United States Department of Labor
Employees' Compensation Appeals Board

A.Z., Appellant	)	
and	)	**Docket No. 20-0411**
	)	**Issued: October 7, 2020**
DEPARTMENT OF VETERANS AFFAIRS, BAY PINES VA MEDICAL CENTER, St. Petersburg, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 10, 2019 appellant filed a timely appeal from a June 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from June 13, 2019, the date of OWCP's decision, was December 10, 2019. Since using December 12, 2019, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is December 10, 2019, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a respiratory condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On June 22, 2018 appellant, then a 65-year-old staff psychologist, filed an occupational disease claim (Form CA-2) alleging that, due to factors of her federal employment, she developed pulmonary conditions including severe asthma, paroxysmal coughing/hemoptysis, and reactive airways. She noted that she first became aware of her condition on June 1, 2015 and realized that it was caused or aggravated by her federal employment on September 23, 2016. Appellant explained that she had not filed her claim within 30 days because she was never informed of OWCP's filing requirements by the employing establishment.

In a July 10, 2018 development letter, OWCP informed appellant that it had received no evidence in support of her occupational disease claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's exposure to potentially harmful substances, and comments from a knowledgeable supervisor regarding the accuracy of her statements. It afforded both parties 30 days to respond.

In a July 20, 2016 letter, Dr. Patrick Klemawesch, Board-certified in internal medicine, detailed his treatment of appellant related to her history of severe asthma with paroxysmal coughing episodes leading to hemoptysis. He explained that she had to limit her use of medication to treat her condition due to her history of glaucoma. Appellant informed Dr. Klemawesch that a strong trigger effect of her symptoms was her work environment where she documented multiple ceiling water leaks and discolored moldy ceiling tiles. Since she began her abbreviated work schedule, she noted a clear correlation between her symptoms and her time in her office building. Dr. Klemawesch explained that hypersensitivity testing indicated that appellant was moderately sensitive to multiple indoor and outdoor molds. He opined that she must limit her exposure to her employment building as a part of her treatment.

In a July 27, 2016 letter, appellant detailed her history of respiratory problems since transferring to the employing establishment in 2012. She requested that the employing establishment perform a safety check of her work environment as she believed the air quality was having an effect on her health.

Appellant submitted a September 14, 2016 indoor air quality survey provided by Cristina Jones, a certified industrial hygienist. Ms. Jones reviewed samples from the mental health area where appellant worked and opined that water damage caused the amplification of biological spores to exist. She also recommended remediation steps for the employing establishment to undertake.

In a November 1, 2016 letter, appellant informed her human resources department of the chronology of her conditions. She explained that after the environmental engineering study was performed on her floor, three offices in the mental health clinic, including her own were closed.

In a March 28, 2017 letter, appellant informed her supervisor of her intent to retire as of May 31, 2017 as a result of the health challenges caused by her work environment. She voluntarily retired effective May 31, 2017.

Dr. Ali Saberi, Board-certified in internal medicine, in a May 8, 2018 narrative medical report, reviewed appellant's employment history from 2012 and her past medical history, including medical evidence from Dr. Klemawesch which noted asthma and symptoms of coughing. He diagnosed dyspnea, paroxysmal coughing episodes leading to syncope and hemoptysis, reactive airway disease, and severe asthma exposure. Dr. Saberi opined that appellant's conditions were caused by the mold exposure she encountered at her employing establishment. He noted that her eyes had also been affected beginning June 2016 and ultimately required emergency surgery. Dr. Saberi explained that, due to the use of inhalers to treat her respiratory issues, appellant's optic nerve was 50 percent destroyed. He also noted that she had not experienced a trigger since her retirement on May 31, 2017. Dr. Saberi opined that appellant's condition arose in the course of her employment and that her work duties contributed to, aggravated, and/or caused her conditions. He explained that her 2006 treatment for reactive airways made her more prone to sustaining subsequent respiratory injuries. Dr. Saberi explained that her respiratory issues were causally related to her continued exposure to the mold in the employing establishment as working in the area was a "documented trigger" and an air quality test revealed that the office she was working contained water damage and mold.

In response to OWCP's development questionnaire, appellant submitted a July 16, 2018 statement in which she indicated that she was continuously exposed to mold spores while performing her work duties as a psychologist 40 hours per week and this caused her health problems. She alleged that she experienced severe coughing and wheezing that had caused her to cough up blood as a result.

The employing establishment controverted appellant's occupational disease claim in a September 28, 2018 letter. It asserted that mold is located everywhere in the State of Florida and is not state regulated. The employing establishment reasoned that because mold is not regulated and it cannot be proven that appellant's illness was caused by conditions of her federal employment, her claim should be denied. It also attached a series of e-mails dated from August 5, 2016 to August 20, 2018 demonstrating that she was relocated due to mold levels in her office.

In an undated personal statement, appellant detailed the development of her respiratory and glaucoma issues from 2012, when she began her employment at the employing establishment, through her retirement in 2017. She stated that every day she worked at the employing establishment since 2012 she was exposed to water damage and indoor fungal spores until she requested that an indoor air survey be performed in July 2016. Appellant explained that the indoor air quality survey revealed water damage and mold that caused her building to be condemned and closed. She also noted a previous 2006 coughing episode after which she was diagnosed with a reactive airway. Appellant further stated that her symptoms related to the 2006 coughing episode quickly resolved.

