

In the Matter of the Compensation of
NATALIE ROWDEN, Claimant

WCB Case No. 15-00473

ORDER ON REVIEW

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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 her husband became the on-site property managers for the employer's apartment complex. (Tr. 10). They lived in an apartment within the complex. (*Id.*)

In 2002-03, claimant and her husband and children moved into apartment 112. (*Id.*) Beginning in 2006-07, claimant experienced fatigue, headaches, and other symptoms. (Tr. 11, 12). She found mold in the apartment. (Tr. 12). She cleaned, painted and used a dehumidifier, but the mold came back. (Tr. 12, 13).

On February 4, 2014, Mold Investigations performed an inspection and testing to determine if there was mold in the exterior siding. (Ex. 2-2). Mr. Nadermann, a "principal" of that organization, reported that mold was found in the wall sheathing above unit 112, in a back side vent, and in a soffit under the roof sheathing.¹ (Ex. 2-3).

On February 26, 2014, Mr. Dayfield, of Mold Testing Services of Oregon, collected air samples in the kitchen and master bathroom and submitted them for

¹ Mold samples were submitted to a laboratory, which identified several mold species, including *Stachybotrys* and *Penicillium/Aspergillus* group. (Ex. 2-3).

laboratory analysis. (Ex. 5-6). Mr. Dayfield reported “significantly elevated levels of mold spores in the interior air of unit 112.”² (Ex. 5-1).

On March 5, 2014, Mold Inspection Sciences evaluated four areas on the exterior of three buildings within the apartment complex. (Ex. 7). The inspector found “actively wet building materials inside the walls below three balcony decks, indicating active water intrusion/leaking conditions.” (Ex. 7-1). 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 claimant’s apartment. (Ex. 7-1, -2).

On March 19, 2014, Ms. Ellis, a senior industrial hygienist, performed a visual inspection of claimant’s apartment³ and reviewed the mold spore sample results previously collected. (Ex. 9-2). Ms. Ellis also collected air and surface samples to determine if the amount and type of spore previously found had remained constant. (Ex. 10-1). She reported that air tests showed substantially lower concentrations of mold spore compared to the data previously reported, that the mold spores were predominately *Aspergillus* and *Penicillium*, and that there was no *Stachybotrys*. (Ex. 10-3).

On April 7, 2014, Mr. Nadermann inspected claimant’s apartment for mold. (Ex. 16-1). He did not observe mold contamination or moisture intrusion. (Ex. 16-1). He further reported that indoor air samples did not indicate an elevated mold spore count, but that “the presence of [*P*]enicillium and [*A*]spergillus and traces of [*S*]tachybotrys [were] indicators of a potential or prior mold issue.” (Ex. 16-3). Based on his visual inspection and sample results, he did not recommend further spore or particle based investigation, but advised that the “presence of mycotoxins should be addressed.”⁴ (Ex. 16-4).

² Mr. Dayfield’s report identified several mold species, including *Penicillium/Aspergillus* types and *Stachybotrys*. (Ex. 5-7). The record does not include Mr. Dayfield’s technical qualifications/expertise.

³ Ms. Ellis observed mold growth on the base of the exterior walls in the living room and bedrooms, on the walls behind the toilet tanks, and on the window frames. (Ex. 9-1, -2). She tested the walls for moisture and found dry conditions. (Ex. 9-2). 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.*) She attributed the mold growth to “condensation issues within the apartment.” (Ex. 10-2).

⁴ The record does not include Mr. Nadermann’s technical qualifications/expertise.

On April 9, 2014, a Mold Investigations employee performed inspection and testing underneath the apartment's exterior siding. (Ex. 14-2). On April 16, 2014, Mr. Nadermann reported that surface sampling from the sheathing indicated the presence of *Stachybotrys* species "throughout." (Ex. 14-3).

