

support his claim. This was to include a medical report that included a medical history, a description of symptoms, and a firm diagnosis of the condition with an explanation of the medical etiology of the infection. In a November 11, 2005 response, appellant provided a list of areas in the employing establishment where he worked from July 14 to September 2, 2005 that he considered to be high risk for MRSA infection. He stated that on September 6, 2005 he noticed a small lump on his left thigh that gradually enlarged and became so painful that he could not walk. On September 18, 2005 appellant went to the emergency room and had surgery. A blood culture demonstrated MRSA. Appellant also provided laboratory test results including a culture that demonstrated a heavy growth of MRSA. On September 18, 2005 Dr. Lynn J. Hyland, a Board-certified surgeon, performed incision, drainage and debridement of spreading infection of the left anterior thigh. On September 21, 2005 she performed further debridement.

A November 30, 2005 memorandum provides that appellant was informed by telephone of the need for a medical opinion on causal relationship. By decision dated December 22, 2005, the Office denied the claim on the grounds that the medical evidence did not establish that the diagnosed condition was caused by the claimed employment factors. On November 9, 2006 appellant requested reconsideration and submitted reports from Dr. Hyland dated December 1 and 7, 2005 in which she advised that appellant had been under her care since September 18, 2005 for a spreading MRSA infection of his left anteromedial thigh that required surgery. Dr. Hyland opined that appellant should remain off work until released to return to work by the employing establishment, who was currently following his care. By decision dated November 22, 2006, the Office denied modification of the December 22, 2005 decision.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

Office regulations, at 20 C.F.R. § 10.5(q) define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁴ To

¹ On a form request dated June 4, 2007, appellant requested both reconsideration and an oral hearing with the Office. He mailed his appeal to the Board on June 6, 2007. The Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed is null and void. *Jacqueline S. Harris*, 54 ECAB 139 (2002).

² 5 U.S.C. §§ 8101-8193.

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.5(q); see *Ellen L. Noble*, 55 ECAB 530 (2004).

establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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 specific employment factors identified by the claimant.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an MRSA infection caused by his federal employment. Appellant identified areas of the employing establishment that he considered high risk for infection, and the medical evidence of record including a laboratory culture study, establishes that he had an MRSA infection in his left thigh that required surgery on September 18 and 21, 2005. His attending general surgeon, Dr. Hyland, provided reports dated December 1 and 7, 2005 which noted that appellant had been under her care since September 18, 2005 for a spreading MRSA infection of the left anteromedial thigh. She, however, did not provide a cause of appellant's MRSA infection. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹

In order to establish entitlement, a claimant must provide a physician's opinion that is 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

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Because appellant did not submit a reasoned medical opinion explaining how employment factors caused his MRSA infection, he did not establish the critical element of causal relationship.¹¹

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an MRSA infection causally related to factors of his federal employment.¹²

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 22, 2006 be affirmed.

Issued: December 7, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Leslie C. Moore, supra* note 7.

¹¹ *See John W. Montoya*, 54 ECAB 306 (2003).

¹² The Board notes that appellant submitted evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *see Steven S. Saleh*, 55 ECAB 169 (2003).