

**United States Department of Labor
Employees' Compensation Appeals Board**

RICHARD L. SWAIN, Appellant

and

**DEPARTMENT OF THE ARMY,
White Sands Missile Range, NM, Employer**

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**Docket No. 05-323
Issued: April 12, 2005**

Appearances:
Richard L. Swain, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 22, 2004 appellant filed a timely appeal from the October 21, 2004 merit decision of the Office of Workers' Compensation Programs, which denied that he sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant's deep vein thrombosis was causally related to his federal employment.

FACTUAL HISTORY

On March 30, 2004 appellant, then a 51-year-old equipment engineer, filed a claim alleging that he sustained an injury in the performance of duty on February 27 and 28, 2004. He stated that he was clearing brush with pruning shears for 10 hours both days. On the following weekend, March 6 and 7, 2004, his arm became red and swollen. A deep vein thrombosis was found and he underwent catheter-directed thrombolytic therapy. Appellant alleged that the

repetitive motion of using the pruning shears for 10 hours each day damaged a vein in his arm and caused a blood clot to form at that spot.

On March 9, 2004 Dr. Michael Keller, a vascular surgeon, related appellant's history and diagnosed left axillary and subclavian vein thrombosis. He reported: "This is likely an effort-type thrombosis, probably induced from his recent activity with the tree trimming. It is not likely that he has some underlying hypercoagulable disorder based on his past medical history."

On March 29, 2004 Dr. William T. Baker, appellant's general practitioner, reported as follows: "[Appellant's] recent hospitalization was due to a deep venous thrombosis of his left subclavian vein. I believe this was due to repetitive movements of his upper extremities."

On a March 30, 2004 Record of Injury form, Dr. Michael S. Torres, an employing establishment physician, stated: "My opinion is that it is questionable if the above [history] caused or exacerbated the DVT condition."

On September 20, 2004 the Office asked appellant to submit a physician's opinion, supported by a medical explanation, as to how the reported work incident caused or aggravated the claimed injury. The Office stated: "This explanation is crucial to your claim." He did not respond within the 30 days allowed.

In a decision dated October 21, 2004, the Office denied appellant's claim. The Office accepted that the employment incident occurred as alleged but found that the medical evidence failed to establish that this incident caused the medical condition for which he sought compensation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Employee must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established

¹ 5 U.S.C. §§ 8101-8193.

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

ANALYSIS

There is no dispute that appellant used pruning shears or loppers to clear brush for 10 hours a day on both February 27 and 28, 2004. In its October 21, 2004 decision, the Office referred to this employment activity as “established work-related event(s).” The Board finds that appellant experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether this employment activity caused or aggravated the diagnosed medical condition.

The medical opinion evidence in this case is generally supportive of appellant’s claim. Dr. Baker reported that appellant’s recent hospitalization for a deep vein thrombosis was due to repetitive movements of his upper extremities. He reviewed the history of clearing brush and debris and related appellant’s condition to the established employment activity. However, Dr. Baker’s opinion, for purposes of determining appellant’s entitlement to compensation, does not explain how clearing brush with a pair of pruning shears could cause or contribute to a deep vein thrombosis. He did not explain the basic physiology of deep vein thrombosis or how he concluded there was a causal relationship to a reasonable degree of medical certainty. The Board finds that Dr. Baker’s opinion is of diminish probative value because it lacks adequate medical reasoning.⁷

The opinion of the employing establishment physician, Dr. Torres, is also of little probative value. He did not explain the reason he thought a causal relationship was questionable.

Dr. Keller, a consulting vascular surgeon, stated that appellant’s thrombosis was likely an effort-type thrombosis “probably induced from his recent activity with the tree trimming.” He added that it was not likely, based on past medical history, that appellant had some underlying hypercoagulable disorder. While indicating that appellant’s thrombosis was probably not a natural result of some preexisting condition but was likely induced by the recent employment activity, the physician’s opinion an causal relationship was couched in speculation. Dr. Keller did not explain the basic physiology of how clearing brush with a pair pruning shears can lead to

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ *See Connie Johns*, 44 ECAB 560 (1993) (holding that a physician’s opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

a deep vein thrombosis. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can the opinion be speculative or equivocal⁸

Although appellant has submitted medical evidence that tends to support his claim, it is insufficient because it lacks adequate rationale from a physician that contains an explanation of how his deep vein thrombosis was caused by the accepted work activities. For this reason the Board finds that appellant has not met his burden of proof to establish causal relationship.

CONCLUSION

Appellant has not met his burden of proof to establish that his deep vein thrombosis was causally related to the established employment activity.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ See *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002). See also *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).