In May 2014, Mr. McConnell, an industrial hygienist, and Dr. Thrasher, a PhD toxicologist, performed an evaluation to test for mycotoxins in the apartment and its occupants and to "connect those findings to the molds found outside of the home that might be drawn into the home through the venting." (Ex. 18-8). Based on a laboratory analysis of dust samples taken from the refrigerator coils and on claimant's urine testing results, they concluded that claimant had been exposed to "mycotoxin-producing" molds that had been drawn into the unit through the bathroom and kitchen ventilation.⁵ (Ex. 18-12, -13, -16, -17).

In July 2014, claimant consulted Dr. Hope, a specialist in environmental medicine. (Exs. 21, 33-14). Dr. Hope assessed her symptoms as consistent with her "exposure to [a] severely water damaged apartment with extensive visible mold found to have very elevated levels of *Stachybotrys* and *Aspergillus/Penicillium* mold in multiple locations throughout the unit" and "urine mycotoxin testing * * * positive for very elevated levels of Trichothecenes * * * mostly likely secondary to exposure." (Ex. 21-7).

In November 2014, claimant filed an occupational disease claim for "toxic exposure." (Ex. 23).

On December 22, 2014, claimant consulted Dr. Webb, a family practice specialist, who diagnosed "mold exposure." (Ex. 24-2).

In January 2015, 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 supporting a diagnosis of mold (fungal) allergy, mold-related infection (mycoses), or mycotoxicosis as a result of [claimant's] work and exposures at [the] apartment complex." (Ex. 31-33). He reasoned that the studies conducted by Ms. Ellis were not indicative of any health hazard and that claimant's symptoms were not consistent with a physical disease or injury. (Ex. 31-36, -37, -38).

⁵ Claimant's urine testing reported a positive result for "Trichothecene Group." (Ex. 18-13). Mr. McConnell and Dr. Thrasher reported that several species of toxigenic molds that produce mycotoxins were identified in the dust sample from the refrigerator coil, including *Stachybotrys chartarum*, which produce Trichothecenes. (Ex. 18-16).

On January 26, 2015, Sedgwick denied the claim. (Ex. 29). Claimant requested a hearing.

Dr. Hope disagreed with Dr. Bardana's opinion. Based on claimant's history, "lab work," symptoms, and three environmental evaluations,⁶ Dr. Hope concluded that claimant's work exposure was the major contributing cause of her "mold/mycotoxin exposure" and need for treatment. (Ex. 33-7). In doing so, she reasoned that "trichothecene mycotoxins have been found to be present in the air of buildings contaminated by *Stachybotrys* mold" and "positive findings from [claimant's] urine/blood tests" were "clear evidence of exposure from the mycotoxins into [claimant's] system[.]" (Ex. 33-10, -12).

Dr. Webb deferred to Dr. Hope's opinion. (Ex. 32-2). Dr. Webb also stated the "mold exposure" diagnosis was based on a positive blood test with elevated *Eosinophils* (a mold species) and reproducible joint pain. (Ex. 32-1).

Dr. Bardana testified that urine mycotoxin testing is not approved by the federal government for accuracy or clinical use. (Tr. 40, 41). He observed that claimant's urine test did not identify specific trichothecenes, of which there are "hundreds," with some types having significant toxic properties, and one type commonly found in foods. (Tr. 41, 42). He further stated that mycotoxins had not been measured in the apartment and, thus, the nature of the mycotoxin that was claimed to have been ingested was not demonstrated. (Tr. 42, 43).

CONCLUSIONS OF LAW AND OPINION

In upholding Sedgwick's denial, the ALJ concluded that there was insufficient evidence to support a conclusion that claimant had suffered a toxic exposure that would cause a disease resulting in medical treatment and/or

⁶ Dr. Hope described a February 7, 2014 "indoor air quality" examination performed by Mold Investigations as finding "a higher than normal levels of cladosporium, Penicillium and *Stachybotrys chartarum* (all forms of highly toxic mold/toxins)[.]" (Ex. 33-6). She described a February 28, 2014 Mold Testing Services of Oregon inspection as finding "actively wet building materials inside the walls below the balcony desks [sic], indicating active water intrusion/leaking conditions, water damage was observed and mold growth was confirmed in the areas that were examined." (*Id.*) Third, she described an April 16, 2014 Mold Investigations 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.*)

disability. On review, claimant contends that the record establishes that she 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 conclusion.

