

stomach problems, chest pains, shaking and fainting due to environmental exposures in the course of his federal employment. OWCP accepted the claim for headache. Following his injury, appellant was reassigned to another work location.

The record contains April 6, 2006 data from the employing establishment documenting elevated carbon dioxide and carbon monoxide exposure levels in Building 37. In a statement dated September 22, 2006, appellant's supervisor indicated that air quality samples showed levels that were less than harmful.

A September 22, 2006 individual environmental exposure record indicates that appellant was exposed to elemental carbon at or above the permissible exposure limits.

On March 8, 2013 appellant, through his congressional representative, submitted a January 14, 2013 medical report from Dr. Rebecca Bascom, a Board-certified internist, who reviewed his presentation of his work history. Dr. Bascom noted that, from January to March 2005, he was exposed to isocyanate spray paints while working in Building 37. In 2008, appellant began working in Building 57. He was exposed to spray paint outside the paint booths but did not work in the spray booths. Appellant began working modified employment in Building 33 where there was no spraying but would experience symptoms again when sent to other buildings. He relocated to Building 2 and experienced multiple exacerbations of asthma when exposed to fumes. Dr. Bascom reviewed Material Safety Data Sheets for the chemicals to which appellant attributed his exposure, the medical reports of record, and the results of diagnostic testing. She diagnosed occupational inhalation exposure to dust, vapors, gases, fumes including isocyanates, solvents and diesel fumes causing occupational asthma, occupational rhinitis, and occupational migraine headache with syncopal migraine. Dr. Bascom described a series of claims filed by appellant for headache, asthma and chemical exposure from 2006 to 2009 and stated, based on his description of his work duties:

“[My] opinion at the conclusion of the evaluation is that all of the above claims describe manifestations of a single multisystem occupational illness caused by the sustained Inhalation of sensitizing and irritant chemicals including isocyanates spray paints, currently a leading cause of occupational asthma. The exposure began in 2006 with the development of new onset isocyanate occupational asthma and rhinosinusitis with headache, progressing to migraine headaches and syncopal migraine. The prognosis of occupational asthma relates to the duration of symptomatic exposure and the severity at the time of removal from exposure. [Appellant] was exposed for over three years because he continued to be assigned to work areas with regular use of spray paints through the spring of 2008. He had severe persistent asthma that was not in good control at the time of removal from exposure. [Appellant] also had developed new, severe migraine headaches. The persistence of his diseases and persistent increased reactivity are consistent with the medical literature on these conditions.”

Dr. Bascom found that appellant was permanently disabled from working at the employing establishment. She stated:

“[Appellant]’s record demonstrates classic features of isocyanate occupational asthma: there was a period of symptomless exposure; there was a characteristic history of worsening of symptoms at work and improvement away from work; there was worsening in peak flow measurements during times of work[-]related symptoms; there is good correlation between peak flow measures and spirometric values; there is variable airflow obstruction documented by standard lung function testing.”

By letter dated March 18, 2013, OWCP informed appellant’s congressional representative that it had accepted a 2006 claim for a headache, a 2008 claim for an aggravation of asthma, and a 2009 claim for an acute headache. It noted that appellant last worked at the employing establishment in April 2009. OWCP advised that it had not accepted all workplace exposure discussed by Dr. Bascom and noted that she did not address outside exposure to odors and fumes or his treatment for reflex epilepsy.

On March 20, 2013 OWCP requested that appellant submit additional factual information, including his history of irritant exposure outside of his federal employment. In a March 24, 2013 response, appellant indicated that he had no other outside exposure to irritants except for certain restaurants, stores, and church.

By decision dated June 26, 2013, OWCP denied appellant’s claim after finding that he had not submitted sufficient evidence that he sustained employment-related asthma. It noted that he had not provided information about his wine making activities that exposed him to sulfur dioxide.

On July 1, 2013 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

On November 26, 2013 appellant submitted a proposed remedial action plan for Building 37 site and Building 47 by the Environmental Protection Agency and responses from the employing establishment to the plan.

At the telephone hearing, held on November 20, 2013, appellant’s counsel noted that Building 37 was a superfund site and that the proposed remedial plan showed various volatile organic compounds that had leached into the ground. Dr. Bascom testified at the hearing. She related that she reached her diagnosis of occupational asthma through industrial hygiene reports from the employing establishment, a review of medical records, pulmonary function tests and Material Safety Data sheets. Dr. Bascom noted that appellant was exposed to hex methylene diisocyanate, a sensitizer that was a frequent cause of occupational asthma. She related that the spray painting was performed in alcoves rather than enclosed spray booths. Dr. Bascom opined that appellant’s five-year history of cigarette smoking in the 1970s and his exposure to sulfur dioxide while making wine did not contribute to his asthma. She explained that sulfur dioxide could trigger occupational asthma, but that his symptoms and the timeframe were inconsistent with that as the cause.

