

**United States Department of Labor
Employees' Compensation Appeals Board**

D.R., Appellant)

and)

DEPARTMENT OF JUSTICE, BUREAU OF)
ALCOHOL, TOBACCO & FIREARMS,)
Brooklyn, NY, Employer)

**Docket No. 12-478
Issued: July 23, 2012**

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 3, 2012 appellant, through his attorney, filed a timely appeal of the July 13, 2011 merit decision of the Office of Workers' Compensation Programs denying his occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 sustained a pulmonary condition causally related to factors of his federal employment.

On appeal, counsel contends that appellant met his burden of proof as he submitted sufficient factual and medical evidence to establish his occupational disease claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 23, 2010 appellant, then a 44-year-old, criminal investigator, filed an occupational disease claim alleging that on December 6, 2006 he first became aware of his bronchiolitis obliterans organizing pneumonia. He further alleged that on April 29, 2009 he first realized that his condition was caused by his employment when a supervisor advised him that air quality test results revealed unacceptable levels of potentially harmful contaminants in his work environment. The contaminants included bromomethane and benzene, which could have significant health effects.

By letter dated April 1, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence, including a rationalized medical opinion from an attending physician, which described his symptoms and provided the results of examination, tests and treatment and a diagnosis together with medical reasons on how the claimed work exposure contributed to the diagnosed condition. Appellant was afforded 30 days to submit the requested evidence. He did not respond.

In a May 3, 2010 decision, OWCP denied appellant's claim, finding that he had not provided the requested factual and medical evidence.

By letter dated April 21, 2011, appellant, through his attorney, requested reconsideration. Correspondence from the employing establishment dated April 28 and 29 and May 2009 indicated that the results of air quality tests performed in its office space revealed several contaminants that were above Environmental Protection Agency standards and yet below Occupational Safety and Health Administration permissible exposure limits. It noted that several employees had become ill or complained about respiratory problems that appeared to be related to these contaminants.

In an undated narrative statement, appellant contended that he experienced episodes of dizziness, nausea, vomiting and extreme difficulty with breathing as a result of his exposure to harmful contaminants while working in the employing establishment's Brooklyn, New York office. He had not experienced any of these conditions prior to this assignment. Appellant was advised by an employee that she had two inflamed lungs which, was similar to his condition. He stated that air quality test results revealed the presence of bromomethane, benzene, tetrachloroethylene, m/p-xylene and 1,4-dichlorobenzene in his office. Appellant listed the health effects of exposure to these contaminants which were similar to his health problems. He stated that prolonged inhalation of lower concentrations of bromomethane may cause bronchitis and pneumonia. Exposure to benzene had serious health effects as it targeted the liver, kidney, lung, heart and brain. Tetrachloroethylene can cause dizziness and headaches. Exposure to high levels of m/p-xylene for short periods can cause irritation of the skin, eyes, nose, throat, difficulty with breathing, other lungs problems and delayed reaction time. Appellant stated that 1,4-dichlorobenzene may reasonably be anticipated to be a carcinogen, although there was no direct evidence of causal relationship. It was believed that acetone exhibited only slight toxicity in normal use and there was no strong evidence of chronic health effects if basic precautions were followed.

An unsigned medical report dated January 15, 2007, which contained the typed name of Dr. Luis D. Berrizbeitia, a Board-certified surgeon, indicated that appellant underwent a diagnostic bronchoscopy with multiple washings, video-assisted thoracoscopic surgery exploration of the right hemithorax, wedge resections in the right lower, right middle and right upper lobe and placement of an arterial line and a central venous line to treat his bilateral pulmonary infiltrates.

In a February 25, 2010 report, Dr. Raul Valcarcel, an attending internist, reviewed documents given to him by appellant addressing his alleged employment-related health issues, which included episodes of dizziness, nausea, vomiting and extreme difficulty with breathing. He was advised by appellant that a coworker experienced similar health conditions which included inflamed lungs. Air quality tests indicated that, potential contaminants that, were not acceptable by government standards existed within appellant's work space. Dr. Valcarcel stated that some of the contaminants could have significant health effects that were similar to the ones appellant was currently experiencing. He advised that a prolonged inhalation of lower concentrations of bromomethane may cause bronchitis and pneumonia. Exposure to benzene had serious health effects as it targeted the liver, kidney, lung, heart and brain. Tetrachloroethylene can cause dizziness and headaches. Exposure to high levels of xylene for short periods of time can cause irritation of the skin, eyes, nose and throat. It can also cause difficulty in breathing and other problems with the lungs. Based on his medical knowledge and experience, Dr. Valcarcel opined that the aforementioned contaminants possibly caused or adversely affected appellant's health condition. He further opined that, based on the government administered air quality test results, appellant's condition had a direct correlation to his work environment.

In a July 13, 2011 decision, OWCP denied appellant's claim. It found that the factual evidence was sufficient to establish that he was exposed to potentially harmful contaminants while working at the employing establishment. OWCP, however, found that the medical evidence was insufficient to establish that appellant sustained a diagnosed medical condition causally related to the accepted employment factor.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ S.P., 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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. 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.⁵ 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.⁶

ANALYSIS

OWCP accepted that appellant was exposed to potentially hazardous contaminants while working as a criminal investigator. The Board finds, however, that the medical evidence of record is insufficient to establish that his pulmonary condition was caused or aggravated by the accepted employment factor.

Dr. Valcarcel's February 25, 2010 report found that appellant's exposure to bromomethane, benzene, tetrachloroethylene and xylene at work "possibly" caused or adversely affected his health condition. He further found that appellant's condition had a direct correlation to his employment based on the government administered air quality test results. Dr. Valcarcel's opinion regarding causal relationship is speculative in nature and unsupported by rationalized medical evidence explaining how appellant's exposure to harmful contaminants caused his pulmonary condition.⁷ Further, he did not provide any findings on examination or render a diagnosis. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.⁸ For the stated reasons, the Board finds that Dr. Valcarcel's report is insufficient to establish appellant's claim.

The January 15, 2007 unsigned surgical report which contained the typed name of a Dr. Berrizbeitia has no probative value in establishing that appellant sustained a pulmonary

⁵ *Victor J. Woodhams*, *supra* note 4 at 351-52 (1989).

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

condition causally related to the established employment factor. It is well established that medical evidence lacking proper identification is of no probative medical value.⁹

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

On appeal, appellant contended that he submitted sufficient factual and medical evidence to establish his occupational disease claim. While the factual evidence is sufficient to establish the employment factor alleged to have caused or contributed to his pulmonary condition, the medical evidence, as discussed above, is not sufficiently rationalized to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a pulmonary condition causally related to factors of his federal employment.

⁹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2012
Washington, DC

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

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

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