In the Matter of the Compensation of
DARIN ROWDEN, Claimant
WCB Case No. 15-00474
ORDER ON REVIEW
Welch Bruun & Green, Claimant Attorneys
Michael G Bostwick LLC, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Lipton's order that upheld the denial by Sedgwick Claims Management Services (Sedgwick) of claimant's occupational disease claim for toxic exposure. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," with the following summary and supplementation.

In 1998, claimant and his wife became the on-site property managers for the employer's apartment complex. (Tr. 7). The employer provided them with an on-site apartment and office. (Tr. 8, 9).

In about 2003, claimant moved into unit 112. (Tr. 9; Ex. 40-28). After moving into the apartment, he developed allergies, skin rashes, and bronchitis. (Tr. 10). He noticed mold in the apartment. (Tr. 11).

On January 16, 2014, claimant consulted Dr. Kazmierowski, an allergy specialist, for nasal congestion and wheezing, which claimant attributed to mold. (Ex. 1A). On skin tests, claimant showed a positive reaction to various substances, including mold and dust mites. (*Id.*)

On February 4, 2014, Mold Investigations, LLC, inspected the exterior siding for mold. (Ex. 4-2). Its representative reported finding mold in the wall sheathing above units 112 and 113, in a back side vent, and in a soffit under the roof sheathing.[1] (Ex. 4-3).

[1] Mold samples were submitted to a laboratory, which identified several species, including *Stachybotrys* and *Penicillium/Aspergillus* group. (Ex. 3-3).

On February 26, 2014, Mold Testing Services of Oregon collected air samples from unit 112. (Ex. 7-6). Its representative reported that laboratory analysis results "indicate the presence [of] significantly elevated levels of mold spores in the interior air of the unit 112."[2] (Ex. 7-1). The representative recommended that claimant vacate the apartment. (*Id.*) Shortly thereafter, claimant moved out of the apartment complex. (Ex. 40-52).

On March 5, 2014, Mold Inspection Sciences inspected the exterior walls of four units in three different buildings within the complex. (Ex. 9). The inspector found "actively wet building materials inside the walls below three balcony decks, indicating active water intrusion/leaking conditions." (Ex. 9-1). He also reported that "significant water damage to structural building materials was observed and mold growth was confirmed in those areas." (*Id.*) The inspection did not include unit 112. (Ex. 9-2, -3).

On March 19, 2014, Wise Steps, Inc., was asked to develop cleaning protocols for unit 112. Based on a visual inspection of the apartment[3] and the previous air sample data, its senior industrial hygienist recommended a thorough cleaning. (Ex. 13-3). The hygienist also collected air and surface samples from the apartment to determine if the amount and type of spore previously found had remained constant. (Ex. 13-1). She reported that the samples showed no *Stachybotrys* mold and substantially lower concentrations of mold spore compared to the data previously collected. (Ex. 13-2). She opined that these samples indicated that any mold spore from the fungal growth in the exterior soffit was not migrating into the apartment. (*Id.*) Reasoning that the amounts and types of mold spore should have been similar if mold spore was infiltrating the apartment, she surmised that conditions at the time of the first tests had changed. (Ex. 13-3).

On April 7, 2014, Mold Investigations, LLC, inspected unit 112. Noting that "mold issues" were being repaired, its representative did not observe new mold contamination or moisture intrusion. (Ex. 20-1). The representative also

[2] The Mold Testing Services of Oregon report identified several mold species, including *Stachybotrys* and *Penicillium/Aspergillus*. (Ex. 7-7).

[3] The industrial hygienist observed mold growth on the base of the exterior walls inside the living room and bedrooms, on the walls behind the toilet tanks, and on the window frames. (Ex. 12-1, -2). She tested the walls for moisture and found dry conditions, which she attributed to the apartment being empty and the use of a dehumidifier. (Ex. 12-2). She reported that the ceiling had no sign of water staining or mold growth and that there was no mold growth on the furniture. (*Id.*) She also reported that the interior walls had no cracks or openings for air to infiltrate the apartment in the area of the exterior soffit. (*Id.*)

collected indoor and outdoor air and surface samples. (*Id.*) He reported that indoor air samples did not indicate an elevated mold spore count, but that *Penicillium* and *Aspergillus* and traces of *Stachybotrys* were present. (*Id.*) Describing exterior vent protrusions as heavily contaminated, he surmised that contaminated air had entered the unit when earlier testing showed elevated levels. (Ex. 20-4).