By decision dated October 18, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

On November 7, 2018 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. In an attached letter, she noted her disagreement with OWCP's October 18, 2018 decision and cited Board decisions to demonstrate the sufficiency of her medical evidence.

OWCP subsequently received an April 13, 2016 medical report, wherein Dr. Hudman Hoo, Board-certified in internal medicine, evaluated appellant for her recurring coughing, wheezing, and dyspnea and recounted the history of her related symptoms. Dr. Hudman Hoo diagnosed allergic rhinitis due to pollen, hemoptysis, wheezing, and a chronic cough and provided medications to treat her conditions.

By decision dated January 11, 2019, OWCP's hearing representative vacated the October 18, 2018 decision and remanded the case for further development. He determined that OWCP had not properly made findings of the specific factors of employment that were accepted prior to considering the medical evidence of record.

By decision dated February 13, 2019, OWCP denied appellant's occupational disease claim. It made specific findings as to the accepted factors of employment, but denied the claim as the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

On March 22, 2019 appellant requested reconsideration of OWCP's February 13, 2019 decision. In an attached letter, she clarified that she was diagnosed with asthma prior to her 2015 to 2017 health problems. Appellant asserted that the employing establishment's argument was unsubstantial and reasoned that the office she worked in was the only facility in which she experienced symptoms related to her pulmonary conditions.

In a June 22, 2016 letter, Dr. Gerald Snyder, a Board-certified optometrist, noted that appellant presented for a glaucoma evaluation. He indicated that she underwent cataract surgery in 2012 and had since discontinued her use of prescription eye drops because of breathing issues.

Dr. Saberi clarified in an October 25, 2018 letter that appellant did not have a preexisting condition of asthma before he began treating her in 2015. He indicated that her asthmatic conditions began after she was exposed to mold at her place of employment. Dr. Saberi opined that appellant's medical issues and respiratory diagnoses were causally related to her continued exposure to the employing establishment.

In an October 30, 2018 letter, Dr. Klemawesch also clarified that appellant did not have a preexisting condition of asthma prior to working at the employing establishment and opined that her conditions developed as a result of the prevalence of mold at the employing establishment. He opined that her respiratory medical issues were causally related to her chronic exposure to aspergillus and penicillium mold at the employing establishment.

By decision dated June 13, 2019, OWCP's hearing representative affirmed the February 13, 2019 decision finding that the evidence of record was insufficient to establish, by probative and substantial evidence, that appellant's respiratory conditions were causally related to the accepted factors of her federal employment.

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 timely filed within the applicable time limitation period of FECA,[3] 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.[4] 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.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, 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 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 identified employment factors.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[9]

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

[6] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[9] *Id.*; *Victor J. Woodhams*, *supra* note 6.

ANALYSIS

The Board finds that the case is not in posture for decision.

In support of her claim, appellant submitted a July 20, 2016 letter in which Dr. Klemawesch detailed his treatment for her severe asthma with paroxysmal coughing episodes leading to hemoptysis. He acknowledged the water leaks and discolored mold in her work environment as a strong trigger effect of her symptoms. Dr. Klemawesch explained that hypersensitivity testing indicated that appellant was moderately sensitive to multiple indoor and outdoor molds and opined that her employment building was a contributing factor of her conditions. In a separate October 30, 2018 letter, he identified her chronic exposure to aspergillus and penicillium mold at the employing establishment as the cause of her respiratory conditions.

Additionally, Dr. Saberi, in his May 8, 2018 narrative medical report, reviewed appellant's employment history and past medical history and diagnosed dyspnea, paroxysmal coughing episodes leading to syncope and hemoptysis, reactive airway disease, and severe asthma exposure. On evaluation of appellant and review of an air quality test of her office building, he opined that the mold exposure at the employing establishment contributed to, aggravated and/or caused her conditions and explained that her 2006 treatment for reactive airways made her more prone to sustaining subsequent respiratory injuries.

The Board finds that, although Drs. Klemawesch and Saberi's medical opinions are not fully rationalized, they constitute relevant evidence in support of appellant's claim, as they explain the physiological process by which her accepted factors of federal employment caused or aggravated her diagnosed respiratory conditions. Dr. Klemawesch's July 20, 2016 letter and Dr. Saberi's May 8, 2018 narrative medical report therefore raise an uncontroverted inference of causal relationship between her claimed respiratory conditions and the accepted factors of her federal employment. Further development of appellant's claim is therefore required.[10]

On remand OWCP shall prepare a statement of accepted facts (SOAF) setting forth the employment factors which have been established and refer appellant to an appropriate second opinion physician for an examination and a rationalized medical opinion as to whether her accepted employment factors either caused or aggravated her respiratory conditions.[11] If the second opinion disagrees with the explanations provided by Drs. Klemawesch and Saberi, he or she must provide a fully-rationalized explanation explaining why their opinions are unsupported. After this and such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[10] *See A.T.*, Docket No. 19-1972 (issued June 25, 2020); *K.T.*, Docket No 19-1436 (issued February 21, 2020); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 7, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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