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

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| **D.S., Appellant** | ) | |
| **and** | ) | **Docket No. 15-1257** |
| | ) | **Issued: November 24, 2015** |
| **DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, TINKER AIR FORCE BASE, OK, Employer** | ) | |

*Appearances:*
*Lenin V. Perez*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On May 15, 2015 appellant, through her representative, filed a timely appeal from a December 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

### ***FACTUAL HISTORY***

On August 27, 2013 appellant, then a 50-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that she sustained an occupational disease due to exposure to

[1] 5 U.S.C. § 8101 *et seq.*

harmful substances in her workplace over time. She alleged that there was mold in the heating, ventilating, and air conditioning (HVAC) system and that she could smell mold in the HVAC system caused by rain. Appellant claimed that there were places where water leaked into the building and that pipes had broken and caused flooding. She indicated that she sustained sinus congestion, fungal growth under her fingernails, and systemic overgrowth of yeast throughout her body. Appellant also claimed that she developed mycotoxin tricothecenes toxicity due to exposure to black mold growth. She first became aware of her claimed condition on August 14, 2013 and realized on that date that it was caused or aggravated by her employment. Appellant stopped work on August 14, 2013 but returned to full-duty work the next day.[2]

In a letter dated September 6, 2013, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted an undated statement, received on September 10, 2013, in which she provided an extensive history of her medical treatment. She indicated that there was mold in her workplace and that the medical evidence showed that she sustained mycotoxin tricothecenes toxicity as a result. Appellant stated that her workplace was professionally dried after leaks were found but indicated that she could still smell the presence of mold.[3]

Appellant submitted an August 14, 2013 report in which Dr. Gregg S. Govett, an attending Board-certified otolaryngologist, stated that he performed mycotoxin testing on July 23, 2013 which was positive for tricothecenes. Dr. Govett stated that this substance is a potent mycotoxin which is acquired into the body when one is exposed to black mold. He noted that mycotoxin toxicity can cause a variety of medical illnesses and recommended that appellant not return to the source of exposure until the mold had been completely removed.

In an August 23, 2013 e-mail, an official from the employing establishment's bio-environmental engineering department stated that, on his August 6, 2013 assessment of appellant's workplace, he did not observe any key indicators that the HVAC system was the cause of any problem. If the HVAC system was the issue, the area would feel humid, there would be a musty/mildew odor, and it would be uncomfortably warm. The official stated that, aside from some dirt/dust on the HVAC vents near where the indoor air quality meter was placed, he did not observe anything like this. He noted that the results from August 6, 2013 the indoor air quality testing were all within normal parameters. The record contains an indoor air quality survey dated August 6, 2013 in which it was concluded that humidity was slightly higher than the recommended range, but that temperature, carbon dioxide, and carbon monoxide were within recommended parameters. It was noted that there was dust on HVAC ceiling exhaust mounts but that there was nothing that appeared to be excessive.

On September 4, 2013 Dr. Govett stated that tricothecenes are mycotoxins secreted by several species of mold, including Stachybotrys, commonly known as black mold. He stated that mold exposure causing such infection comes from any "sick building" or a building that has had

[2] On the same form, appellant's immediate supervisor stated that he was not aware of an environmental report showing that there was mold in appellant's workplace.

[3] Appellant also submitted February and July 2013 engineering work requests to clean the HVAC system.

water leaks resulting in mold growth. Dr. Govett noted that appellant alleged there was mold in her workplace but that the existence of mold would have to be proven through mold plate testing with culture growth and identification.

In a letter dated September 18, 2013, the employing establishment indicated that it was challenging appellant's compensation claim.

On September 19, 2013 Dr. Govett stated that he first saw appellant in October 2011 at which time she had already received treatment for Graves' disease, chemical sensitivities, chronic fatigue, and yeast (Candida) problems. He noted that appellant's problems were multi-factorial and that her Candida, heavy metal, chemical, and mal-absorption issues had been resolved with therapy. The offending foods had been removed from appellant's diet, the Candida overgrowth had been treated, and chelation therapy removed the heavy metals from her body. Dr. Govett stated that the only problem he could find to explain the symptoms that recurred in April 2013 was appellant's "mycotoxin infection that appears to have been acquired in your workplace." He indicated that mycotoxins were involved in all disease processes from cancer to kidney failure and noted that the Food and Drug Administration followed a number of them in all food sources.

In an October 9, 2013 decision, OWCP denied appellant's claim for a work-related occupational disease, finding that she did not submit a rationalized medical report establishing a specific occupational disease due to exposure to mold or other substances in the workplace.

