

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

C.G., Appellant)

and)

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, SOCIAL SECURITY
ADMINISTRATION, Atlanta, GA, Employer**)

**Docket No. 14-461
Issued: August 5, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 23, 2013 appellant filed a timely appeal of a December 6, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained or aggravated respiratory and allergic conditions due to employment exposures to mold and chemicals.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 30, 2012 appellant, then a 36-year-old claims representative, filed an occupational disease claim alleging that on November 15, 2012 she became aware that her symptoms of headaches, burning of her skin, tightness in her chest and ear aches were due to mold and chemicals at the employing establishment.

Appellant sought medical treatment with Dr. Monina S. Mabuit Lim, a family practitioner, on November 20, 2012. Dr. Lim attributed her symptoms to pesticides used at the employing establishment. Appellant underwent a chest x-ray on November 30, 2012 with a possible diagnosis of bronchitis. On November 30, 2012 Dr. Sunil Parikh, a Board-certified family practitioner, diagnosed a chemical reaction to insecticide used at the employing establishment on November 14, 2012. On December 3, 2012 Dr. Lim stated that appellant's symptoms might be related to an allergic reaction to a substance at the employing establishment. Dr. Timothy Anderson, a physician Board-certified in public health and general preventative medicine, diagnosed pharyngitis, upper respiratory infection, acute sinusitis and cough on December 20, 2012. Appellant submitted a December 20, 2012 pulmonary function report which listed possible early obstructive pulmonary impairment. She reported shortness of breath on January 1, 2013 and received a diagnosis of bronchospasm at the Palms West Hospital emergency room from Dr. John Halpern, an osteopath.

In a letter dated February 12, 2013, OWCP requested additional factual and medical information in support of appellant's claim. Dr. Denzil Seedail, a family practitioner, examined appellant on January 14, 2013. He diagnosed cough, shortness of breath and reactive airway disease. Dr. Seedail noted that appellant's symptoms started around November 15, 2012 after she was exposed to pesticides.

On April 29, 2013 OWCP requested information from the employing establishment regarding on site mold and spraying of chemicals. The employing establishment provided a mold evaluation dated November 27, 2012. The report noted that limited indoor air quality screening took place on November 20, 2012 after occupants reported symptoms following an exterminator spraying in the area. The employing establishment responded on May 17, 2013 and stated that she had not experienced any similar conditions and could not confirm the presence of mold in the employing establishment or the effect of spraying odorless chemicals. Appellant stated that an air study indicated elevated humidity levels above the recommended 60 percent. The air samples revealed common environmental molds in concentrations similar or lower than outdoor concentrations typically found in Florida. There were elevated moisture levels which would be favorable for microbial growth. The employing establishment closed November 16 through 26, 2012 as a precautionary measure pending the results of an air quality test. It reopened on November 27, 2012 based on the preliminary results of air testing. The employing establishment again closed on February 4, 2013.

By decision dated June 17, 2013, OWCP denied appellant's claim finding that she did not submit sufficient medical evidence to establish a respiratory condition as a result of her employment exposure.

Appellant requested reconsideration on September 27, 2013. Dr. William F.P. Tuer, a physician Board-certified in allergy and immunology, examined her on August 20, 2013. He found that she was allergic to a broad variety of the pollens of trees, grasses and weeds as well as molds, animal dander and indoor environmental allergens. Dr. Tuer diagnosed cough with small airway labiality and evidence of allergic sensitivity to several molds. He also found probable episodic bronchospasm with an onset of symptoms with exacerbation at the workplace. Dr. Tuer stated, “The patient’s history strongly suggests that exposure to mold has been causative in her symptoms, both of cough and episodic bronchospasm as well as upper respiratory symptoms. The fact that symptoms were present primarily upon entry to the workplace and have subsequently subsided completely with change in workplace is strongly suggestive that environmental factors in the workplace have resulted in her symptoms.” Dr. Parikh diagnosed a nasal abscess on August 6, 2013 and prescribed medication.

By decision dated December 6, 2013, OWCP denied appellant’s claim. It found the medical evidence insufficient to support that her condition was caused or aggravated by employment exposure.

LEGAL PRECEDENT

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.”² 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.³

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁴ Medical rationale includes a physician’s detailed opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment exposure. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship

² 20 C.F.R. § 10.5(q).

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁴ *T.F.*, 58 ECAB 128 (2006).

between the diagnosed condition and specific employment activity or factors identified by the claimant.⁵

ANALYSIS

Appellant attributed her symptoms of headaches, chest tightness and ear aches to exposure to mold and chemicals at the employing establishment. The employing establishment provided air quality testing which demonstrated elevated humidity levels above the recommended 60 percent. The air samples indicated common environmental molds in concentrations similar or lower than outdoor concentrations typically found in Florida. The elevated moisture levels which would be favorable for microbial growth. OWCP has accepted that appellant was exposed to some mold at the employing establishment.⁶

Appellant sought treatment from several physicians who attributed her headaches, tightness in her chest and ear aches to exposure to unidentified chemicals at the employing establishment. Dr. Lim examined her on November 20 and December 3, 2012 and attributed her symptoms to pesticides used at the employing establishment or an allergic reaction to a substance at the employing establishment. Dr. Parikh diagnosed a chemical reaction to insecticide at the employing establishment on November 14, 2012. Dr. Seedail examined appellant on January 14, 2013 and diagnosed cough, shortness of breath and reactive airway disease. He noted that her symptoms started around November 15, 2012 after she was exposed to pesticides. These reports are not sufficiently detailed or well-reasoned on causal relation to meet appellant's burden of proof. None of the physicians provided an explanation of how exposure to unidentified chemicals at unspecified levels of exposure could have resulted in her symptoms. Without clear medical reasoning explaining the relationship between appellant's diagnoses and her employment, these reports are not sufficient to meet her burden of proof.

On August 20, 2013 Dr. Tuer conducted testing and found that appellant was allergic to a broad variety of the pollens of trees, grasses and weeds as well as molds, animal dander and indoor environmental allergens. He diagnosed cough with small airway lability and evidence of allergic sensitivity to several molds. Dr. Tuer also found probable episodic bronchospasm with an onset of symptoms with exacerbation at the workplace. He stated, "The patient's history strongly suggests that exposure to mold has been causative in her symptoms, both of cough and episodic bronchospasm as well as upper respiratory symptoms. The fact that symptoms were present primarily upon entry to the workplace and have subsequently subsided completely with change in workplace is strongly suggestive that environmental factors in the workplace have resulted in her symptoms." The Board finds that Dr. Tuer's report is speculative on causal relation. The Board has held that the mere manifestation of a condition during a period of employment does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of

⁵ A.D., 58 ECAB 149 (2006).

⁶ The findings of the November 2012 air study evaluation of appellant's workplace showed that the sample results of indoor airborne mold appeared in an array of mold spores similar to those in the outdoor air. The report noted that the total concentration of airborne mold spores was lower in the indoor air when compared to the results for the sample collected outdoors. These results are not suggestive of an indoor mold growth condition. See *B.B.*, Docket No. 13-256 (issued August 13, 2013).

employment nor the belief that the employment caused or aggravated a condition is sufficient to establish causal relationship.⁷ Dr. Tuer did not clearly explain how the workplace exposure to mold resulted in appellant's diagnosed conditions. His report is not sufficiently well rationalized to meet her burden of proof.

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 submit the necessary medical opinion evidence to meet her burden of proof in establishing an occupational disease claim.

ORDER

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

Issued: August 5, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).