United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	
DEPARTMENT OF THE ARMY, U.S. ARMY MEDICAL RESEARCH INSTITUTE OF INFECTIOUS DISEASES, Fort Detrick, MD, Employer	)	**Docket No. 13-81** **Issued: August 23, 2013**

Appearances
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 16, 2012 appellant, through his attorney, filed a timely appeal from a September 13, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant has established that he contracted a parasitic infection in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 16, 2011 appellant, then a 29-year-old animal caretaker, filed an occupational disease claim (Form CA-2) alleging that he sustained a systemic Entamoeba polecki infection in the performance of duty on or before October 19, 2011. He attributed his condition to exposure to nonhuman primate (NHP) feces while wiping and hosing down animal cages. Appellant explained that accidental fecal cyst ingestion could have occurred when he was splashed with fecal matter while hosing down cages. He also came into contact with fecal matter when monkeys got out of their cages during cage changes. Appellant asserted that protective gear and face masks did not offer 100 percent protection. He stopped work on October 19, 2011 and returned to work on November 7, 2011.

In a November 29, 2011 letter, OWCP advised appellant of the type of evidence needed to establish his claim, including a detailed factual statement explaining the mechanism of infection, specifying specific dates, incidents and routes of exposure. It also instructed him to provide a report from his attending physician explaining how and why the identified workplace exposures would cause the claimed amoebic infection. Appellant was afforded 30 days in which to submit such evidence.

In an October 19, 2011 report reviewed by Dr. Alex Ambroz, an attending internist at the Martinsburg Family Healthcare facility, a physician's assistant noted that appellant presented with a two-week history of bloody diarrhea, vomiting, nausea and abdominal pain. He noted that appellant was "an animal caretaker at [the employing establishment], specifically caring for exotic monkeys." October 20, 2011 laboratory tests ordered by Dr. Ambroz confirmed the presence of Entamoeba polecki trophozoites in appellant's stool. Appellant was advised of the diagnosis on October 26, 2011 and Dr. Ambroz prescribed antibiotics.

As the organism was a reportable infectious agent and as appellant's position required him to report any "potentially disqualifying information to his employer," appellant telephoned the employing establishment health clinic to report the lab results establishing the source of his gastroenteritis. Appellant wanted to know if this was a work-related disease. Dr. Roger McIntosh, an employing establishment physician, advised appellant that he would look into this with the infectious disease physicians and with the veterinarians at the employing establishment. Appellant was advised to return to the clinic for follow up on Monday, October 31, 2011, before returning to work.[2]

In a November 2, 2011 memorandum to Dr. McIntosh, a deputy director of the employing establishment's veterinary medicine division stated that appellant worked with "rhesus macaques, cynomolgus macaques, African Green monkeys and marmosets." He stated that appellant was provided coveralls, shoe covers, double gloves, a hair bonnet, surgical mask and plastic face shield. Dr. McIntosh explained that NHP entering the country are quarantined by direction of the Centers for Disease Control and Prevention. At that time, animals are screened for infectious diseases, including enteric pathogens. Upon arrival at the employing establishment, these animals are once again quarantined where they undergo physical

[2] Several parts of the medical record have been redacted. No reason has been proffered for the redaction.

examination and a second screening for enteric pathogens. Dr. McIntosh noted there was no known history of Entamoeba infections at the employing establishment. He noted that the organism was also found in "humans and other mammalian species including swine, sheep and goats." Dr. McIntosh concluded that if a worker dons the appropriate equipment and practices good hygiene there would be minimal risk for contracting any enteric organisms from a nonhuman primate at the employing establishment. Further, with no known history of the organism in the employing establishment colony, with the strict protective equipment practices in place and with the presence of the organism in other sources outside the employing establishment, it was highly unlikely that this case of Entamoeba polecki was a result of contact with the NHP at the employing establishment.