Appellant requested reconsideration of her claim and submitted a March 26, 2014 report of Dr. John W. Ellis, an attending Board-certified occupational medicine physician.

In his March 26, 2014 report, Dr. Ellis provided a history of appellant's symptoms and medical treatment and noted that she had reported that there was mold in her workplace. He reported the findings of his evaluation on that date, noting that examination of appellant's head was unremarkable, her eyes had mild conjunctival irritation, and there were rough chest sounds of rhonchi on inhalation and expiration with expiratory wheezing. Dr. Ellis diagnosed "Sensitization to environmental stimuli in her work space at [the employing establishment] causing pathological responses" of rhinitis of the upper respiratory tract, pan-sinusitis of the upper respiratory tract, and reactive airway disease (asthma) of the lower respiratory tract. He indicated that it was more probable than not that appellant's diagnosed conditions were caused or aggravated by her employment. Dr. Ellis stated, that based on appellant's genetic makeup and the nature of her symptoms, it was medically reasonable that her exposures to the environmental stimuli at the employing establishment caused her body to respond with increased sensitization in her upper and lower respiratory tracts. He noted that the specific sensitizers did not have to be identified to state that it was medically reasonable that her exposures in the workplace increased her sensitization. Dr. Ellis opined that appellant's exposures in her workplace buildings increased her symptoms and that leaving the buildings decreased her symptoms, thereby indicating that the causation of her sensitization was in the workplace buildings. He stated:

> "It is not uncommon common [sic], and therefore more medically probable, that [appellant's] mold exposures were the greatest sensitizer causing her the greatest physiological changes in her upper and lower respiratory tracts. She was also

> exposed to mycotoxins at [the employing establishment]…. [Appellant's] exposures have caused physiological changes in upper and lower respiratory tracts. Her central nervous system symptoms are due to the changes in her upper and lower respiratory tracts causing secondary central nervous system symptoms. The fogginess she has in her thinking is part of her body's response to her sensitization causing outpouring of chemicals from her respiratory tracts."[4]

In a November 10, 2014 report, Dr. Govett noted that appellant reported that she continued to suffer from poor air quality in her workplace near the end of the runway at the employing establishment. He noted that appellant suffered from mycotoxicity and chemical sensitivities, and stated that burning jet fuel was causing fatigue, cognitive dysfunction, malaise, and brain fog. Dr. Govett noted, "It would be beneficial to her ongoing medical conditions if she would be allowed to work at her home so as to avoid the triggers of her illness that are present in her working environment."[5] In a December 8, 2014 report, he indicated that it had been brought to his attention that appellant's environmental symptoms of fatigue, malaise, skin rashes of undetermined origin, arthralgias, recurrent Candidiasis, and brain fog had returned. Appellant was still suffering from mycotoxicity as her triothecenes level was still high in her urinalysis. Dr. Govett stated:

> "[Appellant] would benefit from extensive environmental testing of her workplace as the building is apparently condemned and full of mold. I have instructed her to have her home tested for mold as well…. I have instructed [appellant] to continue the protocols for mycotoxin removal from her system and to continue to try to avoid the workplace if at all possible until the results of the testing are known."

By decision dated December 24, 2014, OWCP affirmed its October 9, 2013 decision denying appellant's claim for a work-related occupational disease. It modified its October 9, 2013 decision to clarify that appellant had not shown that there was mold in her workplace. It noted that dust in fact existed in her workplace on HVAC ceiling exhaust mounts. However, OWCP determined that appellant did not submit a rationalized medical report establishing that she sustained a specific occupational disease due to accepted exposures in the workplace.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every

[4] Dr. Ellis indicated that appellant had been totally disabled for the past seven weeks due to her work-related medical condition.

[5] Appellant also submitted a document dated March 27, 2014 which contains a description of her symptoms. Although the document is on Dr. Govett's letterhead, it appears to be missing pages and is not signed.

compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[6]

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.[7] 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

## ***ANALYSIS***

In August 2013 appellant filed an occupational disease claim alleging that she sustained an occupational disease due to exposure to harmful substances in her workplace, including mold in the HVAC system. In an October 9, 2013 decision, OWCP denied her claim for a work-related occupational disease, finding that she did not submit a rationalized medical report establishing a specific occupational disease due to exposure to mold or other substances in the workplace. By decision dated December 24, 2014, it affirmed its October 9, 2013 decision denying appellant's claim for a work-related occupational disease, but modified it to reflect that appellant had not shown that there was mold in her workplace.[12] OWCP determined that

[6] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[7] 20 C.F.R. § 10.5(ee).

