

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed respiratory conditions in the performance of duty as a Veterans Affairs (VA) nurse.

FACTUAL HISTORY

On February 24, 2012 appellant, then a 62-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed respiratory illness from her employment as a VA nurse by working in a room where the ceiling tiles were stained with mold. She first became aware of her condition and of its relationship to her employment on January 17, 2012 when air conditioning personnel moved ceiling tile and exposed the mold. Appellant notified her supervisor on February 8, 2012.

By letter dated March 5, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim because she had only submitted a Form CA-2. Appellant was advised of the medical and factual evidence needed and asked that she respond to the provided questions within 30 days. In another March 5, 2012 letter, OWCP requested that the employing establishment provide information regarding appellant's employment duties and any possible exposure to harmful substances.

By letter dated March 20, 2012, the employing establishment stated that it was not disputing appellant's January 17, 2012 date of injury as failing to establish performance of duty, fact of injury and causal relationship. It noted that it was submitting a statement from appellant's supervisor, appellant's statement with photographs attached, medical reports, an e-mail from a safety specialist regarding the pollen count in January 2012 and an air quality sampling report.

In medical reports dated June 12, 2009 to January 27, 2010, Dr. C.E. Guice, a Board-certified otolaryngologist and surgeon, reported that appellant complained of mid-facial pressure, discomfort, thick postnasal drainage, phlegm and sore throat. Upon physical examination, he diagnosed chronic persistent maxillary sinusitis, allergic and inflammatory sinusitis, allergic rhinitis and nasal congestion. Dr. Guice noted that appellant submitted for allergy testing which revealed multiple positives. He recommended intranasal sprays and allergy shots which were unsuccessful and opined that she could consider evaluation for hormone replacement as an alternative option.

In medical reports dated December 31, 2007 to February 17, 2012, Dr. Stephen L. Harless, Board-certified in family medicine, reported that appellant complained of laryngitis, fever, drainage and congestion. In a November 21, 2011 medical report, he stated that physical examination revealed allergic rhinitis and decreased range of motion in the neck and shoulder. Dr. Harless diagnosed epistaxis and chronic pain in relation to C7 disc and shoulder injury from an October 10, 2006 workers' compensation claim. In a January 19, 2012 report, he diagnosed sinus bronchitis after complaints of sinus, sore throat, cough, cold congestion, hurting and aching. In a February 17, 2012 medical report, Dr. Harless noted that appellant complained of sinus, sore throat, cough, cold, congestion and crud. Appellant reported that there was mold at her workplace which she had been exposed to, noting that the employing establishment was not

taking action to remove the mold. Dr. Harless diagnosed allergic rhinitis, allergic bronchitis and mold exposure.

In a February 26, 2012 field report, Micro-Methods Lab performed indoor air quality sampling for airborne mold in Rooms 2021 and 2022 of Building 2 at the Biloxi VA Medical facility. The report found that air sampling for total mold spores did not indicate an elevated mold status in any of the areas sampled at the time of the assessment.

In a March 5, 2012 memo, Murphy J. Dore, a VA safety specialist, reported that during the time frame in question of January 12 to 21, 2012, the Biloxi Pollen Count ranged from 7.1 to 6.7. Thus, he advised that the pollen count during the week of January 17, 2012 was in the medium category.

In a March 13, 2012 narrative statement, appellant reported that, around February 2012, mold was visually verified on insulated pipes, pink insulation and ceiling tiles by VA maintenance staff. She reported that she had been working in Building 2, Room 2022 since May 2011 for five days a week, eight hours a day. Appellant stated that, beginning in May 2011, she developed on and off mild sinus and upper respiratory symptoms. On January 17, 2012 her symptoms exacerbated with severe coughing, sneezing, throat burning and upper airway constriction. Appellant noted that, despite having received medication from her physician, her cough and chest congestion persisted. The employing establishment moved her to a different office in February 2012. Appellant further stated that she smoked about ½ to 1 packet of cigarettes a day for approximately 20 years but quit on March 3, 2010. In support of her statements, she submitted photographs of her office in Room 2022 including pictures of the ceiling and pipes.

