

ISSUE

The issue is whether appellant has met his burden of proof to establish lung conditions causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 25, 2017 appellant, then a 60-year-old reproduction equipment operator, filed an occupational disease claim (Form CA-2) alleging multiple medical conditions as a result of being exposed to chemical fumes due to factors of his federal employment. He indicated that he first became aware of his conditions, and their relationship to factors of his federal employment, on October 21, 2014.

In a narrative statement dated July 25, 2017, appellant indicated that on September 3 and 11, 2014 he was exposed to hazardous roofing material chemicals, which came through the air conditioning system and into his employment duty station. He noted that he left work on September 11, 2014 for medical examination. Appellant subsequently felt ill in the days after exposure and sought medical treatment from his primary physician on September 30, 2014. He related that a scan of his lungs revealed a number of noncalcified growths sprouting in both lungs. Appellant indicated that he began experiencing severe pain in his lower intestines on March 5, 2015 and was diagnosed with infectious colitis. He noted that he was hospitalized and then placed on a steroid medication for his lung disease, which had been diagnosed as sarcoidosis. Appellant noted that the steroid medication caused side effects including a collapsed left lung and dangerously low levels of oxygen. He also noted that, subsequent to filing the Form CA-2, he also suffered from blood poisoning, bronchitis, a fractured back from repetitive coughing, a left-sided hernia, and had major corrective spinal surgery all of which he attributed to the chemical exposure in March 2014.

In a development letter dated August 9, 2017, OWCP advised appellant of the deficiencies of his claim. It provided a questionnaire for his completion and informed him of the medical evidence needed to establish his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In response to OWCP's development letter, on August 14, 2017 OWCP received approximately 100 separate diagnostic examination reports ranging from December 17, 2008 to July 1, 2016 regarding appellant's lung conditions.

In addition, OWCP received approximately 40 separate medical reports with dates ranging from March 30, 2014 to October 28, 2016 from various physicians at the Veterans Administration (VA) Hospital in Hines, IL including: a report dated March 30, 2014 from Dr. Hameeda Shaikh, a Board-certified pulmonologist; a report dated February 24, 2015 from Dr. Michael Eng, a Board-certified cardiothoracic surgeon; reports dated April 7, 2015 from Dr. John Santaniello, a Board-certified general surgeon, and Dr. Michael Sprang, a Board-certified gastroenterologist; a report dated April 21, 2015 from Dr. Jennifer Plitcha, a Board-certified general surgeon; a report dated May 19, 2015 from Dr. Usman Khan, a Board-certified pulmonologist; a report dated August 26, 2015 from Dr. Ambrose Panico, an osteopath; a report dated September 15, 2015 from Dr. William W. Ashley, a Board-certified neurosurgeon; a report dated December 8, 2015 from

Dr. Linda Chan, a Board-certified pulmonologist; a report from Dr. Raj Uppal, an anesthesiology specialist; multiple reports dated February 1 through 16, 2016 from Dr. Teng Moua, a Board-certified pulmonologist; reports dated February 2 and 17, 2016 from Dr. Robert A. Werners, a Board-certified endocrinologist; reports dated February 4, 2015 and June 9, 2016 from Dr. Brian E. Grogg, Board-certified in physical medicine and rehabilitation; a report dated February 4, 2016 from Dr. Amy E. Rabatin, Board-certified in physical medicine and rehabilitation; multiple reports dated February 19 through April 15, 2016 from Dr. Michael Frett, a pain management specialist; a report dated May 15, 2016 from Dr. W. Richard Marsh, a Board-certified neurosurgeon; a report dated May 18, 2016 from Dr. Jeremy L. Fogelson, a Board-certified neurosurgeon; a report dated June 17, 2016 from Dr. Stephen J. Johans, a Board-certified neurosurgeon; a report dated June 29, 2016 from Dr. Jerry Bauer, a Board-certified neurosurgeon; and a report dated October 28, 2016 from Dr. Frank Laghi, a Board-certified pulmonologist. These physicians collectively diagnosed the following conditions: lung nodules, chronic back pain, degenerative disc disease, steroid-induced osteoporosis with fracture, steroid-induced testicular hypofunction, infectious colitis, enteritis, gastritis, blood poisoning, sleep apnea, and rheumatic disorders of both mitral and tricuspid valves. Each physician reviewed appellant's history of injury and diagnostic reports, performed a physical examination, and diagnosed a variety of conditions.

In a report dated February 16, 2016, Dr. Moua indicated that he could not provide a definitive diagnosis as to whether the lung nodules were sarcoidic in nature, and noted that, even if the nodules were sarcoidic, the brief exposures on September 9 and 11, 2014 could not have caused them.

OWCP reviewed the medical records submitted and undertook further development of the claim. In a new development letter dated September 21, 2017, it advised appellant of the deficiencies of his claim, notified him of the type of additional evidence needed to establish his claim, and provided a questionnaire for his completion. Appellant was informed of the medical evidence necessary to establish his claim. OWCP afforded him 30 days to respond.