On April 8, 2014, claimant consulted Dr. Webb, his primary care physician, for a rash. (Ex. 14-3). Claimant told Dr. Webb that he had been exposed to mold. (*Id.*) Dr. Webb diagnosed dermatitis and mold exposure. (Ex. 14-5).

On April 8 and April 9, 2014, Mold Investigations, LLC, inspected the exterior walls of two buildings within the complex.[4] (Exs. 18-2, 19-1). Its representative reported that surface sampling results from the sheathing indicated the presence of several mold species, including *Stachybotrys*. (Exs. 18-3, 19-2).

In May 2014, Mr. McConnell, an industrial hygienist, and Dr. Thrasher, a PhD toxicologist, "test[ed] for mycotoxins in the home as well as the occupants of the home [to] connect those findings to the molds found outside of the home that might be drawn into the home through the venting." (Ex. 24-8). Based on the laboratory analysis of a dust sample taken from a refrigerator coil in the apartment and on claimant's urine tests, they concluded that claimant had been exposed to "mycotoxin-producing" molds that originated at the exterior of the building and were drawn into the apartment through the bathroom and kitchen ventilation.[5] (Ex. 24-12, -13, -16, -17).

On July 21, 2014, claimant consulted Dr. Hope, a specialist in environmental medicine. Dr. Hope assessed "exposure to severely water damaged apartment with extensive visible mold found to have very elevated level of *Stachybotrys* and *Aspergillus/Penicillium* mold in multiple locations throughout the unit." (Ex. 32-7). She described claimant's urine test as "positive for extraordinarily high levels of trichothecenes * * * most likely secondary to exposure and consistent with the symptoms experienced." (*Id.*)

[4] Unit 112 was not located in either building.

[5] Mr. McConnell and Dr. Thrasher reported that several species of molds that produce mycotoxins were identified in the refrigerator coil dust sample, including *Stachybotrys chartarum*, which produce Trichothecenes, *Eurotium amstelodami*, which produce Ochratoxin A, and *Aspergillus* species, which produce Aflotoxins. (Ex. 24-16). Claimant's urine test reported a positive result for Trichothecene Group and a negative result for Ochratoxin A and Aflotoxins. (Exs. 24-13, 44-13).

On November 17, 2014, claimant filed an occupational disease claim for "toxic exposure." (Ex. 36).

On January 16, 2014, Dr. Bardana, a specialist in allergies and clinical immunology, performed an evaluation at Sedgwick's request. Dr. Bardana concluded that there was no scientific evidence that claimant has mold or moisture-related symptoms secondary to exposures in his apartment or office. (Ex. 44-31). Specifically, Dr. Bardana opined that claimant did not have evidence of mold allergy, infection, or irritant effect. (*Id.*) He observed that claimant's symptoms involve almost all of the body's organ systems and are not consistent with a physical disease. (Ex. 44-34). Noting that mycotoxins were not measured at the apartment complex, he also opined that urine/serum tests for the presence of mycotoxins are not approved for diagnostic purposes. (Ex. 44-31, -34).

On January 26, 2015, Sedgwick denied the claim. (Ex. 45). Claimant requested a hearing.

On March 31, 2015, Dr. Bardana reviewed additional medical records. He concluded that laboratory studies ordered by Dr. Hope and conducted on August 19, 2014 had no clinical implications and that blood testing done on January 22, 2015 was negative for allergy to mold. (Ex. 47-15, -39, -41).

