

her condition was a hospital-acquired infection according to her physician and that there was no other way of contracting this condition. Appellant stated that she first became aware of the condition on April 2, 2010, but did not realize that it was employment related until April 9, 2010. She stopped work on April 2, 2010 and has not returned.²

By letter dated April 30, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide the requested information.

OWCP thereafter received a copy of appellant's position description and an April 15, 2010 incident report. In the incident report, appellant stated that on April 2, 2010 she was exposed to a candidiasis by a patient's cough in the women's clinic where she worked and it had been reported to her supervisor. Under description of the incident she noted "Candidiasis -- Pneumonia. In hospital for 10 days." Nydia Maymi completed an employing establishment incident report in which appellant stated having no knowledge of whether the illness was acquired at work. Ms. Maymi related that appellant indicated "that she thinks she may have gotten the pneumonia here because patients cough and sneeze in the room with her" and that she could not identify a specific patient as contributing to her condition.

In a May 21, 2010 statement, appellant related being hospitalized for moderate respiratory distress from May 8 to 9, 2010. In response to OWCP's questions, she indicated that she had previously been treated for bacterial pneumonia on February 20, 2007 but had never been treated for candidiasis pneumonia. With respect to the exposure question, appellant noted her work hours and schedule and that she had been assigned to the Woman's Clinic for the past five years. She related that her symptoms began on April 3, 2010, but she was not diagnosed with candidiasis until April 9, 2010.

Subsequent to OWCP's receipt of appellant's statement, appellant submitted medical and diagnostic reports regarding her hospitalization for respiratory problems which diagnosed candidiasis pneumonia.

On June 24, 2010 OWCP referred appellant for a second opinion evaluation with Dr. Leonard Y. Cosmo, for an assessment of her condition. In an August 11, 2010 report, Dr. Cosmo, based upon a review of the medical evidence, statement of accepted facts and physical examination diagnosed community-acquired pneumonia. He explained that the condition of candidiasis pneumonia is not associated with occupational exposures and that occupational exposures are suggestive of a sick-building related disease. Dr. Cosmo related that the Candida fungus is not caused by inhalation from a work setting, but is typically found in patients who have an underlying immunosuppressed condition or received significant amounts of steroids or antibiotics. Next, he stated that the Candida fungus "results from exogenous flora that can multiply under certain conditions" and cannot be inhaled during a work-related setting.

By decision dated October 12, 2010, OWCP denied appellant's claim on the ground that her diagnosed condition was not employment related.

² Appellant was separated from her employment due to her inability to perform her work duties effective March 22, 2011.

In a letter dated November 2, 2010, appellant's counsel requested a telephonic hearing.

By decision dated February 15, 2011, an OWCP hearing representative found that the case was not in posture for a decision as appellant had not established a *prima facie* claim at the time OWCP undertook further medical development. She found that appellant had not established the factual portion of her claim as it was unclear from the record what exposure had been accepted as factual and compensable by OWCP. Thus, the hearing representative remanded the case to OWCP for further development of the factual and medical evidence was required.

In a March 7, 2011 letter, OWCP informed appellant that the medical and factual evidence of record was insufficient to her claim. Appellant was advised to submit medical and factual evidence including a statement identifying the employment factors that she believed caused or contributed to her condition and a medical opinion attributing her condition to the employment factors identified by her.

In response OWCP received a February 16, 2011 report from Dr. David A. Wasserman, a physician specializing in emergency medicine. Dr. Wasserman reviewed Dr. Cosmo's report and the medical evidence. He noted his disagreement with Dr. Cosmo's conclusions and noted flaws made by Dr. Cosmo in his report. Dr. Wasserman stated that prior to appellant being diagnosed with candidiasis pneumonia she had recalled seeing a patient at the employing establishment who had been treated for this condition and that she worked in a hospital with the infirm. He stated that nowhere else could appellant's exposure have occurred in view of her working in a hospital and caring for ill patients during her workday.

