

United States Department of Labor
Employees' Compensation Appeals Board

B.L., Appellant

and

DEPARTMENT OF THE ARMY, TEST &
EVALUATION COMMAND, WHITE SANDS
MISSILE RANGE, NM, Employer

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Docket No. 15-0946
Issued: October 19, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 16, 2015 appellant filed a timely appeal from a January 8, 2015 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 over the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed a pulmonary condition causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the January 8, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that four different military and civilian doctors concurred that the constant exposure of mold, asbestos, and fungi in her work building caused her lung disease.

FACTUAL HISTORY

On January 24, 2014 appellant, a 49-year-old information technology (IT) specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained a pulmonary condition due to factors of her federal employment. She alleged that the air in her work building was contaminated and that this caused her stress, breathing problems, and chest pain. Appellant reported that she first became aware of her condition and attributed it to her federal employment on December 17, 2013.

Appellant submitted a position description and a December 10, 2013 report from Dr. Cesar Vivanco, a Board-certified oncologist, who reported that appellant suffered from “severe respiratory problems contracted in White Sands Missile Range.” Dr. Vivanco noted that appellant experienced a back injury at work that kept her away for several months and after she returned to work, she developed several physical health problems. He opined that appellant’s respiratory problems, constant headaches, upset stomach, chest pain, insomnia, uncontrolled high blood pressure, low energy, and eating disorders were consequences of the high level of stress she was having at work. Dr. Vivanco recommended she stop all stressful activities immediately and indicated that if appellant’s symptoms continued to worsen he would have to consider hospitalization.

In a February 11, 2014 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted narrative statements dated March 4 and June 26, 2014, an environmental report of her work building, and photographs in support of her claim. She also submitted a November 15, 2010 witness statement from her coworker, R.L., who indicated that he noticed her breathing issues when she was required to have prolonged stays within the work building and that she started feeling poorly with a shortness of breath and coughing.

By decision dated January 8, 2015, OWCP denied appellant’s claim finding that the medical evidence she submitted failed to establish a causal relationship between her pulmonary condition and factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim, including the fact that he or she 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, and that an injury⁴ was sustained in the performance of duty. These

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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.⁷

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she developed a pulmonary condition causally related to factors of her federal employment.

Appellant identified the factors of employment that she believed caused her pulmonary condition, specifically breathing in contaminated air at work, which OWCP accepted as factual. However, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her employment caused or aggravated her medical condition.⁸

In his December 10, 2013 report, Dr. Vivanco noted that appellant suffered from “severe respiratory problems contracted in White Sands Missile Range.” He opined that her respiratory problems, constant headaches, upset stomach, chest pain, insomnia, uncontrolled high blood pressure, low energy, and eating disorders were all consequences of the high level of stress she was experiencing at work. Dr. Vivanco recommended that appellant stop all stressful activities immediately and that if her symptoms worsened he would have to consider hospitalization. The Board finds that Dr. Vivanco failed to provide a rationalized opinion to explain how the alleged contaminated air caused or aggravated her pulmonary condition or any other condition. Dr. Vivanco noted that appellant’s condition occurred while she was at work, but such

⁵ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *O.W.*, *supra* note 5.

⁸ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.⁹ The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁰ Lacking thorough medical rationale on the issue of causal relationship, the Board finds that Dr. Vivanco's report is insufficient to establish that appellant sustained an employment-related injury.

Appellant further submitted a position description, her own narrative statements, an environmental report, photographs, and a witness statement from her coworker, R.L. These documents are not medical evidence because they do not contain rationale by a physician relating appellant's disability to her employment.¹¹ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

On appeal, appellant submitted new evidence and contends that four different military and civilian doctors concurred that the constant exposure of mold, asbestos, and fungi in her work building caused her lung disease. As noted,¹² however, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.¹³

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 not met her burden of proof to establish that she developed a pulmonary condition causally related to factors of her federal employment.

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹¹ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

¹² *Supra* note 2.

¹³ See 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2015
Washington, DC

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

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

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