

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

J.H., Appellant

and

**DEPARTMENT OF THE ARMY, RED RIVER
ARMY DEPOT, Texarkana, TX, Employer**

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**Docket No. 13-1180
Issued: August 7, 2013**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2013 appellant filed a timely appeal from a January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant has established prostate cancer due to employment factors.

FACTUAL HISTORY

On August 20, 2012 appellant, then a 59-year-old rubber injection molding machine operator, filed an occupational disease claim, alleging that he developed prostate cancer from working around toxic fumes from rubber. He became aware of his condition and realized it was causally related to his employment on February 1, 2010. Appellant did not stop work and retired

¹ 5 U.S.C. §§ 8101-8193.

on May 1, 2009. The employing establishment challenged the claim noting that there was a lack of supporting medical evidence.

Submitted with the claim were employing establishment industrial hygiene reports dated May 1 and August 5, 2009 which assessed the health hazard of rubber products employees exposure to carbon black, metals, polynuclear aromatic hydrocarbons, hexamethylene diisocyanate and organic vapors. The report concluded that all contaminants measured in the survey were within present Occupational Safety Health Administration compliance standards.

Appellant submitted a January 11, 2010 report from Dr. Bryan D. Bowen, a family practitioner, who treated appellant for prostate cancer. Dr. Bowen noted findings upon examination of elevated blood pressure and hypertension, normal chest and lung examination, nontender abdomen and normal peripheral vascular system. He diagnosed neoplastic malignant prostate. Also submitted was a report from Dr. Jason Pickelman, a Board-certified urologist, dated February 1, 2010 who treated appellant in follow-up after a lymph node dissection. Dr. Pickelman noted an essentially normal physical examination. He advised that appellant was postrobotic laparoscopic bilateral pelvic lymph node dissection which was negative for prostate cancer. Dr. Pickelman noted an inflammatory response in the nodes which could represent early lymphoma and recommended radiotherapy. On June 18, 2010 he noted appellant's prostate specific antigen result was elevated and abnormal. An August 8, 2011 prostate specific antigen study indicated a malignant prostate.

On August 30, 2012 OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors. This letter was sent to appellant's address of record.

In a decision dated January 25, 2013, OWCP denied appellant's claim for compensation on the grounds that the medical evidence did not establish that a medical condition was diagnosed in connection with the claimed work factors.²

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or 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.³

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

² Appellant subsequently requested reconsideration and an oral hearing. The record contains a February 19, 2013 OWCP decision that denied his request for reconsideration without conducting a merit review and a March 28, 2013 decision that denied his request for an oral hearing. Appellant did not appeal these decisions.

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 claimant. 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.⁴

ANALYSIS

It is not disputed that appellant worked as a rubber injection molding machine operator and was exposed to rubber products and associated substances while performing his work duties. It is also not disputed that he has been diagnosed with prostate cancer. However, appellant has not submitted sufficient medical evidence to establish that his claimed conditions are causally related to specific employment factors or conditions.

Appellant submitted a January 11, 2010 report from Dr. Bowen who treated appellant for prostate cancer. He noted an essentially normal physical examination and diagnosed neoplastic malignant prostate. This report is insufficient to establish the claim as the physician did not provide a history of workplace exposures⁵ or specifically address whether appellant's employment had caused or aggravated a diagnosed medical condition.⁶

Also submitted was a February 1, 2010 report from Dr. Pickelman who noted that appellant was postrobotic laparoscopic bilateral pelvic lymph node dissection which was negative for prostate cancer. Similarly, on June 18, 2010 Dr. Pickelman noted appellant's prostate specific antigen result was abnormally elevated. He did not provide a history of any employment exposure or specifically address whether appellant's employment had caused or aggravated a diagnosed medical condition. Therefore, these reports are insufficient to establish the claim. An August 8, 2011 prostate specific antigen study indicated a malignant prostate but did not contain a physician's opinion addressing whether employment exposures caused or contributed to the prostate malignancy.

The Board finds that the medical evidence does not establish that appellant developed prostate cancer as a result of his employment. An award of compensation may not be based on

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁶ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

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 relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP therefore properly found that he did not meet his burden of proof in establishing 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 did not meet his burden of proof to establish that his claimed conditions was causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 Office of Workers' Compensation Programs' decision is affirmed.

Issued: August 7, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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