left shoulder joint instability would affect his ability to perform the duties required of his position, as his shoulder would likely dislocate during any potential physical altercation.

The record contains an April 1, 2011 report from Dr. Lawrence W. Raymond, an employing establishment physician, who opined that appellant's sinus and respiratory conditions would not prevent him from performing the duties of his border protection assignment.

In letters dated April 1 and June 7, 2011, the employing establishment controverted appellant's claim.

By decision dated June 28, 2011, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his claimed left shoulder injury was causally related to his accepted employment activities. Appellant disagreed with the decision and appealed to the Board.

In an order dated December 12, 2011, the Board set aside the June 28, 2011 decision and remanded the case for consolidation with appellant's April 16, 2011 occupational disease claim in File No. xxxxxx549, in which he also alleged that he sustained a work-related left shoulder condition.

On remand, OWCP combined the instant case with File No. xxxxxx549 in accordance with the Board's directive.

By decision dated March 16, 2012, OWCP denied appellant's claim. After reviewing the evidence in the consolidated files, the claims examiner determined that the medical evidence was insufficient to establish a causal relationship between appellant's left shoulder condition and the accepted employment activities. He noted that neither File No. xxxxxx549, nor any other file that had been consolidated with this case, contained medical evidence relating to the claimed left shoulder condition.

On November 18, 2010 appellant filed an occupational disease claim alleging that he sustained eye irritation, breathing difficulties, nausea, chronic sinusitis and allergic bilateral rhinitis due to employment-related exposure to varying levels of jet exhaust fumes, dust, toxins, poisons and construction materials for the period April 18 through November 5, 2010 (File No. xxxxxx576).[6] He submitted statements from the employing establishment, accompanied by informal environmental studies and reports, reflecting that he periodically worked approximately

[6] File Nos. xxxxxx576 and xxxxxx549. Appellant also submitted Form CA-2s that were associated with the file for periods through January 15, 2011.

75 to 120 yards from the opening of the Jetway and was exposed to exhaust from baggage towing vehicles and increased levels of dust due to construction.

Appellant submitted a March 30, 2009 report from Dr. Lawrence W. Raymond, a Board-certified internist, who diagnosed recurrent rhinitis and conjunctivitis related to unidentified stimuli. Dr. Raymond suspected that jet fuel vapors and exhausts were possible participants. In a May 29, 2009 report, Dr. Steven Bauer, a Board-certified internist, treated appellant for symptoms of acute episodic allergic bilateral conjunctivitis/rhinitis, allergic chronic sinusitis and laryngitis. He opined that appellant's conditions were likely related to jet fumes, dirt and debris caught in carpeting and possibly materials emitted from forced hot air and cold air systems in appellant's indoor work environment.

In a letter dated December 30, 2010, OWCP informed appellant that the information and evidence submitted was insufficient to establish his claim. It advised him to submit detailed factual information regarding the duties he performed that created his claimed hazardous exposure and a rationalized medical report containing examination findings, a diagnosis and an opinion explaining how the identified exposure caused or aggravated a diagnosed condition.

Appellant was treated by Dr. Jordanka Angelova, a family physician. On December 13, 2010 Dr. Angelova diagnosed sinusitis, which he opined was likely related to dust, fumes and construction materials at work. On January 6, 2011 he stated that he had been treating appellant since November 6, 2010 for symptomatology relating to allergic rhinitis, acute/chronic sinusitis, and most recently laryngitis. Dr. Angelova opined that the symptoms were due to exposure to airport-caused exhaust fumes, dust, as well as indoor allergens, such as carpeted areas. In a January 26, 2011 report, he diagnosed chronic, recurrent allergic rhinitis, which he opined developed as a result of appellant's exposure at work to fumes, dust and chemicals present at airports. Dr. Angelova noted that appellant's symptoms, which included nasal congestion, itchy eyes, dry throat, laryngitis, markedly improved or resolved when his exposure to these elements was limited.

By decision dated March 1, 2011, OWCP denied appellant's claim in File No. xxxxxx576 on the grounds that the medical evidence failed to establish a causal relationship between his sinus condition and factors of his employment. On March 2, 2011 appellant requested review of the written record. OWCP denied his request as untimely by decision dated May 18, 2011.