Claimant bears the burden of proving that her work exposure was the major contributing cause of her condition. ORS 656.266(1); ORS 656.802(1)(a); ORS 656.802(2)(a). Although she need not prove a specific diagnosis to prove the compensability of an initial claim, she must prove the existence of her occupational disease "by medical evidence supported by objective findings." ORS 656.802(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 she was exposed to employment conditions that were potentially causal; whether that exposure caused her condition is a question of medical causation. *Darla Litten*, 55 Van Natta 925, 926 (2003).

Due to the 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).

In assessing claimant's condition, Dr. Hope relied on claimant's "positive urine mycotoxin for trichothecenes at very significantly elevated levels." (Exs. 21-7, 22-8, 33-5). She opined that this test demonstrated that "the mycotoxins, including mold, had entered into [claimant's] blood stream and that the exposure was severe."⁷ (Ex. 33-8).

⁷ Dr. Hope also described other objective evidence supporting the "toxic exposure" diagnosis, specifically, "neurocognitive abnormalities including abnormalities in sway balance and reaction time[,] elevations in C4a of 8874 (normal 1-2830), Positive ANA of 1:80, homogenous pattern, TSH elevated at 10.79; total T3 low at 63; FT4 0.8 and positive autoantibodies consistent with autoimmune thyroiditis [sic], Nasal fungal cultures positive for *Alternaria* mold on the right and *Cladosporium* mold on the left; and [her] clinical observations of the stiffness and tenderness to palpation in [claimant's] hands and joints." (Ex. 33-5). She did not explain how this other evidence demonstrated claimant's "mold/mycotoxin exposure."

In contrast, Dr. Bardana opined that the presence of mycotoxins in a urine sample does not establish a disease. (Tr. 40). Relying on a February 20, 2015 Centers for Disease Control and Prevention (CDC) report that “such testing to diagnose work-related illness can lead to * * * incorrect diagnosis,” he represented that the validity of urine testing for mycotoxins is “highly questionable” and that “mycotoxin testing carried out in either serum or urine has not been validated for diagnostic purposes.” (Ex. 31-41, -42). He also noted that claimant’s urine test did not identify a specific trichothecene, of which there are “hundreds,” some with significant toxic properties and one commonly found in foods, which made the testing meaningless.⁸ (Tr. 41, 42).

In response, Dr. Hope distinguished the CDC study (as based on a positive trichothecene urine finding in one patient, who was found not to have had a significant mold exposure), but she did not address the lack of validation for urinary mycotoxin testing or identify the trichothecene found in claimant’s urine, rendering her opinion less persuasive. (Ex. 33-8).

We turn to the evidence concerning claimant’s exposure. Dr. Hope concluded that claimant’s apartment 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 used for biologic warfare (cites omitted) and associated with significant adverse health effects in humans[.]” (Ex. 33-9). She relied on three environmental studies and a report that “trichothecene mycotoxins were found at remarkably high levels” in the refrigerator coils of claimant’s apartment as well as in her urine. (Ex. 33-6, 33-10). For the following reasons, we are not persuaded that Dr. Hope had a sufficiently complete or accurate history of claimant’s exposure to trichothecene mycotoxins. *See Jackson County v. Wehren*, 186 Or App 555, 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 an incomplete or inaccurate history is not persuasive).

⁸ At hearing, Dr. Bardana affirmed the following statements from the February 20, 2015 CDC report: “Mycotoxins are metabolites of some fungi that can cause illness in human and animals primarily after ingestion of contaminated foods. Low levels of mycotoxins are found in many foods; therefore, mycotoxins are found in urine of healthy persons. Mycotoxin levels that predict disease have not been established. Urine mycotoxin tests are not approved by the FDA for accuracy or clinical use.” (Tr. 41).