[8] *Supra* note 6.

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] OWCP did find that dust in fact existed in appellant's workplace on HVAC ceiling exhaust mounts.

appellant did not submit a rationalized medical report establishing that she sustained a specific occupational disease due to accepted exposures in the workplace.

The Board notes that despite appellant's assertions that there was mold in the HVAC system in the workplace, there is no evidence of record showing that mold existed in her workplace. The employing establishment indicated that no environmental testing report established the existence of mold in the workplace. On August 23, 2013 an official for the employing establishment's bio-environmental engineering department stated that, on his August 6, 2013 assessment of appellant's workplace, he did not observe any key indicators that the HVAC system was the cause of any problem. He noted that the results from the August 6, 2013 indoor air quality testing were all within normal parameters.[13]

The Board finds that appellant did not submit a rationalized medical report establishing that she sustained a specific occupational disease due to exposures in the workplace.

Appellant submitted an August 14, 2013 report in which Dr. Govett, an attending Board-certified otolaryngologist, stated that he performed mycotoxin testing on July 23, 2013 which was positive for tricothecenes. Dr. Govett stated that this substance is a potent mycotoxin which is acquired into the body when one is exposed to black mold and noted that mycotoxin toxicity can cause a variety of medical illnesses. In his later reports, Dr. Govett acknowledged that there was no objective evidence that mold actually existed in appellant's workplace. On September 19, 2013 Dr. Govett stated that the only problem he could find to explain the symptoms that recurred in April 2013 was appellant's "mycotoxin infection that appears to have been acquired in your workplace." However, this opinion on causal relationship is of limited probative value because it is not based on a complete and accurate factual history given that mold has not been established in the workplace.[14] In a November 10, 2014 report, Dr. Govett noted that appellant suffered from mycotoxicity and chemical sensitivities, and stated that burning jet fuel was causing fatigue, cognitive dysfunction, malaise, and brain fog.[15] This opinion on causal relationship also is of limited probative value because it is not based on a complete and accurate factual history. It has not been established that appellant was subjected to jet fuel fumes at work. Dr. Govett has not provided a rationalized medical report establishing that appellant sustained a work-related occupational disease.

In a March 26, 2014 report, Dr. Ellis, an attending Board-certified occupational medicine physician, provided a history of appellant's symptoms and medical treatment and noted that she had reported that there was mold in her workplace. He diagnosed "Sensitization to environmental stimuli in her work space at the employing establishment causing pathological responses" of rhinitis of the upper respiratory tract, pan-sinusitis of the upper respiratory tract,

[13] The record contains an indoor air quality survey dated August 6, 2013 in which it was concluded that humidity was slightly higher than the recommended range, but that temperature, carbon dioxide, and carbon monoxide were within recommended parameters. It was noted that there was dust on HVAC ceiling exhaust mounts, but that there was nothing that appeared to be excessive.

[14] *See supra* note 10.

[15] Dr. Govett noted, "It would be beneficial to her ongoing medical conditions if she would be allowed to work at her home so as to avoid the triggers of her illness that are present in her working environment."

and reactive airway disease (asthma) of the lower respiratory tract. Dr. Ellis stated, that based on appellant's genetic makeup and the nature of her symptoms, it was medically reasonable that her exposures to the environmental stimuli at the employing establishment caused her body to respond with increased sensitization in her upper and lower respiratory tracts. He posited that appellant's exposures to mold caused the greatest physiological changes in her upper and lower respiratory tracts.

The Board finds that Dr. Ellis' report is of limited probative value in establishing a work-related condition because it is not based on a complete and accurate medical history and does not contain adequate medical rationale in support of its conclusions. Dr. Ellis' report is not based on a complete and accurate factual history given that mold has not been established in the workplace and he placed great emphasis on the role of mold in causing appellant's condition. He stated that appellant's exposures in her workplace buildings increased her symptoms and that leaving the buildings decreased her symptoms, thereby indicating that the causation of her sensitization was in the workplace buildings. However, the Board has held that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and employment factors.[16] Dr. Ellis indicated that the specific sensitizers did not have to be identified to state that it was medically reasonable that her exposures in the workplace increased her sensitization, but he did not further explain the basis for this statement. For these reasons, he has not provided sufficient medical rationale to show that appellant sustained a work-related occupational disease.[17]

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 did not meet her burden of proof to establish that she sustained an occupational disease in the performance of duty.

[16] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[17] On appeal, counsel argued that the opinion of Dr. Ellis established appellant's claim. For reasons explained above, Dr. Ellis' opinion is of limited probative value in establishing her claim.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board