

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

C.S., Appellant)

and)

DEPARTMENT OF HEALTH & HUMAN)
SERVICES, NATIONAL DISASTER MEDICAL)
SERVICES, Bethesda, MD, Employer)

**Docket No. 14-203
Issued: April 24, 2014**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 4, 2013 appellant, through his attorney, filed a timely appeal of a September 17, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision denying his occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that his necrotizing myonecrosis was causally related to his employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal. On July 31, 2011 appellant then a 64-year-old health technician/paramedic filed an occupational disease claim alleging that he had developed necrotizing fasciitis, clostridium septicum due to factors of his federal employment. He stated that he returned from a two-week deployment in Haiti on January 30, 2010 and was diagnosed with strep throat. Appellant stated that periodically after that he developed multiple episodes of uncontrolled fevers and on July 2, 2011 received a diagnosis of necrotizing fasciitis.

In a report dated September 8, 2011, Dr. Robert E. Hruby, a Board-certified surgeon, stated that he first examined appellant on July 2, 2011 with necrotizing fasciitis and myonecrosis secondary to clostridium perfringens infection. He stated that appellant developed multisystem organ failure and required treatment for respiratory failure, renal failure and overwhelming sepsis. Dr. Hruby opined, "From a clinical standpoint, the infectious etiology of his disease may be related to his deployment to Haiti although deployment occurred months before. The medical literature suggests that these types of unusual infections mainly remain dormant in the gastrointestinal tract for extended periods of time." Dr. Hruby examined appellant on July 3, 2011 and diagnosed necrotizing fasciitis with no clear source, possibly spontaneous, with multisystem organ failure. On July 22, 2011 he diagnosed clostridium perfringens necrotizing fasciitis involving the upper back, right flank and right anterior abdominal wall.

By decision dated November 1, 2011, OWCP denied appellant's claim on the grounds that the medical evidence had not established that his diagnosed condition was due to his employment. The Board reviewed appellant's appeal in a decision dated November 5, 2012 and reissued on January 18, 2013² and found that Dr. Hruby did not explain how or why he believed that appellant developed necrotizing fasciitis and myonecrosis due to his deployment to Haiti. The Board found that appellant had not submitted sufficient medical opinion evidence to establish his occupational disease claim. The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

Counsel requested reconsideration on August 13, 2013. In a report dated December 1, 2011, Dr. Hruby opined that clostridium perfringens was the etiology of appellant's necrotizing myonecrosis. He stated that clostridium perfringens were endemic in Haiti. Dr. Hruby concluded, "The patient, after his deployment, developed an acute diarrheal illness followed by fulminant sepsis and necrotizing myonecrosis. As you are also aware, these infections may lay dormant in carriers for extended period of time. Based on these criteria, it is probable that this unusual life threatening infection from which [appellant] is recovering may be related to his deployment to Haiti."

By decision dated September 17, 2013, OWCP denied modification of its prior decisions. It reviewed Dr. Hruby's December 1, 2011 report and continued to be speculative as to the relationship between appellant's condition and his employment.

² Docket No. 12-1169 (issued November 5, 2012). Due to a failed delivery of its November 5, 2012 decision to appellant, the Board issued an order reissuing this decision on January 18, 2013.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."³ To 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁴

ANALYSIS

The Board previously found that appellant had established that he was a federal employee and had implicated a factor of employment, *i.e.*, deployment to Haiti in January 2011, but had failed to establish that the diagnosis of necrotizing fasciitis in July 2011 was causally related to the employment factor.

The Board finds that appellant has failed to submit the necessary rationalized medical opinion evidence to establish that his diagnosed condition was caused or aggravated by his travel to Haiti. Appellant submitted an additional report from Dr. Hruby dated December 1, 2011. Dr. Hruby again opined that clostridium perfringens were the etiology of appellant's necrotizing myonecrosis and were endemic in Haiti. He noted that, subsequent to his deployment to Haiti, appellant developed an acute diarrheal illness followed by fulminant sepsis and necrotizing myonecrosis. Dr. Hruby stated that these infections may lay dormant in carriers for extended period of time. He concluded, that it was probable that appellant's infection "may be related" to his deployment to Haiti.

This report is of limited probative value in establishing that appellant's diagnosed occupational disease is related to his deployment to Haiti. Dr. Hruby did not explain how or why he believed that appellant developed necrotizing fasciitis and myonecrosis due to his deployment to Haiti. He merely indicated that there was a possible connection. Without medical opinion evidence addressing mechanics by which appellant's deployment to Haiti would have resulted in the diagnosed condition and offering a clear opinion that this deployment was the cause of appellant's disease process, this report is not sufficient to meet appellant's burden of proof. Dr. Hruby's opinion is also speculative in nature as he used the phrases "probable" and "may be

³ 20 C.F.R. § 10.5(q).

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

related” in describing the causal relationship between appellant’s diagnosed condition and his employment exposure.⁵

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between his deployment to Haiti in January 2011 and his disease process in July 2011.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to submit the necessary medical opinion evidence to establish his occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT September 17, 2013 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: April 24, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees’ Compensation Appeals Board

⁵ See *Jennifer Beville*, 33 ECAB 1970, 1973 (1982); *Leonard J. O Keefe*, 14 ECAB 42, 48 (1962) (finding that an opinion which is speculative in nature is of limited probative value on the issue of causal relationship).