United States Department of Labor
Employees' Compensation Appeals Board

S.F., Appellant	)	
and	)	**Docket No. 12-66**
	)	**Issued: June 25, 2012**
DEPARTMENT OF HOMELAND SECURITY, CITIZEN & IMMIGRATION SERVICES, Lincoln, NE, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 5, 2011 appellant filed a timely appeal of the August 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his occupational disease claim. 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On January 28, 2011 appellant, then a 59-year-old immigration services officer, filed an occupational disease claim, alleging chronic severe sinus infections, allergies and conditions

[1] 5 U.S.C. §§ 8101-8193.

affecting his heart and intestines due to dust and mold allergens in the building where his office was located. He first became aware of his condition on October 14, 2009 and realized it was causally related to his employment on November 24, 2009. Appellant worked intermittently. His supervisor, Michelle Williamson, noted that he was last exposed to the conditions alleged to have caused his illness on October 24, 2010 and was relocated to the Highlands building.

In an accompanying statement, Ms. Williamson noted that appellant began work in September 2008 in the Highland building until October 1, 2009 when he agreed to relocate to the Star building, a privately owned building that was leased. He worked there until October 24, 2010. Once management was advised of the mold, it notified the lessor of the building and air quality tests were performed by Midwest Laboratories, which showed air quality levels within acceptable standards. Ms. Williamson noted that a few employees were skeptical of the test results claiming the landlord was not forthright and failed to ensure a comprehensive test. The employing establishment acted on its concerns and had the General Services Administration contract for another air quality assessment. An independent contractor was hired, Occu-tec, and conducted a comprehensive Indoor Air Quality assessment of various items including the heating and air conditioning system, sources of molds/odors, air plenums and air sampling utilizing both air quality and surface tests. Ms. Williamson stated that the test results identified acceptable air quality conditions and no readily apparent sources of molds/odors but noted pollen levels were elevated which was due to the high pollen levels outside. The employer submitted a copy of the air quality tests performed by Midwest Laboratories on January 22, 2010. It showed outdoor testing of the building on the roof, dock, north exterior entrance and south exterior entrance revealed mold and indoor testing on the janitorial second floor, south lobby first floor, middle of the first floor, middle of the second floor and the second floor, where mold was not detected. Also submitted was comprehensive Indoor Air Quality assessment conducted by Occu-tec of July 19, 2010. It inspected the heating and air conditioning system, sources of molds/odors, air plenums and air sampling utilizing both air quality and surface tests and identified acceptable air quality conditions and no readily apparent sources of molds/odors but noted pollen levels were elevated which was due to the high pollen levels outside.

In a narrative statement, appellant noted that he developed sinus infections from October 2009 to July 2010, caused by overexposure to mold and dust allergens in the Star building. He noted being allergic and vulnerable to mold and indoor dust allergens. Appellant stated that he had a mitral valve birth defect that was repaired in 2000 and diverticulitis inflammation 15 years prior. He asserted that his chronic sinus infections in the workplace lowered his resistance to other infections causing his heart and colon conditions. Appellant believed management did not take appropriate action to remedy the situation, prolonged an unhealthy situation and other employees became sick. He submitted e-mails dated October 2009 to August 2010, addressing the mold situation in the Star building and requesting union assistance. Appellant submitted notes from employee "ADC" meetings dated November 24, 2009 to August 10, 2010 and requests for accommodation dated July 6 and September 28, 2010 seeking to be moved back to the Highland building. Also submitted was a job description for an immigration services officer.

Appellant submitted a May 26, 2010 allergy skin test by Dr. Fred Kiechel, a Board-certified otolaryngologist. A June 29, 2010 report from Dr. Richard J. Thompson, a Board-

certified family practitioner, noted that appellant had allergic reactions to mold spores and indoor dust and repeated exposure to the allergens likely caused chronic sinus infections. He noted that appellant underwent heart surgery to repair a defective mitral heart valve in 1999 and indicated that the repaired valve was vulnerable to damage caused by the infections. Dr. Thompson noted that appellant experienced arrhythmia and palpations on June 15, 2010 and underwent a heart catheterization on June 22, 2010. Appellant reported that his work environment had more dust and mold since he changed buildings in October 2009 and he reported headaches and chronic sinus infections. Dr. Thompson stated that it appeared that the building in which appellant worked prior to October 2009 caused less irritation and fewer health problems and recommended appellant return to that building. Appellant was treated in the emergency room on July 27, 2010 and was diagnosed with tachycardia.