Drs. Hope and Webb disagreed with Dr. Bardana's opinion. (Exs. 48, 49). Contending that Dr. Bardana relied on outdated/invalid medical studies, Dr. Hope maintained that claimant's work exposure was the major contributing cause of his mold/mycotoxin exposure condition and need for treatment. (Ex. 49-8). She based her opinion on claimant's history, laboratory results, symptoms, and three environmental evaluations.[6] (Ex. 49-8). She also asserted that "[t]richothecene mycotoxins were found at remarkably high levels in the refrigerator coils * * * home as well as in [claimant's] urine[.]" (Ex. 49-11).

[6] Dr. Hope described a February 7, 2014 indoor air quality examination by Mold Investigations, LLC as finding "higher than normal levels of *Cladosporium, Penicillium*, and *Stachybotrys chartarum* (all forms of highly toxic mold/toxins)[.]" (Ex. 49-7). She described a February 28, 2014 Mold Testing Services of Oregon inspection as finding "actively wet building material inside the walls below the balcony [decks], indicating active water intrusion/leaking conditions, water damage was observed and mold grow[th] was confirmed in the areas that were examined." (*Id.*) Third, she described an April 16, 2014 Mold Investigations, Inc. examination as finding *Stachybotrys* mold on "outside services of their apartment * * * around the exterior bathroom and kitchen venting; the master bedroom * * * In addition, the fungal/spore type found throughout the apartment was noticeably high and dangerous with elevated levels of *Aspergillus/Penicillium* in the master bedroom, master bathroom, hall bathroom, compared to outside." (*Id.*)

Dr. Webb deferred to Dr. Hope's expertise in refuting Dr. Bardana's opinion. (Ex. 48-2). He also opined that claimant's work place exposure to mold/mycotoxins was the major contributing cause of claimant's disease and need for treatment. (*Id.*)

Dr. Bardana testified that the Center for Disease Control (CDC) issued a general advisory opinion in February 2015, which declared that testing for mycotoxins in human urine is invalid and has no diagnostic implications. (Tr. 47, 48). Dr. Bardana also noted that neither claimant's apartment nor his office was tested for mycotoxins, which can be detected by radio assay. (Tr. 43).

CONCLUSIONS OF LAW AND OPINION

In upholding Sedgwick's denial, the ALJ was not persuaded that claimant's exposure to mold or mycotoxins in his residence was the major contributing cause of a disease resulting in disability or the need for medical treatment. On review, claimant contends that the record establishes that he was exposed to elevated levels of toxin-producing mold and that Dr. Hope's opinion establishes medical causation. For the following reasons, we agree with the ALJ's determination that claimant has not established a compensable occupational disease.

Claimant bears the burden of proving that his work exposure was the major contributing cause of his condition. ORS 656.266(1); ORS 656.802(1)(a); ORS 656.802(2)(a). Although he need not prove a specific diagnosis to establish the compensability of an initial claim, he must prove the existence of his occupational disease "by medical evidence supported by objective findings." ORS 665.802(2)(d); *see Tripp v. Ridge Runner Timber Servs*., 89 Or App 355, 358 (1998); *Carl A. Lorenz*, 59 Van Natta 1754, 1758 (2007) (compensability not proven where the existence of the claimed occupational disease was not established).

Claimant must prove legal and medical causation by a preponderance of the evidence. *See Harris v. Farmer's Co-op Creamery*, 53 Or App 618, 621 (1981). "Legal causation" is established by showing that he was exposed to employment conditions that were potentially causal; whether that exposure caused his condition is a question of medical causation. *Darla Litten*, 55 Van Natta 925, 926 (2003).

Due to conflicting medical opinions regarding the nature and cause of claimant's condition, these issues present complex medical questions that must be resolved by expert medical opinion. *See Uris v. State Comp. Dep't*, 247 Or 420,

426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). We give more weight to those opinions that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986).

For the following reasons, we are not persuaded that claimant proved the existence of an occupational disease or that he was exposed to employment conditions that caused the disputed condition.

