

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

_____)	
A.T., Appellant)	
)	
and)	Docket No. 20-0731
)	Issued: September 30, 2020
DEPARTMENT OF THE AIR FORCE, TINKER)	
AIR FORCE BASE, OK, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 14, 2020 appellant filed a timely appeal from a January 31, 2020 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 over 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 factors of his federal employment.

FACTUAL HISTORY

On October 30, 2019 appellant, then a 36-year-old inventory management specialist, filed an occupational disease claim (Form CA-2) alleging that he developed throat and sinus conditions and a respiratory infection due to factors of his federal employment, including exposure to mold.

¹ 5 U.S.C. § 8101 *et seq.*

He noted that he first became aware of his conditions and their relationship to his federal employment on October 21, 2019. Appellant stopped work on October 21, 2019 and returned to work on October 22, 2019.²

In support of his claim, appellant submitted his position description and a Notification of Personnel Action (Form SF-50) effective February 17, 2019.

In a November 6, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. In a separate letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to submit the requested evidence.

In an undated statement, appellant asserted that on October 3, 2019 he was working in a building that was designated by the employing establishment with a risk assessment code for facility conditions that were conducive to mold growth. He noted that his symptoms included coughing, sinus issues, and sore throat. Appellant indicated that he was first examined on October 21, 2019 and diagnosed with pharyngitis. He contended that he had no history of illness. Appellant asserted that his physician opined that exposure to mold caused a sore throat due to irritation from coughing and sinus drip, and as a result, he developed a bacterial infection.

In a November 26, 2019 response to OWCP's questionnaire, K.W., a section chief with the employing establishment, asserted that none of its areas had been tested to determine if harmful mold was present, but that it was cleaning all areas that had been reported to have visible mold. He indicated that all of its employees were sent home on October 15, 2019 to telework while its building was being cleaned and they returned to their normal duty stations on November 12, 2019. K.W. further noted that appellant worked Monday through Thursday, eight hours per day and performed normal administrative office desk functions including computer and filing work.

By decision dated December 16, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the alleged employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an October 3, 2019 notice of hazard, the employing establishment notified its employees that its building was conducive to mold growth and determined to be "Risk Assessment Code 3 (moderate)."

Appellant submitted a series of e-mails dated from October 15 through November 12, 2019 between the employing establishment and its employees providing updates on mold cleaning in the building. The employing establishment notified its employees that they could fully return to the office on November 12, 2019.

² In an undated work status report (Form CA-3), the employing establishment informed OWCP that appellant had stopped work on October 21, 2019 after filing his claim and returned to work without restrictions on October 22, 2019.

In a January 10, 2020 response to OWCP’s questionnaire, appellant asserted that he was exposed to a source of infection in his cubical work area, work surfaces, cabinets, and ceiling tiles. He noted that the exposure began in October 2019 and he was exposed daily while working eight-hour shifts. Appellant indicated that all employees in the same building were exposed. He asserted that he never experienced the same or similar infection before.

Dr. Wallace B. McLeod, a family medicine specialist, in a January 13, 2020 duty status report (Form CA-17), described the history of injury as working in a molded environment. He observed that appellant had chronic nasal drainage and congestion. Dr. McLeod diagnosed chronic allergic sinusitis and indicated that appellant was advised to resume work on November 19, 2019 without restrictions.

On January 15, 2020 appellant requested reconsideration. In an attached letter dated January 10, 2020, he noted that he was submitting new medical reports and other evidence.

By decision dated January 31, 2020, OWCP modified its December 16, 2019 decision finding that appellant had established that the alleged federal employment factors occurred as described. However, the claim remained denied because the medical evidence of record did not contain a valid medical diagnosis causally related “to the incident of exposure to mold.”

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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 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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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

³ *Supra* note 1.

⁴ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *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.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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 specific employment factors identified by the employee.⁹

ANALYSIS

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

In support of his claim, appellant submitted a January 13, 2020 Form CA-17 report from Dr. McLeod, who diagnosed chronic allergic sinusitis as a result of exposure to a molded environment at work. The Board finds that this report establishes a medical diagnosis in connection with the accepted employment factors.¹⁰ As OWCP has not yet reviewed the medical evidence of record in regard to the issue of causal relationship, the case must therefore be remanded. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision as to whether appellant has met his burden of proof to establish that his diagnosed medical condition is causally related to the accepted factors of his federal employment.¹¹

CONCLUSION

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

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *See K.A.*, Docket No. 18-0999 (issued October 4, 2019).

¹¹ *M.B.*, Docket No. 20-0265 (issued June 17, 2020); *E.C.*, Docket No. 19-0854 (issued October 17, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2020 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: September 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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