

	)	
<b>T.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0381</b>
	)	<b>Issued: April 11, 2025</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>FEDERAL LAW ENFORCEMENT TRAINING</b>	)	
<b>CENTER, Brunswick, GA, Employer</b>	)	
_____	)	

*Case Submitted on the Record*

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 10, 2025 appellant filed a timely appeal from a March 6, 2025 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.

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

On February 17, 2023 appellant, then a 47-year-old general inspection, investigation, and compliance officer, filed an occupational disease claim (Form CA-2) alleging that he developed

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

asthma due to factors of his federal employment including exposure to high levels of mold at the workplace. He noted that he first became aware of his condition and realized its relation to his federal employment on February 10, 2023.

Environmental study documents dated from 2017 establish that mold was present at employing establishment locations.

In a February 1, 2023 report, Dr. Rafael Alba Yunen, a Board-certified internist, diagnosed chronic allergic rhinitis, chronic sinusitis, house dust mite allergy, mold exposure, lung nodules, and asthma. Under history of injury, he stated that appellant self-referred for evaluation of mold exposure. In summary, Dr. Yunen related that he strongly suspected asthma with risk factors of chronic rhinitis/sinusitis and mold exposure at work.

In a report dated February 10, 2023, Dr. Yunen diagnosed occupational asthma. He opined that appellant's asthma was more likely than not caused or aggravated by his exposure to high levels of mold.

In a development letter dated February 27, 2023, OWCP informed appellant of the deficiencies of his claim and advised him the type of factual and medical evidence needed to establish his claim. It afforded him 30 days to submit the requested evidence. In a separate letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It requested that the evidence be submitted within 30 days.

On March 6, 2023 OWCP referred appellant, along with a medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Robert L. Thomas, a Board-certified internist, for a second opinion evaluation to determine whether appellant sustained a diagnosed medical condition causally related to the accepted employment exposure.

In a letter dated March 17, 2023, appellant's supervisor responded that, over the years, the building where appellant worked, Building 252, was prone to roof leaks, given the flat roof and high rainfall totals. Many moisture mitigation strategies were performed to maintain satisfactory working conditions and all reports of moisture were addressed. Around 2016, the roof of building 252 was resealed to correct leakage, this helped but did not prevent all leakage. Around 2017, during an air handler replacement, debris removed from the building displayed signs of high levels of mold. Appellant's supervisor concluded that if appellant's physician correlated mold spores and appellant's allergies, there were documented cases of mold found in Building 252, and he would concur that appellant's working conditions may be a contributing factor to his asthma.

In a report dated March 24, 2023, Dr. Thomas reviewed the medical evidence and SOAF. A spirometry performed at Dr. Thomas's office did not show any variable air flow limitation consistent with reactive airway dysfunction. He reported that appellant's subjective complaints did not correspond with objective findings. Dr. Thomas diagnosed asthma, dyspnea, allergic rhinitis, allergy, and contact with and (suspected) exposure to mold (toxic). He opined that appellant's asthma was not caused by mold exposure but might have been aggravated by indoor mold exposure. Dr. Thomas summarized the environmental studies documentation regarding mold in Building 252. He also reported that appellant has significant dust mites and grass pollen

allergies as well as mold and cockroach mix antigens sensitivity. Thus, Dr. Thomas explained that mold as well as other environmental commonly seen allergens could potentially aggravate appellant's asthma or reactive airways dysfunction. Lastly, he related that appellant could have had a temporary aggravation of his preexisting reactive airways dysfunction/bronchial asthma depending on the amount of mold amplification.

Dr. Thomas, in an April 21, 2023 addendum report, opined that appellant's work duties did not cause his pulmonary condition, as only one low level of allergen specific aspergillus fumigatus antibody was found in allergy testing.

By decision dated April 27, 2023, OWCP denied appellant's claim, finding that he failed to establish that his medical condition was causally related to the accepted employment factor of mold exposure. It accorded the weight of the medical evidence to Dr. Thomas.