By decision dated August 8, 2011, OWCP denied appellant's claim on the grounds that fact of injury had not been established. Specifically, it found that she failed to submit any factual evidence regarding her exposure to any causative agent at work. The only employment factor identified by appellant was that she was exposed to sick patients in the performance of her work duties.

Following the August 8, 2011 decision, appellant submitted an August 14, 2011 statement from appellant. She related that her former assigned work area had been remodeled due to an infestation of mold/fungus and she enclosed e-mail documentation regarding the overhaul of the woman's clinic waiting room due to a fungus infestation.

OWCP also received a January 20, 2012 report from Dr. Kevin L. Trangle, a Board-certified internist and occupational medicine physician, who reviewed appellant's medical record, occupational history, medical history and history of her illness. Dr. Trangle noted that appellant filed a claim alleging that she developed a hospital acquired infection as the result of her work duties. He opined while "[t]he precise source and ultimate cause of her pneumonia cannot be determined within a reasonable degree of medical certainty," he opined that she developed candidiasis pneumonia on a more likely than not basis due to exposure to an infectious agent at her work. Dr. Trangle related that there had been an increase in the incidents of infections and occupationally acquired pneumonia in hospital work and, therefore, appellant's condition was employment related.

On March 6, 2012 appellant's counsel requested reconsideration and submitted a February 8, 2012 statement from appellant disputing the April 15, 2010 incident report by Ms. Maymi.

By decision dated June 6, 2012, OWCP denied appellant's request for modification as she failed to provide a detailed statement identifying the specific work conditions or employment factors she believed caused her condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of her 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.⁴ 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.⁵

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁷

If a claimant does establish an employment factor, she must submit medical evidence showing that a medical condition was caused by such a factor.⁸ The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(ee). *See S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Frankie A. Farinacci*, 56 ECAB 723 (2005).

⁸ *C.D.*, Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

ANALYSIS

OWCP denied appellant's claim because it found that she did not establish the first component of fact of injury; whether she actually experienced the employment exposures that allegedly caused an injury. It found that she did not provide a factual statement identifying the employment factor which she alleged that she was exposed to and which she believed caused or contributed to her claimed injury. OWCP noted that it provided appellant an opportunity to provide such information, but that such information was not received.

The Board finds that appellant failed to meet her burden of proof.

Appellant has the burden to submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition, medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors.

In developing appellant's claim for an occupational disease, OWCP requested that she submit a personal statement identifying specific factors which she attributed caused her candidiasis pneumonia. It also requested that she submit medical evidence describing how the implicated employment factor or factors caused or aggravated the conditions she identified. Appellant did not provide the factual statement requested by OWCP. She initially attributed her condition to a patient who coughed near her while working at the woman's clinic. Following the initial denial of her claim and remand by an OWCP hearing representative, appellant attributed her condition to infestation of mold/fungus in the woman's clinic waiting room instead of to exposure to patients with candidiasis. She changed the employment factor which she believed caused or contributed to her condition.

Further, appellant did not submit rationalized medical evidence establishing a diagnosis and causal relationship between her condition and factors of her federal employment. Both Dr. Wasserman and Dr. Trangle attributed appellant's candidiasis pneumonia to her work with patients at the woman's clinic without providing any supporting rationale. The only rationale provided was that, as appellant was working in a hospital setting, this was the only place she could have been exposed to candidiasis. Neither, physician mentioned exposure to mold or fungus in the workplace. Moreover, Dr. Cosmo, an OWCP referral physician, opined that the cause of appellant's condition was not due to her employment. Although OWCP informed her of the deficiencies in the evidence, she did not submit sufficient factual and medical evidence to establish her claim.¹⁰ Appellant did not meet her burden of proof to establish that she sustained an employment-related injury.

⁹ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Donald W. Wenzel*, *supra* note 6.

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 not met her burden to establish that she sustained an occupational disease in the performance of her federal duties.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2012 is affirmed.

Issued: February 12, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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