On October 17, 2017 OWCP received 83 separate medical reports, dated August 26, 2015 to October 12, 2017, from a number of physicians at the VA Hospital in Hines, IL, including: a report dated August 26, 2015 from Dr. Keith Burgard, an internal medicine specialist; multiple reports dated September 14, 2015 through September 26, 2017 from Dr. Farah A. Meah, a Board-certified endocrinologist; a report dated February 19, 2016 from Dr. Kaya Shah, a pain management specialist; multiple reports dated March 7, 2016 through June 2, 2017 from Dr. Laghi; a report dated March 25, 2016 from Dr. Arslan Zaidi, a pain management specialist; a report dated April 15, 2016 from Dr. Sara Strowd, a pain management specialist; a report dated June 21, 2016 from Dr. Yvonne Lucero, a physical medicine and rehabilitation specialist; multiple reports dated August 25, 2016 through March 16, 2017 from Dr. Michael Wernhoff, a Board-certified neurosurgeon; a report dated August 28, 2016 from Dr. Edward C. Villa, an emergency medicine specialist; a report dated September 23, 2016 from Dr. Bruce E. Lewis, a Board-certified neurosurgeon; a report dated November 26, 2016 from Dr. Stephen Roberts, a Board-certified neurosurgeon; a report dated December 3, 2016 from Dr. Swathi Chidambaram, a Board-certified neurosurgeon; a report dated December 13, 2016 from Dr. John S. Wheeler, a Board-certified neurosurgeon; two reports dated September 20, 2017 from Dr. Kevin Swong, a Board-certified neurosurgeon, and Dr. Matthew Kominsky, a pain management specialist; two reports dated October 11 and 12, 2017 from Dr. Werners; a report dated October 12, 2017 from Dr. Grogg; and

two reports dated October 12 and 30, 2017 from Dr. Moua. These physicians provided examination findings including the previously listed diagnoses.

In his October 12 and 30, 2017 reports, Dr. Moua indicated that he was provided with the material safety data sheet for the chemical exposure and that it was not likely that one exposure could be the cause of appellant's pulmonary condition. In addition, he diagnosed nodules with unknown etiology and could not definitively choose between the possible causes of granulomatous infection or inflammation, sarcoidosis, or inhalation injury.

By decision dated January 11, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted factors of his federal employment.

On January 22, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. He submitted two diagnostic reports dated October 21, 2014 and December 18, 2015 along with his request.

On June 26, 2018 a hearing was held before an OWCP hearing representative.

By decision dated August 30, 2018, OWCP's hearing representative affirmed OWCP's January 11, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶

In an occupational disease claim, to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the

³ *Supra* note 2.

⁴ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *A.M.*, *supra* note 4; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

disease or condition;⁷ (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁸ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

Causal relationship is a medical issue, and the medical evidence required to establish 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 lung conditions causally related to the accepted factors of his federal employment.

In support of his occupational disease claim, appellant submitted a total of 288 medical reports dated February 13, 2014 to October 12, 2017. These reports indicated appellant's diagnosed conditions, which included: lung nodules, chronic back pain, degenerative disc disease, steroid induced osteoporosis with fracture, steroid-induced testicular hypofunction, infectious colitis, enteritis, gastritis, blood poisoning, sleep apnea, and rheumatic disorders of both mitral and tricuspid valves. However, none of these reports included a narrative medical opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence which does not offer an opinion on causal relationship is of no probative value to the issue of causal relationship.¹³ Therefore, these reports are insufficient to establish appellant's claim.

The only physician of record who addressed causal relationship was Dr. Moua. In his reports dated October 12 and 30, 2017, Dr. Moua opined that he could not definitely identify the

⁷ *C.C.*, Docket No. 18-1229 (issued March 8, 2019); *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *K.C.*, Docket No. 19-1185 (issued November 12, 2019); *R.A.*, Docket No. 16-1218 (issued November 10, 2016); *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁹ *Id.*

¹⁰ *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

¹¹ *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

¹² *A.M.*, *supra* note 10; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *See L.T.*, Docket No. 18-1603 (issued February 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

etiology or cause of appellant's conditions. As Dr. Moua's opinion is equivocal and speculative in nature, it is insufficient to establish appellant's claim.¹⁴

On appeal counsel asserts that appellant has met his burden of proof to establish that his diagnosed lung conditions are causally related to the accepted factors of his federal employment. He does not, however, cite to a rationalized medical report on the issue of causation. As explained above, the Board finds that the record lacks rationalized medical evidence establishing causal relationship between appellant's federal employment duties and his diagnosed conditions. For this reason, the Board finds that appellant has not met his burden of proof to establish his 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 his burden of proof to establish lung conditions causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁴ *M.M.*, Docket No. 19-0061 (November 21, 2019); *D.R.*, Docket No. 17-0971 (issued October 5, 2017).