

FACTUAL HISTORY

On August 14, 2012 appellant, then a 44-year-old sales and service associate, filed an occupational disease claim alleging that his bronchial asthma was exacerbated by fungal spores in the air conditioning as well as dust and termites in the employing establishment building. He stated that his asthmatic episode caused a severe supraventricular tachycardia. Appellant stated that he first became aware of his condition on June 10, 1996 and first realized that it was related to his employment on July 19, 2012.

Appellant submitted a series of medical notes in a mixture of Spanish and English dated July 20 through August 6, 2012.

In a letter dated August 27, 2012, OWCP requested additional factual and medical evidence in support of appellant's claim noting that the medical evidence submitted included illegible reports. Appellant submitted photographs of air vents. In a statement dated August 29, 2012, he stated that in 1997 he received 10 percent for his asthma condition. Appellant stated on July 19, 2012 while at work he had a bad asthma attack and was rushed to the hospital with chest pain, difficulty breathing and shortness of breath. He received treatment and was discharged from the hospital. At home, appellant had another asthma attack and was again hospitalized from July 19 through 23, 2012. He stated that his asthma attacks had caused hypertension, chest pain, supraventricular tachycardia, weakness and dizziness. Appellant stated that he had not returned to work.

In a form report dated July 30, 2012, Dr. Javier Santiago Rivera, a family practitioner, diagnosed brachial asthma with recurrent exacerbation who would need the use of long acting bronchodilators and inhaled steroids.

On October 1, 1997 appellant received an award for disability from the Department of Veterans Affairs for muscle inflammation and asthma.

On January 24, 2013 appellant reported a termite infestation to the employing establishment and stated that it was bothering his pulmonary condition. The employing establishment stated that facilities would be called to respond to this. It received a bid for treatment of termites.

In a report dated January 28, 2013, a physician whose signature is illegible stated that due to unclean conditions at the employing establishment including dirty air conditioner vents, dusty boxes and letters and termite infestation of the office facility, appellant's bronchospasms would be triggered. The physician diagnosed bronchial asthma and stated that due to appellant's current condition any dusty, dirty environment would exacerbated his disease.

On January 29, 2013 appellant reported that the air filters were dirty and the air conditioning was not work. He stated that the building did not have any ventilation and that this was causing him pulmonary difficulties. The Postmaster stated on January 25, 2013 that he contacted the facilities to have the air ducts cleaned and that another facility was contacted on January 29, 2013 to resolve the air conditioning issue.

By decision dated February 11, 2013, OWCP denied appellant's claim finding that he had not submitted the necessary medical evidence to establish that a diagnosed condition resulted from his employment exposures.

Appellant requested a review of the written record on March 26, 2013. By decision dated May 7, 2013, the Branch of Hearings and Review denied appellant's request for review of the written record as untimely and determined that the issue could equally well be addressed by requesting reconsideration.²

LEGAL PRECEDENT -- ISSUE 1

The OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."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 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁴

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision.

OWCP accepted that appellant was exposed to dirt, dust and termites in the performance of his federal employment, but denied his claim on the basis that the medical evidence did not sufficiently establish that this employment exposure was related to his diagnosed asthma. The case record, however, does not contain a translation of the Spanish portions of medical reports in the record. The Board has held that it is unreasonable for OWCP to deny a claim before it

² Following appellant's appeal to the Board on May 28, 2013, OWCP issued a decision on August 26, 2013 reviewing the merits of his occupational disease claim and modifying the February 11, 2013 decision. The Board and OWCP may not simultaneously have jurisdiction over the same case. Because OWCP must review its prior decision in order to determine whether appellant submitted additional new and relevant evidence, it may not issue a decision regarding the same issue on appeal before the Board. OWCP therefore did not have the authority to issue its August 26, 2013 decision. *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

³ 20 C.F.R. § 10.5(q).

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

attempts to secure an accurate translation of the relevant evidence.⁵ For OWCP and the Board to properly consider all evidence of record an accurate translation of the medical evidence in Spanish must be obtained. Therefore, the case will be remanded for this purpose and, after conducting such further development as it may find necessary, OWCP shall issue an appropriate merit decision.⁶

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

ORDER

IT IS HEREBY ORDERED THAT May 7 and February 11, 2013 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 21, 2013
Washington, DC

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

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

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

⁵ *H.S.*, Docket No. 11-1170 (issued December 14, 2011); *see also Armando Colon*, 41 ECAB 563 (1990) (OWCP abused its discretion in denying an employee's request for reconsideration on the grounds that the evidence submitted lacked probative value because it was in a foreign language); *Patrick T. Wall*, Docket No. 01-1802 (issued March 26, 2002).

⁶ Due to the Board's decision on the first issue, the second issue is rendered moot.