

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

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| R.M., Appellant |) | |
| |) | |
| and |) | Docket No. 18-0976 |
| |) | Issued: January 3, 2019 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| WHITE CITY DOMICILARY, White City, OR, |) | |
| 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2018 appellant filed a timely appeal from a March 22, 2018 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted employment-related asbestos exposure.

FACTUAL HISTORY

On January 10, 2017 appellant, then a 64-year-old retired hospital housekeeping officer, filed an occupational disease claim (Form CA-2) alleging that he developed lung cancer as a result

¹ 5 U.S.C. § 8101 *et seq.*

of exposure to asbestos at the employing establishment. He noted that he first became aware of his claimed condition on July 24, 1985 and of its relationship to his federal employment on March 2, 2016. Appellant explained that he had not filed his claim within 30 days because he did not have medical documentation. On the reverse side of the claim form, a supervisor noted that appellant had retired on April 1, 2016 and the date of last exposure to the conditions alleged to have caused his condition was October 13, 1985.

By development letter dated April 7, 2017, OWCP noted that appellant had not provided documentation in support of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted factual and medical evidence including a response to the provided questionnaire.

In a statement dated April 28, 2017, appellant explained that he was exposed to asbestos at work when he walked to his office down a hallway that was under construction.

In a May 19, 1982 asbestos screening questionnaire, appellant noted asbestos exposure for eight months at work. He checked “no” to the question of whether he had nonwork asbestos exposure.

Appellant submitted reports of various diagnostic tests. A July 24, 1985 pulmonary function study (PFS) reported mild obstructive ventilator defect. A January 29, 1986 x-ray interpretation revealed a normal chest. A May 15, 1987 PFS revealed evidence of mild diffuse obstructive disease. A March 14, 2014 computerized tomography (CT) scan revealed a 1.8 centimeter pulmonary nodule, changes of remote granulomatous disease, and findings suspicious for primary or metastatic neoplasm. A January 21, 2016 CT scan of appellant’s left lung revealed a left upper nodule had increased in size from 3.66 to 6.91, changes of remote granulomatous disease, and findings suspicious for distant or regional metastasis.

In an April 10, 2016 surgical report, Dr. Ross Michael Reul, a Board-certified thoracic surgeon, related that he had performed a lung resection on April 4, 2016.

Dr. Mary Schwartz, a Board-certified pathologist, reported findings of carcinoid tumor and left lung mass in an April 10, 2016 pathology report. She noted no interstitial fibrosis or pneumonia was identified in the lung parenchyma away from the tumor.

By decision dated July 20, 2017, OWCP denied appellant’s claim. It found that he had established that he was exposed to asbestos at work as alleged. However, appellant’s claim was denied as he failed to submit medical evidence establishing that his diagnosed medical condition was causally related to the accepted factors of his federal employment.

On August 14, 2017 OWCP received appellant’s request for an oral hearing before an OWCP hearing representative, which was postmarked on August 8, 2017. The oral hearing was held on January 17, 2017.

By decision dated March 22, 2018, OWCP's hearing representative affirmed the July 20, 2017 decision denying the claim. He found the medical evidence of record was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 or specific condition for which compensation is claimed is 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 a claim for occupational disease, an employee must submit: (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.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 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

² *Id.*

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).

⁵ *D.U.*, Docket No. 10-0144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁶ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁷ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted employment-related asbestos exposure.

Appellant submitted medical reports from his treating physicians which noted his cancer diagnosis and his lung resection, which was performed on April 4, 2016. However, neither Dr. Reul nor Dr. Schwartz offered an opinion regarding the cause of the diagnosed cancer. Therefore, their reports are of no probative value in establishing causal relationship.⁹

OWCP also received diagnostic test reports. The Board has held, however, that such reports lack probative value as they do not provide an opinion on causal relationship between the accepted employment factor(s) and a diagnosed condition(s).¹⁰

The Board has previously noted that lung cancer is a very broad diagnosis with many potential etiologies, but the only etiology claimed as work related by appellant was not noted by any physician. The lung cancer diagnosis therefore appears to be for a coincidental condition with several other potential causes not including exposure to asbestos.¹¹ The Board finds that appellant has not established a diagnosis of asbestos-related lung cancer.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.¹² Neither the fact that appellant's claimed condition became apparent during a period of employment, nor his belief that the condition was caused by his employment, is sufficient to establish causal relationship.¹³ As appellant has not established that his lung cancer was causally related to his exposure to asbestos, he has not met his burden of proof.

On appeal appellant asserts that his lung cancer was due to his asbestos exposure. For the reasons set forth above, the Board finds that appellant has not met his burden of proof.

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.

⁹ Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship. See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ See *C.D.*, Docket No. 17-2011 (issued November 6, 2018).

¹¹ *D.M.*, Docket No. 17-0677 (issued September 13, 2017).

¹² See *B.A.*, Docket No. 17-1130 (issued November 24, 2017); *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

¹³ *G.E.*, Docket No. 17-1719 (issued February 6, 2018); *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted employment-related asbestos exposure.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board