In a March 11, 2011 letter, OWCP advised appellant of the evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his allergic condition to specific employment factors. OWCP also requested that the employer address appellant's allegation and provide information regarding any harmful substances to which he may have been exposed.

Appellant submitted reports from Dr. James M. Flynn, a Board-certified cardiologist, dated May 3 and July 19, 1999, who treated appellant for mitral valve prolapsed with severe mitral regurgitation and mildly dilated left ventricle. Also submitted were reports from Dr. Thompson dated June 4 to August 18, 1999, who noted that appellant had mitral valve reconstruction on July 19, 1999 and was progressing well. On June 19, 1999 Dr. Deepak Gangahar, a Board-certified cardiologist, performed mitral valve reconstruction and diagnosed severe mitral regurgitation. Chest x-rays from July 15 to 21, 1999 revealed improving atelectasis within the right mid lung. A June 15, 2010 echocardiogram revealed a left atrium mildly dilated, mild mitral regurgitation, status post mitral valve repair and grade 1 diastolic dysfunction. A June 16, 2010 stress test revealed moderate reversible ischemia in the basal to mid inferior wall and normal left ventricular ejection. On June 22, 2010 appellant was treated by Dr. Erich R. Fruehling, a Board-certified cardiologist, who performed a cardiac catheterization and left ventriculography and coronary angiography. Dr. Fruehling diagnosed minimal nonobstructive coronary artery disease and preserved left ventricular systolic function. On July 27 and August 18, 2010 appellant was treated in an emergency room for palpitations, fatigue and dizziness. His diagnoses included atrial flutter with rapid ventricular rate, fatigue, palpitations, hypothyroidism, anxiety and recurrent sinus infections. On August 18, 2010 appellant was treated in an emergency room for abdominal pain. His diagnoses included recurrent diverticulitis of the descending colon with microperforation improved, palpitations, atrial flutter, anxiety, hyperactivity, sinus infections, leukocytosis, overweight and aortic plaque atherosclerosis.

Appellant was treated by Dr. John Cordova, a Board-certified general surgeon, on September 8, 2010 for diverticulitis and microperforation. His history was significant for prior diverticular attacks. In reports dated October 13 and November 10, 2010, Dr. Cordova noted a recent colonoscopy revealed a small polyp and a computerized tomography (CT) scan revealed diverticulosis of the descending colon. He recommended a sigmoid resection. On November 10, 2010 Dr. Cordova performed a laparotomy with sigmoid colectomy distal descending colectomy and primary anastomosis and diagnosed diverticulitis with recent diverticulitis and perforation. A November 3, 2010 CT scan of the abdomen revealed inflammatory changes in the mid

sigmoid colon region, consistent with resolution of acute diverticulitis, extensive diverticular disease remains in the sigmoid colon. On March 22, 2011 Dr. Kiechel noted treating appellant on May 26, 2010 for severe allergy problems and chronic recurrent sinus infections. He noted testing revealed allergies to mold spores and dust mites. Appellant reported working at the Highlands building and indicated that he was doing well in this location but, while working in the Star building, he was exposed to mold and had difficulties. Dr. Kiechel opined that allergen exposures and sinus infections go hand-in-hand.

In statements dated April 28, 2010 and June 8, 2011, appellant reasserted that his conditions were a result of the dust and mold allergens at the Star building and that management was ineffective in dealing with the problem.

In an April 11, 2011 statement, Ms. Williamson reiterated that air quality testing was completed by two separate environmental firms, which revealed that both the Highland and Star buildings were within acceptable environmental standards. In a May 25, 2011 statement, Donald Phillips, a director, advised that the employing establishment was committed to the health and safety of the employees. Mr. Phillips advised that the test results identified acceptable air quality and no readily apparent sources of molds/odors but noted pollen levels were elevated which was due to outside pollen levels. Copies of the previously submitted indoor air quality assessments were submitted.