The record contains a November 2, 2011 e-mail from Dr. Ronald Reisler, an employing establishment physician, to Dr. McIntosh, stating: "Sorry let me correct myself. 25 percent of the NHP infections that were detected or subtyped contained polecki. Some of the NHP had multiple types of Entamoeba subtypes." Dr. Reisler also forwarded a copy of an article by the Centers for Disease Control based on an investigation into a 1998 outbreak of Entamoeba polecki in Tbilisi, Georgia. The article concluded that the outbreak was likely contracted from contaminated water but could also be contracted through exposure to swine, sheep and goats.

On November 17, 2011 during a routine examination for tuberculosis risk assessment, appellant advised an occupational health official that he had been assigned to clean the cages of mice, guinea pigs, rats, rabbits and NHP during the past three years. Appellant reported that this job caused him to be exposed to "potentially hazardous body fluids."

Dr. McIntosh stated on November 25, 2011 that the employing establishment would investigate to determine if "any African Green or Cynomol[g]us monkeys on the Gray side (quarantine) were ill with diarrheal diseases in late Sept[ember] or early October, that [appellant] may have worked with and see if it is possible to obtain stool for Ova and Parasites on any of these NHP that are still around."

In a November 22, 2011 e-mail, an occupational health specialist noted that appellant believed that he could have been exposed to Entamoeba polecki by "handling the telephone, trash cans and laundry in the animal care areas," as well as being splashed by waste material while cleaning cages. The specialist noted that "a very detailed investigation of [appellant's] exposure and travel history resulted in no definitive mechanism by which he became exposed" to Entamoeba polecki. Therefore, there was "no clear evidence that the infection was a result of exposure at" the employing establishment.

By decision dated February 15, 2012, OWCP denied appellant's claim on the grounds that causal relationship was not established. It accepted as factual that he was exposed to animals and feces in the performance of his duties as described. However, there was insufficient evidence to establish that his medical condition was causally related to the exposure at work.

In a March 12, 2012 letter, counsel requested a telephonic hearing, held June 15, 2012. At the hearing, appellant denied eating undercooked pork or having nonoccupational exposure to pigs or monkeys. He explained that when hosing down cages, water droplets from dirty cages sprayed under his face shield and landed directly on his face. Also, appellant took bathroom

breaks between cleaning rooms, exposing him to contaminated matter on his protective clothing. Counsel asserted that there was no likely method of transmission other than appellant's occupational exposure to NHP known to carry the Entamoeba polecki organism. Appellant noted that he no longer worked at the employing establishment as he was "scared to work with animals now."

By decision dated and finalized September 13, 2012, an OWCP hearing representative affirmed OWCP's February 15, 2012 decision denying the claim, finding that the medical evidence of record failed to establish a causal relationship between the claimed condition and occupational exposures to NHP.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

ANALYSIS

Appellant claimed that he contracted a systemic Entamoeba polecki infection in the performance of duty on or before October 19, 2011. He attributed the condition to splash and contact exposures to primate feces while hosing down cages and handling animals during cage transfers. Appellant asserted that he had no nonoccupational exposures to pigs or monkeys, both known to carry the Entamoeba polecki organism.

[3] 5 U.S.C. § 8101-8193.

[4] *Joe D. Cameron,* 41 ECAB 153 (1989).

[5] *See Irene St. John,* 50 ECAB 521 (1999); *Michael E. Smith,* 50 ECAB 313 (1999).

[6] *Gary J. Watling,* 52 ECAB 278 (2001).

[7] *Deborah L. Beatty,* 54 ECAB 340 (2003).

Dr. Ambroz, an attending internist, noted on October 19, 2011 that appellant presented with bloody diarrhea, vomiting and abdominal pain after exposure to exotic monkeys at the employing establishment. He ordered stool testing that revealed Entamoeba polecki trophozoites.

OWCP denied appellant's claim on September 13, 2012, finding that he was exposed to primates and primate feces at work, but that there were no established incidents of transmission. The Board finds, however, that the case is not in posture for a decision.