In a March 16, 2012 narrative statement, Mary Lee, appellant's supervisor, stated that appellant worked in Building 2 Room 2022 area for five days a week, eight hours a day from May 1, 2011 to March 15, 2012. She noted that she was not aware of any definitive evidence of exposure to harmful substances and the VA maintenance staff had not visually verified any mold on insulated pipes, pink insulation or ceiling tiles. Ms. Lee reported that appellant was moved to another office as soon as the employing establishment was notified of any potential problem. She further stated that appellant only used 16 hours of sick leave during the time she was working in the office she alleged contained mold. Ms. Lee concluded that the ventilation and air circulation of the room appellant worked in was comparable to any patient bedroom in the medical facility. An official position description for a VA staff nurse was submitted along with appellant's leave pattern.

By decision dated April 12, 2012, OWCP denied appellant's claim finding that the evidence did not establish that the occupational exposure occurred as alleged. It also noted that she failed to establish that she sustained an injury.

On April 20, 2010 appellant requested reconsideration of OWCP's decision. In support of her claim, she submitted a March 21, 2012 pulmonary function analysis and an April 16, 2012 medical report from Dr. Andrew H. Rogness, Board-certified in pulmonary disease, who reported that she had a history of Chronic Obstructive Pulmonary Disease (COPD) and had been exposed to mold at work from ceilings and pipes. Appellant reported problems with dyspnea on

exertion, sneezing and cough despite her recent prescriptions. Dr. Rogness also noted rhinitis type symptoms and a history of myocardial bridging. He noted that pulmonary function testing revealed mild obstruction to the airflow and normal lung volumes by plethysmography. Dr. Rogness diagnosed COPD, asthma, mold exposure, rhinitis symptoms, myocardial bridging, hypertension and cervical spine disease. He noted that, because of appellant's obstructive lung disease, mold exposure should be avoided which could exacerbate her asthma.

By decision dated June 26, 2012, OWCP affirmed the April 12, 2012 decision finding that the evidence of record failed to establish that the occupational exposure occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ The opinion of the physician must be one of reasonable medical certainty

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The Board finds that appellant failed to establish that she developed respiratory conditions in the performance of duty as a VA nurse.

Appellant must establish all of the elements of her claim in order to prevail. She must prove her employment, time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. Appellant alleged that she developed respiratory illness as a result of exposure to mold while performing her duties as a VA nurse.

Appellant has not provided sufficient detail to establish that an occupational exposure occurred as alleged.⁹ She stated that she developed respiratory problems as a result of working in Room 2202 where she was exposed to mold that was attached to the ceilings and pipes. Appellant and her supervisor reported that she worked in Room 2022 for five days a week, eight hours a day since May 2011. She further alleged that her respiratory symptoms began in May 2011 and progressively worsened as a result of the mold exposure. Appellant, however, has failed to establish that she was exposed to mold when working as a VA nurse. A February 26, 2012 Micro-Methods Lab indoor air quality sampling for airborne mold spores in Rooms 2021 and 2022 of Building 2 at the Biloxi VA Medical facility did not indicate an elevated mold status in any of the areas sampled at the time of the assessment. Appellant's supervisor further stated that the VA maintenance staff had not visually verified any mold on insulated pipes, pink insulation or ceiling tiles.

While appellant claims that her respiratory problems were caused by mold, there is no factual evidence establishing that she was actually exposed to mold in the workplace. Although medical reports from Dr. Harless and Dr. Rogness note mold exposure at work from ceilings and pipes, this information was related to the physicians by appellant. Thus, the information documented in these medical reports were based on appellant's allegations rather than factual evidence establishing mold spores in the workplace.

