

records of his hazardous exposure as required by federal regulations. Appellant submitted new medical evidence and believes that it establishes that he had healthy lungs prior to his employment with the Federal Government.

FACTUAL HISTORY

On October 23, 2007 appellant, then a 56-year-old production controller, filed an occupational disease claim (Form CA-2) alleging that on October 11, 2007 he first realized that his COPD was caused by years of exposure to fuel, water, sewage, asbestos, insulation, dust, air, paint waste, smoke, fumes, chemicals, and second-hand smoke while at work in the naval shipyard. He stated that no respiratory protection was provided to him.

In a note dated October 26, 2007, Dr. Daniel H. Spriggs, a family practitioner, reported the results of lung capacity testing and diagnosed COPD. He opined that the diagnosed condition was “most likely” caused by smoking, but other environmental factors may have contributed to this disease.

In a December 5, 2007 medical report, Dr. Marc S. Gottlieb, a Board-certified internist with subspecialty certification in pulmonary disease, noted appellant’s history and work exposure, and provided examination findings. He diagnosed COPD and asthmatic bronchitis. Dr. Gottlieb opined that “certainly some of this may well be work related.”

In a February 7, 2008 decision, OWCP denied appellant’s claim as the medical evidence was speculative as to whether his diagnosed medical condition was causally related to his employment exposure to fumes, dust and other irritants when performing his job duties.

By letter dated March 8, 2008, appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In a June 11, 2008 decision, an OWCP hearing representative set aside the February 7, 2008 decision and remanded the case for referral to a second opinion physician to further develop whether there was a causal relationship between his diagnosed pulmonary conditions and the established work exposure.

On June 30, 2008 OWCP referred appellant to Dr. Francisco J. Quinones, a Board-certified internist with subspecialty certification in pulmonary disease. In his August 27, 2008 report, Dr. Quinones opined that appellant’s asthma was temporarily related to his work exposure.

By letter dated September 11, 2008, OWCP accepted appellant’s claim for temporary extrinsic asthma.

On April 29, 2014 appellant filed a claim for a recurrence of medical condition causally related to his accepted employment injury. He alleged that he had an incurable disease.

By letter dated June 25, 2014, OWCP advised appellant that no evidence had been received in support of his recurrence claim. It requested factual and medical evidence.

In a July 8, 2014 letter, appellant contended that his work-related asthma and COPD were permanent conditions.

Appellant submitted a May 17, 2010 report from Dr. Robert E. Percy, a Board-certified internist with a subspecialty in pulmonary disease. Dr. Percy diagnosed occupational asthma or extrinsic intermittent asthma and COPD. He related that appellant's conditions were well controlled with medications and he did not appear to have to use an albuterol rescue inhaler on a regular basis. After reviewing a description of appellant's work environment, Dr. Percy cleared him from a pulmonary standpoint to work in the described environment and believed that appellant would experience minimal symptoms, if any, from those working conditions.

By decision dated July 29, 2014, OWCP denied appellant's recurrence claim as he failed to submit sufficient medical evidence to establish a causal relationship between his current conditions and his established work exposure to fumes, dust and other irritants.

In an August 11, 2014 letter, appellant, through counsel, again requested a telephone hearing and submitted statements from his coworkers regarding work duties and work exposure.

In a March 16, 2015 progress note, Dr. Percy noted that appellant had not been seen since 2012. He provided appellant's history which included a recurrent problem of shortness of breath. Dr. Percy noted that his current episode started more than one year ago. He reported examination findings and reiterated his diagnosis of COPD.

In a June 3, 2015 decision, an OWCP hearing representative affirmed the July 29, 2014 decision. He found that appellant had failed to submit any probative medical evidence to establish a causal relationship between any active pulmonary condition and the accepted work exposure. The hearing representative noted that no physician had offered an active diagnosis of the accepted extrinsic asthma condition since 2010 and that appellant had failed to submit medical evidence of his care from 2010 to present as requested.

LEGAL PRECEDENT

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.² Continuous treatment for the original condition or injury is not considered a recurrence of medical treatment nor is an examination without treatment.³

An employee who claims a recurrence of medical condition has the burden of proof to establish causal relationship by the weight of substantial, reliable, and probative evidence. This burden requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the employee's need for

² 20 C.F.R. § 10.5(y).

³ *Id.*

additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

The Board finds that appellant has failed to establish a recurrence of his accepted medical condition. OWCP accepted that appellant sustained temporary extrinsic asthma while working as a production controller. On April 29, 2014 appellant filed a recurrence claim alleging that his current pulmonary conditions were causally related to the accepted condition.

Dr. Percy's May 17, 2010 report noted his review of a description of appellant's work environment and released him to return to work in the same environment, explaining that he would experience minimal symptoms, if any. He noted that appellant had occupational asthma or extrinsic intermittent asthma and COPD, but stated that these conditions were well controlled with medications and it did not appear that appellant had to use an albuterol rescue inhaler on a regular basis. In a March 16, 2015 progress note, Dr. Percy reiterated his diagnosis of COPD.

The Board notes that the COPD condition has not been accepted as employment related by OWCP. It was appellant's burden of proof to establish causal relationship of the COPD condition.⁵ Moreover, Dr. Percy did not explain or offer any medical rationale as to how his accepted temporary extrinsic asthma deteriorated over the years and resulted in the diagnosed pulmonary condition. The report and progress note are therefore insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a recurrence of a medical condition causally related to the accepted employment injury. Appellant did not meet his burden of proof.

On appeal, appellant contends that the evidence of record, including witness statements, establish that he was exposed to a hazardous work environment while working at the employing establishment which resulted in his permanent work-related asthma and COPD. The Board finds that the weight of the medical evidence does not establish that appellant's recurrence of a medical condition was causally related to his accepted temporary extrinsic asthma.

Appellant further contends on appeal that the employing establishment has the burden of proof to establish that his disease is not work related, noting that it had failed to maintain records of his hazardous exposure as required by federal regulations. As stated, he has the burden of proof to establish a causal relationship between his accepted work exposure and the recurrence of his medical condition.⁶

⁴ *E.O.*, Docket No. 11-1099 (issued February 24, 2012); *J.B.*, Docket No. 11-1410 (issued January 5, 2012).

⁵ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ See cases cited, *supra* note 4.

The Board notes that appellant submitted new evidence with his appeal, but the Board's review is limited to the evidence of record before OWCP at the time of its final decision.⁷

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 has failed to meet his burden of proof to establish a recurrence of a medical condition causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ 20 C.F.R. § 501.2(c); see *Steven S. Saleh*, 55 ECAB 169 (2003).