The Board finds that there are no medical reports in the record tying appellant's specific contraction of this Entamoeba polecki infection to the workplace. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by her employment are sufficient to establish causal relationship.[8] Such a relationship must be shown by rationalized medical opinion evidence.[9]

However, the Board finds that OWCP must further develop the factual aspect of this record. Dr. McIntosh advised in his November 25, 2011 note that the employing establishment would investigate whether it was possible to take stool samples from certain NPH that would have been in quarantine in either late September or early October with which appellant may have worked. From a review of the record, no results were ever submitted to OWCP or appellant. OWCP must develop this aspect of the case.

The record also reflects an e-mail from a Dr. Reisler of the employing establishment to Dr. McIntosh, stating: "Sorry let me correct myself. 25 percent of the NHP infections that were detected or subtyped contained polecki. Some of the NHP had multiple types of Entamoeba subtypes." There is no context for this e-mail and there is no other explanation as to its meaning. Further, no attempt by OWCP to clarify the meaning of this e-mail is reflected in the record. It must further develop the facts surrounding this document.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. Although it is a claimant's burden to establish his or her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source. It shares responsibility to see that justice is done.[10] Following this and any other factual development deemed necessary, OWCP shall issue an appropriate decision in the case.

The case will be remanded for further factual development.

[8] *See D.U., supra* note 9; *D.I.*, 59 ECAB 158 (2007)*; Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

[9] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

[10] *See S.P.*, Docket No. 11-1271 (issued April 19, 2012).

CONCLUSION

The Board finds that the case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 13, 2012 is set aside and the case remanded for further development consistent with this decision.

Issued: August 23, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge, concurring:

I concur with the holding of my colleagues and with the disposition of this appeal. The purpose of this opinion is to emphasize the inadequacy of the record.

The first and most obvious problem is that appellant's health record and various e-mails, both provided by the employing establishment have been redacted. On numerous pages, what appears to be black marker obscures lines of information. Even if this incomplete record is not intentional, it still presents this Board with a questionable and obviously incomplete record.[1] The record received by the Board contains copies of e-mails related to an investigation of appellant's claim that he contracted a bacterial infection of his intestinal tract through exposure to primates known to sometimes carry the same bacteria.[2] Appellant works as an animal

[1] It is not impossible that the black markings in the record are the result of scanning and copying colored inks which did not show as black on the original documents.

[2] The e-mails were selected by someone at the employing establishment, printed and included in appellant's medical record. It is not clear if all the relevant e-mails were included. It is not clear what role the person who chose the e-mail and directed their inclusion had in the employing establishment.

caretaker handling monkeys, primates and other animals used for laboratory work by the Army. However no report from an investigation appears in the record. There should be a report or an explanation why no report appears.

The limited record before the Board suggests that the employing establishment investigated whether any primate tested positive for the bacteria which caused appellant's infection. The record should disclose whether appellant's work area was tested for the presence of the particular bacteria that caused the infection. The record should also disclose whether records are kept by the employing establishment of bacterial infections among its employees and if records exist, what they disclose. OWCP has denied appellant's claim without that information.

Aside from information within the custody and control of the employer, the record contains a laboratory report dated October 21, 2011 which states that appellant's infection was reported to the county or State health department. If it becomes clear that the employing establishment contends that appellant, more likely than not, came into contact with the infectious bacteria someplace other then work, it is relevant whether a cluster of infections was reported near appellant's residence.

It is unnecessary to cite authority beyond the manual used to guide the claims examiner. In its development of this claim, OWCP should obtain information which the employing establishment is obligated to provide: (1) A complete health record for appellant without information blacked out; (2) A record of bacterial testing on the laboratory animals which appellant may have contacted; (3) A complete record of any specific investigation or testing performed as a result of appellant's infection.[3]

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

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapters 2.800.4, 2.800.7, 2.800.8, & 2.800.10 (June 2011).