Dr. Hope's description of the environmental studies is inconsistent with our review. Specifically, the February 7, 2014 report by Mold Investigations, which Dr. Hope described as an "indoor air quality examination," reported on an investigation of the exterior of the apartment complex.⁹ (Exs. 2-2, 33-6). The report stated that no indoor air sampling had been conducted. (Ex. 2-5). Next, in describing the findings in a February 28, 2014 report by Mold Testing Services of Oregon, Dr. Hope conflated a March 5, 2014 report by Mold Inspection Sciences. (Exs. 6, 7, 33-6). The March 5, 2014 report evaluated four areas on the exterior of three buildings within the apartment complex, and did not include claimant's apartment (unit 112). (Ex. 7-1). Therefore, although Dr. Hope accurately stated that "the inspector found actively wet building materials inside the walls below three balcony decks, indicating active water intrusion/leaking conditions, water damage was observe and mold grown [sic] was confirmed in the areas that were examined," those findings were for three other buildings and did not include claimant's apartment. (*Id.*) 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. (Ex. 14-2, 33-6). The investigation reported that surface sampling results from the sheathing indicated the presence of *Stachybotrys* species "throughout," but did not refer to claimant's apartment. (Ex. 14-3).

Also, Dr. Hope did not mention an April 18, 2014 report by Mold Investigations which reported that: (1) an inspection and testing in the interior of claimant's apartment did not indicate an elevated mold spore count in the indoors compared to outdoors; (2) indoor air quality parameters and particle counter were "well within normal ranges"; and (3) interior inspection did not reveal evidence of moisture intrusion. (Ex. 16-3, -4).

Lastly, the environmental studies did not persuasively establish the presence of trichothecenes/mycotoxins in claimant's apartment. Although Mr. McConnell and Dr. Thrasher state that molds and mycotoxins were found on the refrigerator coil, the laboratory data presented in their report refers only to molds and does not refer to mycotoxins/trichothecenes. (Ex. 18-12, -16). Mr. McConnell and Dr. Thrasher also stated that "molds that produce mycotoxins" were identified from the refrigerator coil, which confirms that molds were found. (Ex. 18-16).

⁹ The report was entitled "Indoor Air Quality Analysis & Recommendations." (Ex. 2-1).

Lastly, they concluded that urinary mycotoxin testing “confirms” that claimant was exposed to “mycotoxin producing molds.” (Ex. 18-17). As previously discussed, such testing has not been validated and did not establish a specific trichothecenes or its source. Without further explanation, Mr. McConnell’s and Dr. Thrasher’s report does not persuasively establish that mycotoxins/trichothecenes were measured in claimant’s apartment.¹⁰ (*Id.*)

Dr. Bardana stated that “the mere presence of mold species should not be interpreted as * * * produc[ing] any mycotoxin[,]” and he observed that there was no measurement of mycotoxins in the apartment. (Ex. 31-37). Consequently, he concluded that there was insufficient data to support an assertion that there were dangerous levels of “mold toxicity” exposure. (Ex. 31-40, -41).

After completing our review, based on the aforementioned reasoning, we conclude that this record does not persuasively establish that claimant’s apartment was “severely water damaged” or that there were “elevated levels” of trichothecenes (mycotoxins) in the apartment.

In sum, the record does not persuasively establish the existence of an occupational disease related to claimant’s alleged work exposure to trichothecenes/mycotoxins. Accordingly, we affirm.

ORDER

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

Entered at Salem, Oregon on July 1, 2016

¹⁰ 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. 18-17). The laboratory analysis included in their report does not include “Trichothecenes” in the 23 molds listed. (Ex. 18-12). Moreover, the statement was made after they discussed claimant’s urine test (which described “92.58 ppb of Trichothecenes which is 463 times what is considered positive (.2 ppb),” not while discussing the laboratory analysis of the refrigerator coil dust. (Ex. 18-16, -17.) Therefore, in the absence of further explanation, we are unable to interpret the report as establishing that the dust taken from the refrigerator coils was tested for or showed trichothecenes/mycotoxins.