In a report dated March 8, 2024, Dr. John W. Ellis, a physician Board-certified in family medicine and environmental medicine, diagnosed moderate persistent asthma with acute exacerbation, acute recurrent sinusitis, chronic sinusitis, and pneumonia due to other specified infectious organisms, which were employment related. He explained that appellant had no prior history of respiratory conditions, had never used tobacco products or smoked, and had no family history of respiratory or lung conditions. Dr. Ellis also noted that prior to 2009 appellant did not exhibit any allergies, breathing impairments, or sensitivity to any environmental factor. Additionally, there was evidence that the buildings appellant worked in contained a significant amount of mold throughout the building, which was confirmed in 2017. Thus, Dr. Ellis concluded that appellant's respiratory impairments were caused by his work and causal relationship was established.

On April 12, 2024 appellant requested reconsideration.

By decision dated April 17, 2024, OWCP denied modification.

On February 27, 2025 appellant requested reconsideration, asserting that the evidence of record established that his asthma was aggravated by his exposure to mold at work. He referenced Dr. Thomas' opinion that his asthma may have been aggravated by indoor mold exposure.

By decision dated March 6, 2025, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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 filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained while in the performance of duty as alleged, and

---

<sup>2</sup> *Id.*

<sup>3</sup> *B.C.*, Docket No. 24-0707 (issued August 20, 2024); *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

that any disability or specific condition for which compensation is claimed is 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>

In an occupational disease claim, appellant's burden of proof requires submission of 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 employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> 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 accepted employment exposure.<sup>8</sup>

### ANALYSIS

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

OWCP referred appellant to second opinion physician, Dr. Thomas. In a report dated March 24, 2023, Dr. Thomas opined that appellant's asthma was not caused by mold exposure, but might have been aggravated by indoor mold exposure. He further found that appellant could have had a temporary aggravation of his preexisting reactive airways dysfunction/bronchial asthma, depending on the amount of mold amplification. Dr. Thomas related that appellant had significant dust mites and grass pollen allergies as well as mold and cockroach mix antigens sensitivity. Thus, he explained that mold as well as other environmental commonly seen allergens could potentially aggravate appellant's asthma or reactive airways dysfunction. In an April 21, 2023 addendum note, however, Dr. Thomas opined that appellant's work duties did not cause his pulmonary condition as only one low level of allergen specific aspergillus fumigatus antibody was found in allergy testing. He did not further explain whether the allergen found on testing could have aggravated appellant's asthma condition. The Board thus finds that Dr. Thomas' opinion regarding the cause of appellant's asthma was insufficiently rationalized.

---

<sup>4</sup> *B.C., id.; J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *B.C., id.; M.T.*, Docket No. 20-1814 (issued June 24, 2022); *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).

<sup>6</sup> *B.C., id.; S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>7</sup> *B.C., id.; K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>8</sup> *S.W.*, Docket No. 23-1026 (issued October 21, 2024); *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>9</sup> It has an obligation to see that justice is done.<sup>10</sup> OWCP was therefore required to seek further clarification from Dr. Thomas regarding whether appellant's asthma condition had been aggravated by the accepted employment factors. As it undertook development of the evidence by referring appellant to Dr. Thomas, it had the duty to secure an appropriate report based on an accurate factual and medical background and which is sufficiently rationalized.<sup>11</sup>

Accordingly, this case will be remanded to OWCP for further development of the medical evidence. On remand, OWCP shall request a supplemental opinion from Dr. Thomas regarding whether the accepted employment exposure contributed to appellant's diagnosed conditions. If he is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant to a new second opinion physician.<sup>12</sup> After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

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

---

<sup>9</sup> See *S.F.*, Docket No. 23-0509 (issued January 24, 2024); see e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

<sup>10</sup> See *S.F., id.*; *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>11</sup> See *S.F., id.*; *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

<sup>12</sup> *J.F.*, Docket No. 23-0963 (issued December 8, 2023); *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T., id.*; see also *D.L.*, Docket No. 20-0886 (issued November 9, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2025 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this decision of the Board.

Issued: April 11, 2025  
Washington, DC

Patricia H. Fitzgerald, 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