The record contains a second opinion report dated May 6, 2011 from Dr. Benjamin Chiam, a pulmonologist, who provided a history of appellant's employment-related exposure to jet fuel, paint and other toxins. Examination revealed clear lungs on auscultation. Pulmonary function testing identified minor airway obstruction. Dr. Chiam diagnosed a symptom complex (with pulmonary and extrapulmonary symptoms) aggravated by his work environment. He stated that the breadth of appellant's symptoms made a respiratory disease such as asthma alone less likely. Dr. Chiam opined, however, that appellant did certainly have respiratory symptoms that may be explained by asthma/reactive airway disease. He stated, "In this context, asthma, work-aggravated asthma and possibly occupational asthma could be considered." Dr. Chiam agreed with appellant's treating physicians that allergy could be a contributing factor, but stated that allergic response to fuel fumes does not have a biologic plausibility. He opined that appellant might have multiple chemical sensitivity disorder. Dr. Chiam stated that in order to

clarify appellant's diagnosis, specific allergen/fume challenge testing would be required. As his expertise was in the area of respiratory disease, he indicated that he would not be able to perform the necessary tests. Dr. Chiam further stated that he had not reviewed appellant's imaging, but assumed it was unremarkable. As appellant refused further testing, he stated that he was unable to offer a complete opinion.

In a supplemental report dated May 20, 2011, Dr. Chiam stated that labeling appellant as strictly allergic was probably not appropriate until further understanding of his case was achieved. He offered multiple possibilities for appellant's symptoms, including asthma, bronchitis or allergic bronchopulmonary aspergillosis and recommended an examination by an allergist/immunologist. Finally, Dr. Chiam stated that, without further testing, he was unable to provide an accurate opinion on the cause of appellant's condition.

On April 16, 2011 appellant filed another occupational disease claim alleging that he sustained a medical condition as a result of exposure to paint and diesel fumes on April 14, 2011 (File No. xxxxxx549).

By decision dated May 23, 2011, OWCP denied appellant's claim in File No. xxxxxx549 on the grounds that he failed to establish that he had developed a diagnosed condition as a result of the claimed chemical exposure.

By decision dated September 29, 2011, OWCP denied appellant's request for merit review in File No. xxxxxx576.

Appellant appealed OWCP's May 23, 2011 decision in File No. xxxxxx549 and the May 18 and September 29, 2011 decisions in File No. xxxxxx576 to the Board. In separate decisions dated December 19, 2011, the Board set aside OWCP's September 29, 2011 decision in File No. xxxxxx576 and the May 23, 2011 decision in File No. xxxxxx549 and remanded both cases for consolidation of appellant's occupational disease claims related to his sinus/respiratory conditions and for consideration of the medical evidence contained in all of those files.[7]

By decision dated March 16, 2012, OWCP denied modification of its March 1, 2011 decision in File No. xxxxxx576 on the grounds that the medical evidence was insufficient to establish a causal relationship between the accepted exposure and a diagnosed condition. The claims examiner noted that appellant refused to undergo additional testing, as requested by the second opinion examiner.

By decision dated March 19, 2012, OWCP denied appellant's claim in File No. xxxxxx549, finding that appellant had failed to establish a causal relationship between the accepted exposure to paint fumes and diesel fuel and the claimed medical condition. The claims examiner noted that the second opinion examiner was unable to provide an opinion on the cause of appellant's condition due to incomplete testing.

[7] *See supra* note 4.

LEGAL PRECEDENT -- ISSUES 1, 2 & 3

An employee seeking benefits under FECA 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.[8] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

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;[10] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[11] and (3) medical evidence establishing 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.[12]

Generally, causal relationship may be established only by rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that 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.[13] The opinion of the physician must be based on a complete factual and medical background of the claimant,[14] must be one of reasonable medical certainty[15] 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.[16]

[8] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *Solomon Polen*, 51 ECAB 341 (2000).

[11] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[12] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[13] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[14] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[15] *John W. Montoya*, 54 ECAB 306 (2003).

[16] *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS -- ISSUE 1

The medical evidence submitted by appellant is insufficient to establish that his diagnosed left shoulder condition was caused or aggravated by factors of his federal employment. Therefore, appellant has failed to meet his burden of proof.

Relevant medical evidence of record consisted of a March 31, 2011 report from Dr. Lee and a January 18, 2011 MRI scan report. Neither report is sufficient to establish appellant's claim. Dr. Lee diagnosed left shoulder anterior glenoid labral tear and Hill-Sachs deformity. His report, however, did not contain examination findings or a complete factual or medical background. Dr. Lee stated that appellant's left shoulder joint instability would affect his ability to perform the duties required of his position. He did not, however, provide an opinion as to the cause of the diagnosed shoulder condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[17] Similarly, the January 18, 2011 MRI scan report, lacking any opinion on causal relationship, is of limited probative value.

The remaining medical evidence of record, which relates to appellant's respiratory condition, is not relevant to his claim for a left shoulder injury. Therefore, it is insufficient to establish his claim.

