In the Matter of the Compensation of
WCB Case No. 14-03454
ERICK D. BRADY, Claimant
ORDER ON REVIEW
James O Marsh, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Poland's order that upheld the self-insured employer's denial of his occupational disease claim for respiratory conditions. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation to address the opinions of Dr. Barker and Dr. Dordevich, who examined claimant at the employer's request.

Dr. Barker and Dr. Dordevich agreed that claimant's diagnoses included asthma and allergic bronchopulmonary aspergillosis (ABPA), but opined that ABPA is not an occupational lung disease and is not caused by environmental exposure to the mold Aspergillus, which is a ubiquitous mold. (Exs. 343-8-10, 345-21-24). Therefore, Drs. Barker and Dordevich concluded that claimant's respiratory conditions were not attributable to his employment exposure. (Exs. 343-11, 345-22-24). Dr. Silver, claimant's treating physician, persuasively rebutted the contrary opinions of Drs. Barker and Dordevich, citing various medical literature that found incidences of ABPA related to occupational exposure to Aspergillus. (Ex. 350-5-15).

Nevertheless, in concluding that claimant's respiratory conditions were caused, or pathologically worsened, by exposure to mold from his work environment beginning around 2006, Dr. Silver noted that claimant had undergone several bronchoscopies over the years that showed colonization of Aspergillus fungal species. (Exs. 333, 350). According to Dr. Silver, Aspergillus is the predominant organism causing pulmonary disorders. (Ex. 350-3, -6). However, Dr. Silver did not address the fact that a mold inspection report showed *no* growth of Aspergillus in surface samples obtained from the area where claimant worked, and *no* presence of Aspergillus in air samples (whereas the outdoor control air

samples showed the existence of Aspergillus types of mold spores). (Exs. 322-9-11, 322A-2). Under these circumstances, we do not consider Dr. Silver's opinion to be well reasoned or persuasive. *See Somers v. SAIF*, 77 Or App 259, 263 (1986).[1]

Based on the foregoing reasons, in addition to those expressed in the ALJ's order, we find that claimant has not established that his employment exposure was the major contributing cause of his claimed occupational diseases, or the major contributing cause of the combined conditions and pathological worsening of the diseases. ORS 656.802(2)(a), (b). Consequently, we affirm.

ORDER

The ALJ's order dated August 24, 2015 is affirmed.

Entered at Salem, Oregon on February 17, 2016

[1] According to Dr. Silver, other mold species such as Penicillium and Cladosporium are associated with allergic reactions and asthma. (Ex. 350-3, -5). The mold inspection report showed the presence of those molds in the surface and air samples in claimant's employment environment. (*See* Exs. 321, 322, 322A). However, Dr. Silver's opinion that Cladosporium "can also" be associated with chronic allergy and asthma and "can also" lead to allergic bronchopulmonary mycosis is couched in terms of possibility, not medical probability. *See Gormley v. SAIF*, 52 Or App 1055, 1060 (1981) (persuasive medical opinions must be based on medical probability, rather than possibility); *see also Kyle G. Anderson*, 61 Van Natta 2117, 2117-18 (2009) (the words "can be" and "may be" indicate only possibility, not medical probability).