United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 12-1042**
	)	**Issued: December 7, 2012**
DEPARTMENT OF THE NAVY, NAVAL SURFACE WARFARE CENTER, DAM NECK, Norfolk, VA, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 18, 2012 appellant, through counsel, filed a timely appeal from a November 14, 2011 decision of the Office of Workers' Compensation Programs which denied appellant's claim for compensation for the period December 23, 2009 through June 25, 2010. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he is entitled to disability compensation for the period December 23, 2009 through June 25, 2010.

On appeal appellant, through counsel, contends that the evidence unequivocally establishes that appellant was disabled as a result of injuries and conditions causally related to

[1] 5 U.S.C. § 8101 *et seq.*

his federal employment from December 23, 2009 through June 25, 2010 and that he was entitled to compensation for wage loss during that period of time.

FACTUAL HISTORY

On March 11, 2010 appellant, then a 59-year-old technical specialist, filed an occupational disease claim alleging that in October 2009 he found it hard to breathe when the heat was turned on in the building and "stuff" came out of vents. He listed the nature of his injury as hypersensitivity pneumonitis to lungs, extreme shortness of breath, dry cough, severe overwhelming exhaustion, activity intolerance, chest pain, wheezing and calcification of lungs.

In a December 28, 2009 report, Dr. John C. Everett, a Board-certified family practitioner, noted that appellant presented for follow up of wheezing, nonproductive cough and dyspnea. He diagnosed appellant with asthma. Dr. Everett noted current limitations on walking. Appellant continued to submit reports by Dr. Everett. He was treated for a dermatological problem on January 4, 2010 and hypertension on January 13, 2010.

Appellant filed claims for total disability commencing December 23, 2009.

In a January 7, 2010 report, Dr. Vasantha S. Hathwar, a Board-certified pulmonologist, who is also certified in critical care medicine, reviewed appellant's sleep study and diagnosed appellant with obstructive sleep apnea and periodic leg movement disorder, polysonogram and obesity. In a January 11, 2010 report, he noted that appellant had a past medical history significant for hypertension, benign prostatic hypertrophy, gastroesophageal reflux disease and dyslipidemia. Dr. Hathwar noted that appellant was initially seen in his office on December 29, 2009 with complaints of dyspnea, shortness of breath and coughing. He concluded that appellant had dyspnea, episodic in nature, of unclear etiology. Dr. Hathwar noted that all the pulmonary workups seemed to be within the normal range. He noted that appellant may have environmental-induced asthma, as his symptoms sometimes get worse at his workplace. Dr. Hathwar advised appellant to stay on the inhaler for a few months and see whether his overall symptoms get better. He recommended a cardiac workup and further noted that appellant's abdominal obesity might be a part of his shortness of breath. Dr. Hathwar also noted that appellant had obstructive sleep apnea. He recommended increased activity and weight loss.

In a January 28, 2010 report, Dr. Thomas R. Flipse, a Board-certified internist and cardiologist, listed his impression as atypical chest pain, dyspnea, hypertension and hyperlipidemia.

In a February 12, 2010 report, Dr. Alexis A. Vazquez, an osteopath in the Department of Pulmonary Medicine at the Mayo Clinic, opined that appellant was suffering from a hypersensitivity reaction in his lungs, which is also known as hypersensitivity pneumonitis. He recommended that appellant continue with Prednisone for at least six weeks and that appellant evaluate his workplace and home for possible mold or other factors that could precipitate his cough and shortness of breath. Dr. Vazquez noted that, as appellant explained it to him, he works in an environment that was an old farm and that this could rightfully be precipitating his symptoms. He recommended that appellant contact him again in two to three weeks.

In an April 7, 2010 report, Dr. Mark Hammett, a physician Board-certified in occupational medicine, concluded that it was more likely than not that appellant's hypersensitivity pneumonitis was a result of an occupationally-related exposure. He concluded that it was unclear as to whether the source of his recent symptoms was due to an occupational exposure and that this should be resolved as continued exposure to allergens can be expected to result in increased symptoms.

In a July 1, 2010 report, Dr. Vazquez indicated that he diagnosed appellant with hypersensitivity pneumonitis in February 2010 and that at that time, he placed appellant on high doses of steroids and advised him of the importance of avoiding contact with mold or places that have potential to have mold. He indicated that he advised appellant that since his work space has not provided verifiable documentation that his work space does not have mold/moisture issues it would be prudent for him to decline an offer of employment as exposure would result in an exacerbation of his symptoms. Dr. Vazquez noted that these symptoms include severe shortness of breath, activity intolerance, chest tightness, lethargy, and cough and if the condition became chronic it could result in disabling and irreversible pulmonary fibrosis with associated increased mortality.