In assessing claimant's condition, Dr. Hope relied on "objective evidence," including claimant's "positive urine mycotoxin for trichothecenes," nasal fungal cultures (showing the presence of *Penicillium* mold on the right and *Alternaria* mold on the left), blood tests, and Dr. Kazmierowski's January 2014 skin tests. (Ex. 49-6). In contrast, Dr. Bardana testified that most people (90 percent) have *Cladosporium* and *Alternaria* in the nose. (Tr. 50). Next, he reported that claimant's blood tests were negative for allergy to mold. (Ex. 47-39, -41). Third, he noted that current medical literature advises against using intradermal testing, which has been shown to be unreliable and unlikely to reflect true clinical sensitivity. (Ex. 47-42). Dr. Hope did not specifically respond to these points. In the absence of such a response, we discount Dr. Hope's opinion. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion unpersuasive when it did not address contrary opinion).

Furthermore, citing the 2015 CDC advisory, Dr. Bardana opined that urine tests for the presence of mycotoxins are invalid for diagnostic use. (Exs. 44-34, 47-45). In rebuttal, Dr. Hope contended that the CDC advisory was based on one patient, who had a positive urine test for a low level of trichothecene and no proven exposure to mold. (Ex. 49-9). Dr. Hope asserted that the higher level of trichothecene found in claimant's urine "combined with the positive findings of mold/trichothecene/*Stachybotrys* sp in three separate environmental studies, helps confirm that the exposure was severe and longstanding." (*Id.*) Finally, citing two studies from 2009 and 2013, she contended that "[e]levated levels of mycotoxins have been found in symptomatic humans exposed to water damaged buildings and mold including those with chronic fatigue compared to unexposed persons." (*Id.*) Without further explanation, it is unclear that these earlier studies undermine the 2015 CDC advisory. Moreover, for the reasons that follow, we are not persuaded that the environmental studies established the presence of Trichothecene in claimant's apartment or the office.

In disputing Dr. Bardana's assessment of claimant's exposure, Dr. Hope stated that "[t]here is no question the unit had significant water damage and mold with amplified levels of *Aspergillus/Penicillium* and *Stachybotrys* mold as well as

the presence of Trichothecene mycotoxins, an agent use in biologic warfare (cites omitted) and associated with significant adverse health effects in humans[.]" (Ex. 49-10). For the following reasons, we are not persuaded that Dr. Hope had a sufficiently complete or accurate history of claimant's exposure. *See Jackson County v. Wehren*, 186 Or App 55, 561 (2003) (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible); *Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977) (medical opinion that is based on incomplete or inaccurate history is not persuasive).

Dr. Hope described three environmental studies in support of her opinion that claimant's workplace exposure was the major contributing cause of his condition and need for treatment. (Ex. 49-7). Her description of those studies is inconsistent with our review of the record.

Specifically, she described a February 7, 2014 Mold Investigations report as an "indoor air quality examination * * * that found higher than normal levels of *cladosporium, Penicillium* and *Stachybotrys chartarum* (all forms of highly toxic mold/toxins) * * *." (*Id.*) In fact, that report was the result of an investigation of the *exterior* of the apartment complex.[7] (Ex. 4). The report specifically stated that no *indoor* air sampling had been conducted. (Ex. 4-5).

Next, in describing the findings of a February 28, 2014 report by Mold Testing Services of Oregon, Dr. Hope conflated a March 5, 2014 report by Mold Inspection Sciences. (Exs. 8, 9). Thus, her statement (that "the inspector found actively wet building materials inside the walls below three balcony decks, indicating active water intrusion/leaking conditions, water damage was observed and mold grown [sic] confirmed in the areas that were examined") was accurate, but pertained to the March 5, 2014 evaluation of the exterior of three buildings and did not include claimant's apartment. (Ex. 9-1).

Third, the April 16, 2014 report by Mold Investigations did not describe, as represented by Dr. Hope, "elevated levels of *Aspergillus/Penicillium* in the master bedroom, master bathroom, hall bathroom, compared to outside," but rather reported an investigation of the exterior area under the siding of Building A to determine if there was moisture intrusion. (Exs. 18-2, 49-7). The investigator's report (that surface sampling results from the sheathing indicated the presence of *Stachybotrys* species "throughout") did not refer to claimant's apartment. (Ex. 18-3).