In a decision dated August 9, 2011, OWCP denied appellant's claim on the grounds that medical evidence was insufficient to establish that his allergic conditions were caused by his employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[2]

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) 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.

[2] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see Walter D. Morehead,* 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury).

The medical evidence required to establish causal relationship is generally 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.[3]

ANALYSIS

It is not disputed that appellant worked at the employing establishment and was exposed to environmental factors such as those noted in the employing establishment's air quality investigation reports. The Board finds that he has not submitted sufficient medical evidence to support an allergic or chronic sinus condition affecting his heart and intestines causally related to the employment-related exposures. On March 11, 2011 OWCP advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized narrative medical report from a physician addressing how specific employment factors caused or contributed his heart or intestinal conditions.

Dr. Kiechel treated appellant on May 26, 2010 for severe allergy problems and chronic recurrent sinus infections. Dr. Kiechel noted that appellant currently worked at the Highlands building and was doing well at this location but, while working in the Star building, he was exposed to mold and experienced allergen exposures and sinus infections. While he generally attributed an exacerbation of appellant's conditions to the work environment, he did not address the evidence of record, such as the July 19 and 20, 2010 air quality reports, and how any findings related to appellant's medical treatment.[4] For example, Dr. Kiechel did not explain why employment exposure to certain allergies noted in the air quality report caused or aggravated a particular condition nor did he address the impact on appellant's diagnosed cardiovascular or intestinal conditions.[5]

In a June 29, 2010 report, Dr. Thompson noted that appellant had allergic reactions to mold spores and indoor dust. He generally stated that repeated exposure to allergens likely caused chronic sinus infections. Dr. Thompson noted appellant's surgically repaired mitral valve defect was vulnerable to damage caused by infections but did not fully address this on relations to the exposure noted in this case. Appellant reported that the Star building had dust and mold and he reported headaches and chronic sinus infections. Dr. Thompson noted that it appeared that the building appellant worked prior to October 2009 caused less irritation and fewer health problems. The Board has held that speculative and equivocal medical opinions on causal

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

[4] *See Frank Luis Rembisz,* 52 ECAB 147 (2000) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[5] *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *see Jimmie H. Duckett,* 52 ECAB 332 (2001).

relationship are of diminished probative value.[6] Dr. Thompson did not provide a rationalized opinion explaining how the diagnosed allergic reaction, chronic sinus infections, headaches and other health problems were caused or aggravated by the work exposure. The need for medical reasoning or rationale is particularly important in a case such as this where appellant has multiple preexisting conditions affecting his respiratory, cardiovascular and digestive system. Therefore, the opinion of Dr. Thompson is insufficiently rationalized to meet appellant's burden of proof.

Appellant also provided reports from Dr. Fruehling, regarding cardiac matters and Dr. Cordova, regarding diverticulosis, but neither physician specifically addressed whether any particular employment factors or exposures caused or contributed to the employee's cardiac and diverticulosis conditions. Similarly, 1999 reports from Dr. Flynn and Dr. Gangahar predate the time of the claimed employment conditions and do not otherwise address the causal relationship of the conditions and appellant's work environment. Other medical reports including emergency room records and reports of diagnostic testing do not establish the claim as they do not contain a physician's opinion addressing how established employment factors or exposures caused or contributed to a diagnosed condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[7] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and OWCP, therefore, properly denied his claim for compensation.[8]

On appeal, appellant asserts that his employment caused his condition and that his condition only symptomatic with workplace exposure. He also questioned the quality of the mold testing that was performed. As explained, causal relationship must be established by medical evidence and appellant has not submitted sufficient medical evidence to establish his claim. He has also not submitted any evidence to support his assertion that the testing of the work environment was inadequate or invalid.

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

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[6] *See Alberta S. Williamson,* 47 ECAB 569 (1996); *Frederick H. Coward, Jr.* 41 ECAB 843 (1990); *Paul E. Davis,* 30 ECAB 461 (1979).

[7] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[8] *See* 5 U.S.C. § 501.2(c). The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant after the October 29, 2008 OWCP decision.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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