

FACTUAL HISTORY

On February 13, 2017 appellant, then a 42-year-old special agent, filed an occupational disease claim (Form CA-2) alleging that job duties caused malignant melanoma and papillary thyroid cancer. He indicated that he first realized the illness was caused or aggravated by his federal employment on February 13, 2017. Appellant did not stop work.² In an attached statement, he described his federal employment history and noted that he had been exposed to high radon levels while working in a basement office. Appellant indicated that in February 2013 he was diagnosed with metastatic malignant melanoma and in March 2015 was diagnosed with papillary thyroid cancer. He referenced medical publications that he alleged supported a causal link between radon and cancer. Appellant noted that he also had employment-related sun exposure and was exposed to explosives and firearms while at work. He also forwarded a position description, a five-page document in which he referenced additional publications regarding radon, melanoma, and thyroid cancer, and a November 7, 2006 radon report of testing done at the Federal Courthouse at 320-6th Street, in Sioux City, Iowa from April 20 to August 24, 2006.

In a March 10, 2017 development letter, OWCP informed appellant of the evidence needed to support his claim. Appellant was asked to forward the medical reports regarding his cancer diagnoses and a report from his physician explaining how any specific exposure contributed to his diagnoses. In a separate letter, OWCP asked the employing establishment to furnish comments from a knowledgeable supervisor regarding appellant's claim, details of radon exposure, and whether he was exposed to other carcinogens while performing his job duties.

In an undated response, appellant described his job duties and referenced radon test results. He indicated that, during melanoma surgery in February 2013, one positive lymph node was found and that he did not have follow-up radiation or chemotherapy. Appellant related that he was diagnosed with thyroid cancer in March 2015 and underwent alcohol ablation. He noted that he was treated for his cancer diagnoses at the Mayo Clinic in Rochester, MN.

Medical evidence submitted in support of his claim included reports from physicians and results from tests conducted at the Mayo Clinic dated from February 2013, when appellant was diagnosed with malignant melanoma of the right forearm and had surgical excision with one positive lymph node. He had follow-up care regarding this diagnosis through January 4, 2017. Multiple positron emission tomography (PET) scans were performed, and no melanoma recurrences were found. In March 2015 appellant was diagnosed with papillary thyroid carcinoma. An ablation procedure was done on May 13, 2015. Follow-up visits found no recurrent thyroid cancer. In late 2015, an area of inflammation near the appendix was noted on a PET scan. This too was followed. On January 3, 2017 Dr. Robert R. McWilliams, Board-certified in internal medicine and medical oncology, recommended a magnetic resonance imaging to analyze this area of inflammation. After the physician's review of the study, he

² The record also contains a Form CA-2 filed by appellant on January 18, 2007 in which he indicated that he was exposed to radon in his Federal Government office where he had worked for approximately four years. He indicated that he had not been diagnosed with cancer, but recognized that radon could cause cancer in later life. The record does not indicate that this claim has been developed by OWCP.

advised that the findings were not consistent with melanoma, but recommended follow-up in six months.

On February 7, 2017 appellant contacted Dr. McWilliams and inquired about the causal relationship between his employment and his cancer diagnoses. Dr. McWilliams responded that he did not “see much in the literature associating skin melanoma with radon,” but noted that “outside sunlight exposure is associated with risk.” In a February 8, 2017 letter, he described appellant’s report that appellant had worked at the employing establishment since he was 23 and had been exposed to extensive outside work with sun exposure and that he worked in a basement office with high levels of radon. Dr. McWilliams noted appellant’s diagnoses of melanoma and papillary thyroid cancer. He opined that, sunlight exposure was associated with a risk for melanoma and indicated that, while radon had not been reported as associated with melanoma, it could be associated with an overall cancer risk. Dr. McWilliams concluded that, based on the information given by appellant, it was at least possible that his malignancy diagnoses were work related.

Appellant again contacted Dr. McWilliams on February 21, 2017. He noted that he had done research and found scholarly articles listed on the National Institutes of Health website that he thought were supportive. In correspondence dated March 24, 2017, Dr. McWilliams noted that he had read specific articles regarding outdoor exposure of police personnel, the increased incidence of thyroid cancer among police officers, and residential radon exposure and skin cancer. He concluded that, as appellant had notable exposures during his work at the employing establishment and had two malignancies at a young age, it was “certainly plausible that the work-related exposures contributed significantly to the incident of these cancers.”