Appellant expressed his belief that his left shoulder condition resulted from his duties as a border protection officer. The Board has held, however, 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.[18] 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.[19] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the alleged work-related injury is not determinative.

OWCP 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 his claimed condition was caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of employment.

[17] *Michael E. Smith*, 50 ECAB 313 (1999).

[18] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[19] *Id.*

ANALYSIS -- ISSUES 2 & 3

The Board finds that appellant's claims in File Nos. xxxxxx385 and xxxxxx576 are not in posture for a decision.

In separate decisions dated December 19, 2011, the Board set aside OWCP's September 29, 2011 decision in File No. xxxxxx576 and the May 23, 2011 decision in File No. xxxxxx549 and remanded both case for consolidation of appellant's occupational disease claims related to his sinus/respiratory conditions and for consideration of the medical evidence contained in all related files. On remand, OWCP found in each case that the medical evidence failed to establish that appellant developed a respiratory condition due to employment-related exposure to toxins, based on Dr. Chiam's May 20 and 6, 2011 second opinion reports. The Board finds, however, that Dr. Chiams' reports are insufficient to form the basis of OWCP's March 16 and 19, 2012 decisions denying appellant's claims.

OWCP referred appellant to Dr. Chiam for an opinion as to the cause of appellant's current condition. On May 6, 2011 Dr. Chiam diagnosed a symptom complex (with pulmonary and extrapulmonary symptoms) aggravated by his history of employment-related exposure to jet fuel, paint and other toxins. He stated that the breadth of appellant's symptoms made a respiratory disease such as asthma alone less likely. Dr. Chiam opined, however, that appellant did certainly have respiratory symptoms that may be explained by asthma/reactive airway disease. He stated, "In this context, asthma, work-aggravated asthma and possibly occupational asthma could be considered." Dr. Chiam agreed with appellant's treating physicians that allergy could be a contributing factor, but stated that allergic response to fuel fumes does not have a biologic plausibility. He opined that appellant might have multiple chemical sensitivity disorder. The Board finds that Dr. Chiam's report is vague and speculative and is therefore of diminished probative value. Dr. Chiam admittedly was unable to offer an unequivocal opinion as to causal relationship because he was not qualified to perform the specific allergen/fume challenge testing that would be necessary to clarify appellant's diagnosis. The Board notes that he did not review appellant's imaging results. Therefore, it is of diminished probative value

Dr. Chiam's supplemental report of May 20, 2011 is equally vague and equivocal. He stated that labeling appellant as strictly allergic was probably not appropriate until further understanding of his case was achieved. Dr. Chiam offered multiple possibilities for appellant's symptoms, including asthma, bronchitis or allergic bronchopulmonary aspergillosis and recommended an examination by an allergist/immunologist. Finally, he stated that, without further testing, which appellant refused, he was unable to provide an accurate opinion on the cause of appellant's condition.

The Board notes that OWCP found that appellant's refusal to undergo further testing was reason to deny his claim. Appellant's agreement to further testing, however, would not cure the deficiencies in Dr. Chiam's reports. Dr. Chiam was admittedly not qualified to render an opinion or to perform the required testing.

In a December 13, 2012 report, appellant was treated by Dr. Angelova, a family physician, who diagnosed sinusitis and opined that it was likely related to dust and fumes at work. Later, in a report dated January 6, 2011, he stated that he was treating appellant for

allergies related to acute/chronic sinusitis and laryngitis due to exposure of fumes, dust and indoor allergies.

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.[20] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[21] Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[22] As it undertook development of the medical evidence by referring appellant to Dr. Chiam, it had an obligation to secure a report adequately addressing the relevant issue in each case.[23] The obligation continues until it receives a proper report. Therefore, these cases shall be remanded to OWCP for a proper second opinion report from an appropriate specialist. Once OWCP has developed the evidence as it deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a left shoulder injury in the performance of duty. The Board further finds that the issues in File Nos. xxxxxx576 and xxxxxx549 regarding whether he developed a respiratory condition in the performance of duty are not in posture for a decision.

[20] *Vanessa Young*, 55 ECAB 575 (2004).

[21] *Richard E. Simpson*, 55 ECAB 490 (2004).

[22] *Melvin James*, 55 ECAB 406 (2004).

[23] *Peter C. Belkind*, 56 ECAB 580 (2005).

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2012 decision of the Office of Workers' Compensation Programs in File No. xxxxxx385 is affirmed.

IT IS FURTHER ORDERED THAT the March 19 and 16, 2012 decisions in File Nos. xxxxxx576 and xxxxxx549 are set aside and the case is remanded for further development consistent with the provisions of this decision.

Issued: December 14, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board