

FACTUAL HISTORY

On July 5, 2011 appellant, then a 53-year-old information technology specialist, filed an occupational disease claim alleging that on September 9, 2007 he first realized that his sinus, allergy and high blood pressure conditions were caused or aggravated by exposure to cladosporium mold in his workplace.

By letter dated July 28, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to establish his claim.

Appellant submitted several treatment notes from Dr. Brian S. Dantzler, a treating Board-certified allergist and immunologist. In a June 22, 2011 report, Dr. Dantzler stated that appellant was exposed at work to high levels of cladosporium mold. He attributed appellant's recurrent sinusitis episodes "due to the heavy mold exposure from working in a sick building." In an August 11, 2011 report, Dr. Dantzler diagnosed recurrent headaches, recurrent episodes of sinusitis and recurrent nasal congestion, which worsened in the workplace. He reported that appellant had positive prick skin allergen tests to mold, including cladosporium mold, the mold found during building air quality testing. Dr. Dantzler related that appellant's symptoms improved when away from his worksite and that they worsened "after a short time if entering the workplace." He attributed appellant's conditions to workplace exposure to cladosporium mold, as documented by air quality testing of appellant's workplace.

OWCP received an April 11, 2006 Indoor Air Quality Evaluation report for appellant's worksite, which identified inactive cladosporium mold at cube 108 and 041 in the overhead supply vents. The report found no obvious environmental problems other than housekeeping issues and a possible slightly low outside air supply. Recommendations included cleaning inactive mold from all overhead supply vents where it was found, slightly increasing outside air and cleaning of dust accumulations in the supply vents.

OWCP also received an April 2, 2008 Indoor Air Quality Evaluation Report. The report noted that a previous investigation found no obvious environmental problems other than a housekeeping issue and a possible low outside air supply. No problems were identified after a visual inspection of the mechanical room, air handling unit intake location and associated supply grilles.

Dr. Dantzler continued to treat appellant and on October 17, 2011 he diagnosed sinusitis which he found was triggered "significantly, if not completely" by work exposure to inhalants, such as paints, cleaning products and allergens. He noted that the over 60 percent humidity "strongly contributes to mold and house dust mite growth." Dr. Dantzler requested that appellant be allowed to work from home as continued work exposure prevented control of his symptoms.

By decision dated November 9, 2011, OWCP denied appellant's claim as he had failed to establish that the event occurred as alleged, *i.e.*, exposure to mold sufficient to cause his condition. It noted that the studies submitted by him were old and did not support the existence of unsafe levels of any substance at the worksite. OWCP also found that appellant failed to

submit any rationalized medical evidence explaining how his preexisting rhinitis had been aggravated any employment factor.

Subsequent to OWCP's decision appellant submitted new medical and factual evidence. In a November 8, 2011 form signed by Dr. Dantzler, appellant requested to be able to work from home due to workplace exposure aggravation of severe nasal congestion and other nasal problems.

On February 1, 2012 appellant requested reconsideration. In support of his request, he submitted medical evidence concerning treatments for headaches and back conditions and a work release form.

By decision dated April 27, 2012, OWCP denied modification.

Subsequent to the denial appellant submitted an August 16, 2012 request. He submitted another reasonable accommodation request form dated May 16, 2012 signed by Dr. Dantzler requesting that appellant be allowed to work from home as his work environment was triggering his sinusitis and other nasal conditions.

In a May 21, 2012 report, Dr. Maria Trojanowska, a treating physician, diagnosed allergic rhinitis which worsened at work. She concluded that this suggested that appellant was exposed to allergens at work.

Appellant alleged that inhaling the air at his worksite triggered his chronic rhinitis and was responsible for his poor health. He noted that he is healthier when working away from his duty station and at home.

Appellant provided more recent air quality reports. In a December 7, 2011 indoor air quality evaluation, based on a complaint from another employee, it found the air quality to be within acceptable levels and a visual inspection "could not identify any source of air contamination."