Appellant was last seen at the Mayo Clinic on July 11, 2017 by Dr. Svetomir N. Markovic, a Board-certified hematologist. He noted no evidence of melanoma recurrence and recommended a colonoscopy in six months to evaluate the low-level inflammatory-like uptake in the area of the appendix.

By decision dated August 9, 2017, OWCP found that appellant was exposed to increased radon levels while working in a basement office from April 27 to August 24, 2006, that he was exposed to sunlight during his federal employment, and that he was exposed to fire during his federal employment. It, however, denied the claim because the medical evidence submitted was insufficient to establish a causal relationship between these accepted employment factors and his cancer diagnoses. OWCP found Dr. McWilliams’ opinion too speculative to establish that the claimed conditions were employment related.

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, and that the claim was timely filed within the applicable time limitation period of FECA.³ When an employee claims that he or she sustained

³ 5 U.S.C. § 8101(1); *L.M.*, Docket No. 16-0143 (issued February 19, 2016); *B.B.*, 59 ECAB 234 (2007).

an injury in the performance of duty,⁴ he or she must submit sufficient evidence to establish a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.⁵ The employee must also establish that such event, incident, or exposure caused an injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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.”⁸ 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.⁹

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the diagnosed metastatic malignant melanoma and papillary thyroid carcinoma were causally related to the accepted federal work factors of radon, sunlight, and fire exposure.

⁴ *Id.* at § 8102(a).

⁵ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁶ *Id.*

⁷ *R.H.*, 59 ECAB 382 (2008).

⁸ 20 C.F.R. § 10.5(ee).

⁹ *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The record includes reports from a number of physicians and diagnostic studies that confirm the diagnoses of metastatic skin melanoma and papillary thyroid carcinoma. However, none of these reports contain sufficient medical rationale to establish that the diagnosed conditions were caused or aggravated by the accepted federal work factors.

The only reports that contain an opinion on causal relationship are the February 8 and March 24, 2017 letters from Dr. McWilliams. The Board finds that these reports are insufficient to establish causal relationship because they are couched in speculative terms. On February 8, 2017 Dr. McWilliams noted that sun exposure was associated with a risk for melanoma and that radon could be associated with an overall cancer risk. In that report he opined that it was at least possible that appellant's cancer diagnoses were employment related. On March 24, 2017 Dr. McWilliams noted that he had read specific articles regarding outdoor exposure of police personnel, the increased incidence of thyroid cancer among police officers, and residential radon exposure and skin cancer. He concluded that, as appellant had notable exposures during his work at the employing establishment and had two malignancies at a young age, it was "certainly plausible that the work-related exposures contributed significantly to the incident of these cancers."

The Board has long held that excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case.¹³ While Dr. McWilliams generally related appellant's diagnoses to publications that found relationships between specific exposures and melanoma and thyroid cancer diagnoses, he merely mentioned the findings of the articles and made an assumption of plausibility without explaining in detail how these exposures caused or contributed to appellant's diagnoses.

To establish causal relationship under FECA, a claimant must submit a medical opinion report in which a physician reviews the employment factors identified as causing the claimed condition (herein radon, sunlight, and fire exposure) and, taking these factors into consideration along with findings upon examination, opines whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.¹⁴ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹⁵ The Board finds Dr. McWilliams' medical opinions speculative and insufficient to meet appellant's burden of proof.¹⁶

Thus, the evidence presently of record provides insufficient explanation from a physician regarding whether appellant's diagnosed malignant melanoma and thyroid carcinoma were

¹³ *Roger G. Payne*, 55 ECAB 535 (2004).

¹⁴ *J.M.*, 58 ECAB 303 (2007).

¹⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁶ *Id.*

caused or aggravated by his accepted factors of his federal employment. Appellant, therefore, did not meet his burden of proof.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 his burden of proof to establish that his cancer diagnoses were causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2018
Washington, DC

Christopher J. Godfrey, 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

¹⁷ See *J.H.*, Docket No. 17-0248 (issued May 10, 2017).