The medical evidence of record further fails to substantiate her claim as appellant's allegation is inconsistent with surrounding facts and circumstances. In her March 13, 2011 narrative statement, appellant reported that her symptoms and respiratory problems began in May 2011 when she began working in Room 2202 and became progressively worse as she continued to work there. The medical reports of record, however, contradict these allegations as it appears that appellant had preexisting respiratory conditions prior to May 2011. Medical

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

reports submitted from Dr. Guice note appellant's preexisting respiratory conditions and symptoms prior to the alleged exposure in May 2011. In reports dated June 12, 2009 to January 27, 2010, Dr. Guice stated that appellant complained of mid-facial pressure, discomfort, thick postnasal drainage, phlegm and sore throat. Allergy testing revealed multiple positives and he diagnosed chronic persistent maxillary sinusitis, allergic and inflammatory sinusitis, allergic rhinitis and nasal congestion. Dr. Guice further noted that various treatments, including intranasal sprays and allergy shots, were unsuccessful. Dr. Rogness' April 16, 2012 medical report also noted a preexisting condition as appellant had a history of COPD. Because of appellant's obstructive lung disease, he stated that mold exposure should be avoided which could exacerbate her asthma. Dr. Rogness, however, never opined that appellant's conditions were caused by mold exposure as her obstructive lung disease and asthma were preexisting.

While appellant claims that her respiratory problems were caused by mold exposure in the workplace in May 2011, Drs. Guice's and Rogness' medical reports contradict these allegations. Appellant had a history of sinusitis, allergic rhinitis, nasal congestion and COPD long before May 2011 when her alleged symptoms began. She further stated in her March 13, 2012 narrative statement that she smoked ½ to 1 pack of cigarettes a day for approximately 20 years until she quit on March 3, 2010. The March 5, 2012 memorandum from VA Safety Specialist Mr. Dore noted that the pollen count during the week of January 17, 2012 was in the medium category. Thus, based on appellant's preexisting conditions, there are multiple factors that could account for her symptoms including resilient allergies which were unsuccessfully treated, the pollen count, COPD and her 20-year smoking history. Coupled with the fact that mold testing revealed negative in Room 2202, she has failed to establish that she was exposed to mold in the time, place and manner alleged.¹⁰

As appellant has failed to establish exposure to mold, she has also failed to establish a firm medical diagnosis which could be connected to her federal employment duties. Though the medical reports of record provide varying diagnoses, none of these conditions can be connected to an alleged occupational exposure in the workplace as the physicians failed to provide an opinion on the cause of appellant's respiratory problems.¹¹ Thus, the medical evidence of record fails to support the surrounding facts and circumstances or establish a firm medical diagnosis connected to appellant's federal employment duties.¹²

On appeal, appellant argues that VA maintenance removed the majority of the mold prior to the air quality study that was performed which found no mold spores in Room 2202. She, however, failed to submit any persuasive evidence substantiating her allegations. In the instant case, the record lacks evidence establishing the factual element of appellant's claim, namely, that any specific occupational exposure might have caused her injury or disease. The record also lacks medical evidence to establish an injury caused by her employment as a VA nurse. The Board has held that the mere fact that a condition manifests itself during a period of employment

¹⁰ *Id.*

¹¹ *C.f. S.A.*, Docket No. 10-1786 (issued May 4, 2011) (where the Board found that appellant established that the incident occurred as alleged, as there were no inconsistent statements from her or other evidence refuting the occurrence of the alleged incident).

¹² *R.M.*, Docket No. 11-1921 (issued April 10, 2012).

does not raise an inference of causal relation.¹³ An award of compensation may not be based on surmise, conjecture or speculation. Because appellant did not submit sufficient evidence demonstrating the alleged occupational exposure actually occurred as alleged, OWCP properly denied her claim.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she developed respiratory conditions in the performance of duty as a VA nurse.

ORDER

IT IS HEREBY ORDERED THAT the June 26 and April 12, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 11, 2013
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

¹³ *Daniel O. Vasquez*, 57 ECAB 559 (2006).