[7] The report was entitled "Indoor Air Quality Analysis & Recommendations." (Ex. 4).

Finally, Dr. Hope's description of the apartment as having "significant water damage" is not supported by Wise Steps' March 22, 2014 report (which reported no sign of water staining on the ceiling) or by Mold Investigations' April 18, 2014 report (which found no evidence of past or present moisture intrusion). (Exs. 12-1, 20-4).

Moreover, the record does not support the proposition that mycotoxins were found in claimant's apartment. Although Mr. McConnell and Dr. Thrasher stated that mold and mycotoxins were found on the refrigerator coil, the laboratory data presented in their report refers only to molds. (Ex. 24-12, -16). Mr. McConnell and Dr. Thrasher further stated that "molds that produce mycotoxins" were identified from the refrigerator coil, confirming that molds, not mycotoxins, were found. (Ex. 18-16). They concluded that urinary mycotoxin testing "confirms" that claimant was exposed to "mycotoxin producing molds." (Ex. 20-17). Yet, as previously discussed, urinary testing for diagnostic purposes has not been validated.[8] Furthermore, Dr. Bardana's unrebutted testimony established that mycotoxins were not measured at the apartment complex. (Tr. 43; Ex. 44-31).

In sum, after conducting our review, based on the aforementioned reasoning, we are not persuaded that this record establishes the existence of an occupational disease related to claimant's alleged work exposure to mold/mycotoxins.[9] Accordingly, we affirm.

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[8] We are unable to validate the statement in Dr. Thrasher's and Mr. McConnell's report that "[m]ycotoxin testing of the refrigerator motor/coils found Trichothecenes at 139.635 ppb which is 698 times what is considered positive (.2 ppb)." (Ex. 24-17). The laboratory analysis included in their report does not include "Trichothecenes" in the 23 molds listed. (Ex. 24-12). Moreover, the statement was made following their discussion of claimant's urine test (which described "244.77 ppb of Trichothecene)" and not while discussing the laboratory analysis of the refrigerator coil dust. (Ex. 24-16, -17). For the reasons previously discussed, and which they do not address, the urine test does not persuasively establish that claimant was exposed to Trichothecene mycotoxins.

Moreover, Dr. Thrasher and Mr. McConnell stated that the "detection of Ochratoxin A, *Stachybotrys* and Aflotoxins in the urine is indicative of airborne exposure to at least these mycotoxins as well as others." (Ex. 24-16). Yet, claimant's urine test was negative for Ochratoxin A and Aflatoxin Group. (Exs. 24-13, 44-13). In the absence of further explanation, we are unable to interpret their report as establishing that the dust taken from the refrigerator coils was tested for or showed Trichothecenes or other mycotoxins.

[9] In concluding that the workplace was the major contributing cause of claimant's mold exposure and need for treatment, Dr. Webb claimed that, as claimant's attending physician since 2011, he observed that the workplace exposure to mold/mycotoxins caused claimant significant problems over that time. (Ex. 48-2). The record shows that claimant discussed concerns about his exposure to mold with Dr. Webb on April 8, 2014. (Ex. 14-3). Nonetheless, the record does not show a history of those concerns before 2014.

ORDER

The ALJ's order dated November 25, 2015 is affirmed.

Entered at Salem, Oregon on August 12, 2016

Moreover, we are not persuaded that Dr. Webb's opinion is entitled to deference because this record does not support a finding that his ability to observe claimant over time put him in an advantageous position to evaluate the existence of "mold exposure." Rather, we conclude that this claim turns on expert analysis. *See Allie v. SAIF*, 79 Or App 284 (1986) (no special deference given to opinion of the treating physician where the case turned on expert analysis rather than expert external observation); *Robert Lewis DCD*, 67 Van Natta 2187, 2189 (2015) (where the existence of the claimed condition was disputed and the dispute concerned differing interpretations of the deceased worker's findings, the claim turned primarily on expert analysis, rather than expert external observations).