

FACTUAL HISTORY

This case was previously on appeal before the Board.² In a March 1, 2012 decision, the Board affirmed the March 14, 2011 decision denying appellant's claim for disability. It found that he failed to establish that he was disabled for the period commencing August 9 to 30, 2010, as a result of his employment-related aggravation of acute asthmatic bronchitis. The facts and history contained in the prior appeal are incorporated by reference.

In a February 27, 2012 report, Dr. John T. Dang, a Board-certified internist, noted that appellant was seen in follow up for mold irritation. He indicated that the problem is a "workers' compensation claim" and covered by the employing establishment's insurance. Dr. Dang advised that appellant had returned to work full duty.

In a letter dated March 21, 2012, appellant's representative requested reconsideration. He submitted a statement and copies of photographs from appellant, who described his continuing exposure to mold at the employing establishment.

In an April 23, 2012 statement, D.W. Gray, a safety manager, noted that the employing establishment controverted the claim. He explained that the hospital still had carpeted areas, but 80 percent of it had been removed. Mr. Gray noted that the area in question had flooded in the past but a supervised and trained inmate crew removed the water while restrooms were closed until the problem was remedied. He explained that leaks occurred from a leaky water line and that all areas in the employing establishment suspected of mold were identified and remediated. Mr. Gray advised that the necessary departments were contacted and corrective action was taken. He denied that appellant was placed in an unsafe environment.

By decision dated May 18, 2012, OWCP denied modification of its prior decision.

In a May 23, 2012 report, Dr. Dang diagnosed bronchiolitis, acute and noted that appellant had returned to work full duty.

In a letter dated July 3, 2012, counsel requested reconsideration and submitted additional evidence. In a June 1, 2012 report, Dr. Dang explained that he was appellant's treating physician for his work-related injury of September 29, 2008. He indicated that appellant developed a respiratory condition, acute asthmatic bronchitis, which was caused by exposure to mold spores in the workplace. Dr. Dang advised that the letter was to establish disability from August 9 to 30, 2010 as a result of the condition. He noted that appellant was unable to work because of his chronic respiratory condition. Furthermore, "[appellant] could not be exposed to any mold spores as this could cause his condition, (chronic cough, congestion and swollen glands) to worsen."

By decision dated July 16, 2012, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that his was insufficient to warrant review of its prior decision.

² Docket No. 11-1335 (issued March 1, 2012).

By letter dated December 18, 2012, counsel requested reconsideration.

In a September 28, 2012 report, Dr. Dang noted that appellant was seen for a recheck of his mold inhalation injury. He advised that appellant was working and diagnosed acute bronchiolitis and other infectious organism. Dr. Dang continued to treat appellant for his mold inhalation and submit reports.

By decision dated March 6, 2013, OWCP denied modification of the prior decision. It found that appellant did not submit any rationalized, probative and objective medical evidence to support that he was disabled from performing his duties due to his accepted condition beginning August 9, 2010.

LEGAL PRECEDENT

Under FECA,³ the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁴ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵

Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work.⁶ The Board has stated that, when a physician’s statements regarding an employee’s ability to work consists only of a repetition of the employee’s complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁸

ANALYSIS

Appellant filed claims for compensation alleging that he was totally disabled from working for intermittent periods commencing August 9, 2010. In particular, he alleges that the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁵ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

⁷ *John L. Clark*, 32 ECAB 1618 (1981).

⁸ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

employing establishment had mold, which aggravated his acute asthmatic bronchitis such that he was unable to work. In its March 1, 2012 decision, the Board affirmed the March 14, 2011 decision denying appellant's claim for disability. The Board found that he failed to establish that he was disabled for the period commencing from August 9 to 30, 2010, as a result of his employment-related aggravation of acute asthmatic bronchitis. Subsequent to OWCP's March 14, 2011 decision, counsel requested reconsideration and submitted additional evidence to include a statement and photographs from appellant. However, the Board notes that the issue is medical in nature. The Board finds that appellant did not submit any reasoned medical evidence establishing total disability for this period of time.

In support of his claim for disability for the period August 9, 2010 and continuing, appellant provided several reports from Dr. Dang. The June 1, 2012 report, in which Dr. Dang indicated that appellant developed a respiratory condition, acute asthmatic bronchitis and opined that it was caused by exposure to mold spores in the workplace. However, as noted in the Board's previous decision, the indoor microbial assessment conducted by Texas Mold Inspection Services on October 15, 2010 revealed "no moisture sources observed and mold spore elevations are considered insignificant." It also found that a sample taken from appellant's office contained a spore count of chaetomium +19 which was considered insignificant. Dr. Dang also stated that his report was to establish disability from August 9 to 30, 2010 as a result of appellant's acute asthmatic bronchitis. He opined that appellant was unable to work because of his chronic respiratory condition. However, Dr. Dang did not provide rationale to explain how he arrived at this opinion. He did not explain why, in light of the test findings of insignificant mold levels, appellant's employment would have contributed to total disability for the period at issue. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁹ Dr. Dang also indicated that appellant could "not be exposed to any mold spores as this could cause his condition, (chronic cough, congestion and swollen glands) to worsen." The Board notes that this is speculative. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹⁰ While Dr. Dang's February 27, 2012 report noted that appellant had not returned to work and that his problem was a workers' compensation injury, he did not specifically explain why appellant's exposure to workplace substances caused total disability beginning August 9, 2010. Other reports from Dr. Dang either do not provide medical reasoning in support of disability for the claimed period or do not offer any specific opinion that appellant was disabled beginning August 9, 2010 due to his accepted condition. Thus, they are insufficient to establish work-related disability for the claimed period.

The Board finds that appellant has failed to submit rationalized medical evidence establishing his disability for the period August 9, 2010 and thus, he has not met his burden of proof.

⁹*Michael E. Smith*, 50 ECAB 313 (1999); *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁰*Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal). *See also R.S.*, Docket No. 13-464 (issued June 25, 2013) (it is well established that the possibility of future injury constitutes no basis for the payment of compensation).

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 failed to establish that he was disabled beginning August 9, 2010 as a result of his employment-related aggravation of acute asthmatic bronchitis.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2013 Office of Workers' Compensation Programs' decision is affirmed.

Issued: September 6, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board