By letter dated December 19, 2013, the employing establishment requested additional time to dispute appellant's allegation. It did confirm, however, that Building 37 had been a source of groundwater contamination and thus part of the superfund site list. The proposed remediation plan did not indicate the presence of hex methylene diisocyanate in the soil. The employing establishment maintained that it used surface coatings that contained polyurethanes with hex methylene diisocyanate but that it was required to be put on with a spray in a paint booth or with a brush.

In a decision dated February 4, 2014, an OWCP hearing representative affirmed the June 26, 2013 decision. She found that Dr. Bascom's opinion was not rationalized as she did not provide a history of appellant's work-related exposure to chemicals.

LEGAL PRECEDENT

A claimant seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,³ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁵ The claimant must submit a rationalized medical opinion that supports a causal connection between his or her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁶

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.⁷ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.⁸ The Board has stated that, once OWCP has begun investigation of a claim, it must pursue the evidence as far as reasonably possible, particularly when such evidence is in the possession of the government employing establishment and is, therefore, more readily accessible to OWCP.⁹

² *Id.*

³ *See J.P.*, 59 ECAB 178 (2007); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁴ *See G.T.*, 59 ECAB 447 (2008); *Frankie A. Farinacci*, 56 ECAB 723 (2005).

⁵ *See T.H.*, 59 ECAB 388 (2008); *Thomas L. Agee*, 56 ECAB 465 (2005).

⁶ *See D.G.*, 59 ECAB 734 (2008); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

⁸ 20 C.F.R. § 10.121.

⁹ *See Richard Kendall*, 43 ECAB 790 (1992); *Leon C. Collier*, 37 ECAB 378 (1986).

ANALYSIS

OWCP accepted that appellant sustained headaches causally related to environmental exposure in the course of his federal employment. In 2013, appellant requested that OWCP expand his claim to include occupational asthma. In a report dated January 14, 2013, Dr. Bascom related that, based on appellant's description of his employment exposures, appellant had been exposed to isocyanate spray paints from January to March 2005 while working Building 37. In 2008, appellant began working in Building 57 and was exposed to spray paint outside of spray booths, even though he did not work in the spray booths. He subsequently worked in locations that did not involve spray painting, but continued to experience exacerbations at work when he was exposed to fumes. Dr. Bascom reviewed the safety datasheets for the chemicals to which appellant alleged exposure, the results of diagnostic testing, and the medical reports. She diagnosed occupational asthma, occupational rhinitis and occupational migraines as a result of exposure at work to dust, vapors, gases and fumes that included isocyanates, solvents, and diesel fumes. Dr. Bascom explained that appellant's history was consistent with the development of isocyanate occupational asthma as documented by his improvement away from work, and spirometric values. At the November 20, 2013 telephone hearing, she related that he was exposed to hex methylene diisocyanate, a common cause of occupational asthma. Dr. Bascom determined that appellant's five-year history of cigarette smoking in the 1970s and his exposure to sulfur dioxide making wine did not contribute to his asthma. She noted that he had exposure to hex methylene diisocyanate from spray paint in spray alcoves rather than enclosed spray booths.

The Board finds that the case is not in posture for decision. Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁰ The Board has reviewed Dr. Bascom's opinion and finds that appellant provided a history of being exposed to chemicals at work which she found to have caused occupational asthma. Dr. Bascom based her diagnosis on appellant's description of his work history, exposure data, a review of medical records and the results of some objective testing. Her opinion is supportive, unequivocal, bolstered by these objective findings and based on a firm diagnosis. Dr. Bascom further provided rationale for her opinion by explaining that appellant's development of symptoms at work and improvement away from work, as established by spirometric results, supported the diagnosis of occupational asthma. Although her opinion lacks a verified knowledge of any specific exposure by appellant to chemicals at work, it provides sufficient support for causal relationship to require further development by OWCP.¹¹

OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹² It did not obtain from the employing establishment comprehensive data

¹⁰ A.A., 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹¹ *Id.*

¹² See *Donald L. Strain*, Docket No. 94-2607 (issued January 14, 1997); *Robert A. Redmond*, 40 ECAB 800 (1989).

setting forth appellant's exposure to dust, fumes and chemicals during his employment. The employing establishment provided exposure data for carbon dioxide and carbon monoxide in Building 37 in 2006. In a September 22, 2006 statement, appellant's supervisor indicated that the air quality samples showed levels that did not cause harm; however, this appears to relate to the carbon monoxide and carbon dioxide levels. On December 19, 2013 the employing establishment confirmed that it used hex methylene diisocyanate in spray paints but maintained that it had to be used in spray booths or with a brush. It did not, however, specifically state where appellant worked and at what times, whether it used spray alcoves for the application of spray paint in Building 37 during the time of appellant's employment, or provide any comprehensive exposure data relating to appellant's specific periods of employment.

On remand, OWCP should obtain an accurate history of his employment, and to what chemicals he was exposed and during what periods of time and, based on this information, prepare a statement of accepted facts. It should then develop the medical evidence to determine whether appellant sustained occupational asthma due to factors of his federal employment. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 6, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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