A March 6, 2012 mold assessment report noted that a limited mold assessment was conducted on February 16, 2012. It found that the indoor airborne mold levels were below the outdoor levels. Under conclusions and recommendations, the report found airborne mold spore amplification was not present on the date of the test and they found nothing to support the air quality complaint.

A July 12, 2012 report by Dr. Dantzler provided physical findings and diagnoses of acute bronchospasm, allergic rhinitis due to pollen, allergic rhinitis due to other allergen and chronic allergic conjunctivitis.

In an August 1, 2012 report, Dr. Dantzler stated that an April 11, 2006 letter from the employing establishment identified cladosporium mold present in appellant's work area. He stated that appellant continued to be exposed to cladosporium mold as well as other irritants and allergens at work. Dr. Dantzler attributed appellant's significant respiratory symptoms to workplace exposure to cladosporium mold.

Dr. Dantzler further noted, in an August 2, 2012 report, that he has treated appellant for the past five years for allergy and L4-5 stenosis complaints. He attributed appellant's chronic rhinitis to appellant's mold allergies. Dr. Dantzler related that appellant's symptoms worsen while at his work site and improve when away. In concluding, he opined that the buildings in which appellant works aggravated his preexisting chronic rhinitis.

On February 4, 2013 appellant was again seen by Dr. Dantzler who provided physical findings and medical history. Diagnoses included acute ethmoid and frontal sinusitis, perennial allergic rhinitis, seasonal allergic rhinitis, acute bronchospasm, allergic conjunctivitis and increased workplace mold and humidity exposure.

On April 26, 2013 appellant's counsel requested reconsideration.

By decision dated May 21, 2013, OWCP denied reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

OWCP procedures were changed effective August 29, 2011. Section 10.607 of the new regulations provide that the date of the reconsideration request for timeliness purposes was changed from the date the request was mailed to the date the request was received by OWCP.⁶

ANALYSIS

Appellant filed a claim alleging that his preexisting allergic rhinitis had been aggravated by exposure to mold at his work site. OWCP denied his claim on the grounds that he failed to establish that mold was present in unsafe levels at the employing establishment.

² 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

³ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁵ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ *Id.* at § 10.607.

Appellant did not submit any new relevant legal argument not previously considered; nor did he allege that OWCP erroneously applied or interpreted a specific point of law. Consequently, he is not entitled to a review of the merits of his claim based on the first and second requirements of section 10.602(b)(3).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, the Board finds that the evidence submitted is not relevant to the reason that appellant's claim was denied by OWCP. The underlying claim for compensation was denied on the basis that the factual evidence of record did not establish that his claimed exposure to mold exposure occurred as alleged. The medical reports of Dr. Dantzler reiterated his opinion that appellant's allergic rhinitis was aggravated by his workplace exposure to mold. However, as appellant had not proven factually that he was exposed to significant amounts of mold, Dr. Dantzler's reports are not relevant to the issue at hand.⁷ The record also contains a report from Dr. Trojanowska diagnosing allergic rhinitis which she suggested was due to exposure to allergens at work. Dr. Trojanowska did not address whether appellant's allergic rhinitis was due to exposure to mold. Thus, this report is not relevant to the issue at hand.

Appellant also submitted a December 7, 2011 indoor air quality evaluation report and a March 6, 2012 mold assessment report. These reports are duplicative of prior reports which also found no unsafe mold exposure. Appellant also submitted a narrative statement saying that he was healthier when away from work and reiterating his opinion that he was exposed to unsafe levels of mold at work. His statement is duplicative of his prior statements. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁸ The Board, therefore, finds that these reports are insufficient to warrant reopening appellant's claim for further merit review.

Accordingly, the Board finds that OWCP properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(3) and properly denied his request for reconsideration.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁷ See *Freddie Mosley*, 54 ECAB 255 (2002) (evidence that does not address the particular issue involved does not warrant reopening a case for merit review).

⁸ *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 21, 2013 is affirmed.

Issued: July 15, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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