United States Department of Labor
Employees' Compensation Appeals Board

E.V., Appellant	)	
and	)	**Docket No. 15-1759**
	)	**Issued: January 8, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, NORTHAMPTON VETERANS MEDICAL CENTER, Leeds, MA, Employer	)	

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 20, 2015 appellant filed a timely appeal from a June 4, 2015 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a respiratory 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 June 4, 2015 decision, appellant submitted new evidence to the Board. However, 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). Appellant may resubmit this evidence, together with a formal request for reconsideration to OWCP pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On October 2, 2014 appellant, then a 52-year-old nurse, filed an occupational disease claim (Form CA-2) alleging respiratory problems due to poor ventilation and black mold at her workplace. She first became aware of her illness on September 2, 2014 and she stopped work on that day.

With her claim form, appellant submitted an undated statement describing the conditions of the clinic, which included a problematic ventilation system, an on-going leaky roof with visible water stains, and mold on the ceiling tiles. She indicated that testing revealed black mold and she explained that a professional mold remediation had been completed. Appellant also indicated that the workplace had uneven temperatures and was uncomfortable. She noted that duct work ceiling vents were cleaned in August 2014 and she became sick in September 2014. Appellant described her symptoms and stated that she had to be admitted to the hospital, where she was diagnosed with sepsis secondary to community acquired pneumonia. She advised that she never had respiratory problems prior to her employment with the employing establishment.

In an October 27, 2014 report, Dr. Sabitha Gopalswamy, a Board-certified internist, reported a history of exposure to roof leaks, poor ventilation, and mold on ceiling tiles at appellant's office/clinic. She noted treatment of appellant for fever, chills, cough, and shortness of breath on September 1, 2014 and an admission to the hospital with pneumonia on September 4, 2014. Dr. Gopalswamy indicated that appellant returned to work on September 18, 2014. A repeat chest x-ray taken on September 24, 2014 showed resolution of previous pneumonia.

On January 5, 2015 OWCP notified appellant of the deficiencies in her claim and afforded her the opportunity to provide further factual and medical evidence to substantiate her claim. This included a physician's rationalized opinion as to how appellant's workplace exposure resulted in a diagnosed condition.

A May 30, 2014 laboratory analysis report of air monitoring analysis at the employing establishment noted findings of high levels of aspergillis and stachybotrys. In a June 6, 2014 memorandum, the employing establishment stated that stachybotrys was commonly called black mold.

In a January 16, 2015 statement, appellant asserted that she became ill after repeated airborne workplace hazards resulted in her September 2014 hospitalization for sepsis secondary to community acquired pneumonia. She concluded that the conditions at her workplace were deplorable and submitted photographs.

By report dated September 5, 2014, Dr. Gregory T. Williams, a Board-certified internist with subspecialty in infectious disease, noted that appellant was treated for sepsis secondary to community acquired pneumonia. No reference was made to workplace exposure.

In a decision dated February 9, 2015, OWCP denied the claim because the medical evidence of record did not establish that appellant's medical condition was causally related to the accepted workplace exposure. Specifically, it found that appellant's physicians did not provide

rationale establishing a medical relationship between the diagnosed pneumonia and the workplace mold exposure.

On February 27, 2014 OWCP received appellant's February 24, 2015 request for a review of the written record before an OWCP representative.

With her request for review, appellant submitted several medical reports. These included the September 5, 2014 hospital admission report for sepsis secondary to pneumonia and Dr. William's report previously of record.

In a February 24, 2015 report, Dr. Gopalswamy noted that appellant had related that there were duct/vent issues in her workplace which she strongly believed could have precipitated her pneumonia symptoms. She advised that, since the causes of pneumonia could be of different etiology, it was difficult to tell with certainty as to whether the workplace issues contributed to the pneumonia.

By decision dated June 4, 2015, an OWCP hearing representative affirmed the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition, and the implicated employment factors. 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

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

nature of the relationship between the diagnosed condition, and the specific employment factors identified by the claimant.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[7] 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.[8]

ANALYSIS

OWCP denied appellant's claim because there was insufficient medical evidence to establish that her diagnosed pneumonia condition was caused or aggravated by her exposure to black mold at work.

The determination of whether an employment injury is causally related to work factors is generally established by medical evidence.[9]

In her October 27, 2014 report, Dr. Gopalswamy noted appellant's history of exposure to roof leaks, poor ventilation, and mold on ceiling tiles at her workplace and that she was admitted to the hospital with pneumonia on September 4, 2014. However, she offered no opinion on the causal relationship of appellant's condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] In her February 24, 2015 report, Dr. Gopalswamy again noted appellant's workplace exposure, but advised that, since the causes of pneumonia could be of different etiology, it was difficult to tell with certainty if the workplace issues contributed to the pneumonia. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[11] Thus, Dr. Gopalswamy's reports are insufficient to discharge appellant's burden of proof as they do not present a rationalized medical opinion establishing causal relationship.

[5] *Solomon Polen*, 51 ECAB 341 (2000).

[6] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006).

[7] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Sedi L. Graham*, 57 ECAB 494 (2006).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[10] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[11] *See S.E., id.* (finding that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

In his September 5, 2014 report, Dr. Williams advised that appellant was treated for sepsis secondary to community acquired pneumonia, but provided no reference to any workplace mold exposure and offered no opinion as to whether her workplace exposures were the cause of her condition. As noted, medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] As such, Dr. Williams' report is insufficient to meet appellant's burden of proof.

On appeal appellant asserts that the medical evidence submitted supports her claim. As noted, the evidence of record is insufficient to establish causal relationship. Appellant has the burden to establish causal relationship through the submission of rationalized medical opinion evidence.[13]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her diagnosed medical condition was due to factors of employment, as alleged.

[12] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E., id.*

[13] *John J. Montoya*, 54 ECAB 306 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2016
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