

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

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<b>J.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1486</b>
	)	<b>Issued: April 15, 2019</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS ADMINISTRATION MEDICAL</b>	)	
<b>CENTER, Tomah, WI, Employer</b>	)	
_____	)	

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On July 24, 2018 appellant filed a timely appeal from a February 7, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease causally related to the accepted factor of her federal employment.

## FACTUAL HISTORY

On April 7, 2017 appellant, then a 47-year-old clinical application coordinator, filed an occupational disease claim (Form CA-2) alleging that she developed an atelectasis due to possible black mold exposure at work. She noted that she first became aware of her claimed condition on December 7, 2016 and related it to her federal employment on March 16, 2017. Appellant did not stop work.

OWCP received a duty status report (Form CA-17) and a medical release for work form dated April 10, 2017 from Dr. Brian Withers, an osteopathic physician specializing in family medicine. Dr. Withers noted an injury date of March 16, 2017 and released appellant to return to work without restrictions on April 10, 2017. On the Form CA-17 he noted respiratory exposure to toxic black mold and provided a diagnosis of mold exposure. Dr. Withers reported clinical findings of atelectasis vs. fibrosis, improving shortness of breath, cough, and light headedness.

In a development letter dated April 24, 2017, OWCP informed appellant that additional information was necessary to establish her claim, including a detailed description of the employment-related factors that she believed caused or contributed to her condition. Appellant was also instructed as to the rationalized medical evidence establishing causal relationship. OWCP provided a questionnaire for her completion and afforded her 30 days to submit the requested information. By separate letter of the same date, it requested that the employing establishment respond to appellant's allegations and provide information regarding her alleged workplace exposure.

In response to OWCP's April 24, 2017 development letter, appellant submitted factual and medical evidence including her statement and a copy of e-mail correspondence from coworkers describing the mold problems at their worksite.

In a March 16, 2017 Tomah Memorial Hospital emergency department report and nurse's notes from Ashley Path, nurse practitioner, and Amy DeLange, a nurse, appellant's diagnosis was listed as sinusitis maxillary.

Dr. Withers, in a progress note dated April 10, 2017, detailed appellant's complaints. Appellant related developing pulmonary issues after being exposed to black mold in an air conditioning unit near her work area. A review of x-ray interpretations revealed atelectasis versus fibrosis. Under impression/report/plan, Dr. Withers noted possible sticky buttress or other mold exposure. He noted an abnormal x-ray interpretation, that appellant was currently working in another building, and a follow-up x-ray would be performed in two months. Dr. Withers reported that if appellant continued to have lung problems she would be referred to either a pulmonologist or her primary care physician for treatment.

A June 12, 2017 x-ray interpretation noted mold exposure and reported no acute abnormality. Under findings, it reported unchanged linear atelectasis or fibrosis anteriorly.

In a June 12, 2017 form report, Dr. Withers released appellant to return to work that day and noted “improving mold exposure.”

Dr. Withers, in a June 12, 2017 report, observed that appellant had not experienced symptoms since she began working at a different worksite. He noted physical examination findings. A review of two x-ray interpretations revealed clear lungs, with unchanged linear atelectasis and anterior fibrosis. Under impression, Dr. Withers noted “mold exposure” and discharged appellant with no work restrictions. In an addendum he recommended follow-up x-ray evaluation be performed in a year regarding the atelectasis versus fibrosis found on her x-ray interpretations.

By decision dated October 5, 2017, OWCP denied appellant’s occupational disease claim. It found the factual evidence sufficient to establish mold exposure as an employment factor, but found the medical evidence failed to contain a medical diagnosis causally related to the accepted employment factor.

Subsequent to the denial of appellant’s claim, OWCP received additional evidence.

A March 16, 2017 x-ray report noted findings of right mid lung and left lower lobe atelectasis versus fibrous.

On December 12, 2017 appellant requested reconsideration and submitted an October 17, 2017 report, wherein Dr. Withers detailed her symptoms and noted that she had been exposed to mold at her worksite. Dr. Withers opined that it appeared that appellant’s symptoms were attributable to mold exposure based on her improvement after removal from the work environment. He noted that she had been seen twice for symptoms related to mold exposure and that an x-ray interpretation showed atelectasis versus fibrosis. Appellant became asymptomatic after removal from exposure to mold in the work environment.

By decision dated February 7, 2018, OWCP denied modification of its prior decision, finding that the medical evidence was insufficient to establish a diagnosed medical condition in connection with the accepted employment factor due to exposures at work.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are

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<sup>3</sup> *Supra* note 1.

causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

OWCP's regulations define the term "[o]ccupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift.<sup>6</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employee.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factor of her federal employment.

In support of her claim appellant submitted various reports from Dr. Withers, who noted findings consistent with either atelectasis versus fibrosis, which he attributed to black mold exposure at work. Dr. Withers attributed her symptoms to black mold exposure at work because her symptoms improved after she was removed from being exposed to the black mold at work. Although this opinion supported causal relationship, the Board finds that it fails to provide medical rationale explaining the basis for his conclusion regarding the casual relationship between appellant's work exposure to black mold and a diagnosed medical condition.<sup>10</sup> The Board has held that the mere fact that her symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her

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<sup>4</sup> 5 U.S.C. § 8101(1); S.C., Docket No. 18-1242 (issued March 13, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>6</sup> 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2(b) (June 2011).

<sup>7</sup> *M.D.*, Docket No. 18-1365 (issued March 12, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *M.S.*, Docket No. 18-1280 (issued March 12, 2019); *D.I.*, 59 ECAB 158 (2007).

<sup>9</sup> *Id.*, *see also P.S.*, Docket No. 18-1222 (issued January 8, 2019).

<sup>10</sup> *See D.C.*, Docket No. 17-1982 (issued July 11, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

condition and Dr. Wither's employment factors.<sup>11</sup> Lacking thorough medical rationale on the issue of causal relationship, the Board finds that his reports are insufficient to establish that appellant sustained an employment-related injury.

Appellant also submitted diagnostic testing reports in support of her claim, but these diagnostic tests do not address the etiology of her pulmonary condition. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between her employment factors and a diagnosed condition.<sup>12</sup>

OWCP also received a report signed by a nurse practitioner and nurse. However, under FECA,<sup>13</sup> the reports of a nonphysician, including nurse practitioners and nurses, do not constitute probative medical evidence.<sup>14</sup>

As the record does not contain a rationalized opinion explaining causal relationship between appellant's diagnosed condition and the accepted employment exposure, the Board finds that she has not met her burden of proof.

On appeal, appellant asserts that the building she worked in was also found to have bat guano in addition to the mold. She asserts that her symptoms and permanent lung scarring are directly related to her exposure to bat guano and mold. As explained above, the Board finds that the medical evidence of record is insufficient to establish the claim.

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 an occupational disease causally related to the accepted factor of her federal employment.

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<sup>11</sup> See *M.B.*, Docket No. 17-1999 (issued November 13, 2018); *D.C.*, *id.*; *R.H.*, Docket No. 07-2256 (issued March 3, 2008).

<sup>12</sup> See *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>13</sup> 5 U.S.C. 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.404; *C.P.*, Docket No. 17-0042 (issued December 27, 2016); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>14</sup> Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under 5 U.S.C. § 8101(2). Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. However, a report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. See *M.F.*, Docket No. 17-1973 (issued December 31, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2019  
Washington, DC

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

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

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