In a July 18, 2010 letter, the Office of Personnel Management (OPM) found that appellant was disabled due to chronic hypersensitive pneumonitis, obstructive airway breathing problems, chest pain, hypertension and sleep apnea.

On September 27, 2010 OWCP accepted appellant's claim for hypersensitivity pneumonitis.

By decision dated November 3, 2010, OWCP denied appellant's claim for compensation for the period December 23, 2009 through June 25, 2010. It noted that none of the reports addressed his level of temporary total disability and ability to work.

On October 25, 2011 appellant, through his representative, requested reconsideration. Appellant's attorney argued that a decision of the Social Security Administration (SSA) established that appellant's injuries were causally related to his federal employment and that the medical evidence established that he was disabled as a result of injuries and conditions causally related to his federal employment for the period December 23 through June 25, 2010. In further support of his request for reconsideration, he submitted a copy of a July 7, 2011 "fully favorable" decision by the SSA. Appellant also resubmitted other documents that were already in the record.

By decision dated November 14, 2011, OWCP denied modification of its November 3, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as result of the accepted employment injury. Whether a particular injury causes an employee to become

disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative and substantial medical opinion evidence.[2] Such medical evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.[3]

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.[4] The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[5]

ANALYSIS

OWCP accepted that appellant suffered from hypersensitivity pneumonitis as a result of factors of his federal employment. Appellant filed claims for disability compensation for periods commencing December 23, 2009.

The Board finds that appellant did not establish his entitlement to disability compensation for the period December 23, 2009 through June 25, 2010. The weight of the medical evidence does not sufficiently establish that he was disabled for the claimed period due to his accepted condition. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

None of the physicians indicate that appellant was totally disabled during the period December 23, 2009 through June 25, 2010. OWCP accepted that appellant had hypersensitivity pneumonitis as a result of his federal employment and the evidence establishes that he had various symptoms as a result thereof. However, no physician concludes that appellant is totally disabled due to the accepted condition from December 23, 2009 through June 25, 2010. Dr. Everett does not address appellant's disability but simply discusses appellant's symptoms. Dr. Hathwar concluded that appellant had dyspnea and that he may have environmental-induced asthma, but he also does not reach any conclusion with regard to disability or provide rationale relating the diagnosed conditions to appellant's employment. Dr. Flipse listed his impressions as atypical chest pain, dyspnea, hypertension and hyperlipidemia, but he also did not note any period of disability. Moreover, he did not address causal relationship.

[2] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

[3] *Dean E. Pierce*, 40 ECAB 1249 (1989).

[4] *Laurie S. Swanson*, 53 ECAB 517, 520 (2002); *see also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[5] *Amelia S. Jefferson*, *supra* note 2.

[6] *B.S.*, Docket No. 12-507 (issued July 26, 2012).

Dr. Hammett and Dr. Vazquez did address environmental concerns in appellant's workplace. Dr. Hammett concluded that appellant's hypersensitivity pneumonitis was a result of his occupational exposure and did note that continued exposure can be expected to result in increased symptoms. Dr. Vazquez indicated that it would be prudent for appellant to decline an offer of employment with the employing establishment as exposure would result in an exacerbation of his symptoms. Neither physician, however, indicated that appellant was totally disabled nor explained causal relationship and why the conditions were so debilitating as to preclude appellant from working. With regard to their concerns about appellant returning to work at the employing establishment, it is well established that fear of future injury does not constitute a basis for payment of compensation.[7]

Appellant's counsel submitted a letter from OPM and a decision from the SSA with regard to appellant's hypersensitive pneumonitis and his alleged disability. However, the Board has long held that decisions by other governmental agencies regarding claims brought under federal statutes other than FECA are not binding on OWCP.[8] Decisions made by such federal agencies are pursuant to different statutes which have varying standards for establishing disability and eligibility for benefits.[9] Accordingly, the OPM letter and the SSA decision are not dispositive of appellant's rights under FECA.

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 that he is entitled to disability compensation for the period December 23, 2009 through June 25, 2010.

[7] *T.F.*, Docket No. 11-763 (issued November 7, 2011); *see also Gasten F. Valenza*, 39 ECAB 1349, 1356 (1988).

[8] *R.R.*, Docket No. 11-1448 (issued March 6, 2012); *see also Raj B. Thackurdeen*, 54 ECAB 396 (2003).

[9] *R.S.*, Docket No. 10-2221 (issued August 19, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 14, 2011 is affirmed.

Issued: December 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board