

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY G. RILEY and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Jacksonville, FL

*Docket No. 98-1039; Submitted on the Record;
Issued November 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that his skin condition was sustained in the performance of his federal employment.

On June 5, 1996 appellant, then a 42-year-old former federal employee, filed a Form CA-2, claim for compensation, alleging that his staphylococcus aureus and dermatitis herpetiformis were caused by factors of federal employment. Appellant stated that he was initially aware of his condition on June 8, 1995, and that from September 25, 1995 to the present he had been seeking accommodation for his condition.¹ On the same day appellant also filed a claim for wage loss from February 3, 1996, the day he was removed from the employing establishment to June 5, 1996.

In support of his claim appellant submitted a narrative referred to as an abstract report, dated February 1, 1996, which described appellant's exposure to a bacteria, staphylococcus aureus, while gathering marsh water examples during certain times and locations within appellant's area of jurisdiction.²

In an undated attending physician's report received by the Office on February 23, 1996, Dr. Schillinger stated that appellant was totally disabled from July 27 to September 25, 1995, and partially disabled from September 25, 1995 to February 2, 1996. Dr. Schillinger noted that appellant returned to work on September 25, 1995 with restrictions including "working in a nonhumid environment (inside work only, no manual labor)," with self-help and mental health intervention. He added that "[I]t is a medical necessity that [appellant] continues to minimize

¹ In his claim form appellant referred to his doctor's diagnosis of his condition. In an attending physician's supplemental report dated March 15, 1996, Dr. Brent M. Schillinger, appellant's treating physician, Board-certified in dermatology, stated that appellant had staphylococcus aureus and dermatitis herpetiformis.

² Appellant stated that he was exposed to the bacteria on May 15 and 16, June 13, 20, 22, 28 and 29, and July 20, 1995.

any potential or actual stress-related episodes, exposure to heat and humidity, shower frequently with therapeutic nondrying cleaning lotion.” Dr. Schillinger also noted that appellant’s “blisters are present at this time and itch severely. They have been persisting for months now. The medication that [appellant] takes has adverse side effects.”

In a medical report dated March 15, 1996 and received by the Office on July 2, 1996, Dr. Schillinger stated that appellant had “staphylococcus aureus skin infection aggravating existing skin condition” and dermatitis herpetiformis flare-ups. He checked a box indicating that the conditions were caused by appellant’s work. Dr. Schillinger also noted that appellant’s “rare disorder produces recurrent crops of blisters,” and that he was undergoing several treatment regimens. He also noted that appellant’s chronic flare-ups “render [him] completely incapacitated in his pursuit of a normal healthy life,” that the length of appellant’s disability was uncertain, and that he could not return to work since he “lost employment due to disability.” Dr. Schillinger also noted in a box addressing partial disability that appellant could not return to work “until existing condition is under control.” In a box reserved for recommendations and prognosis, he noted:

“Since exposed tissue can become infected at any time [appellant’s] prognosis is unpredictable, uncertain and indefinite until his current medications and treatment regimes can bring his aggravated condition under control. This condition may persist for months or years. [Appellant] will have to stay under the care and treatment of a doctor for the rest of his life.”

In a medical report dated May 20, 1996, received by the Office on July 2, 1996, Dr. Schillinger stated that appellant had recurrent dermatitis herpetiformis with folliculitis. He noted that appellant related his initial outbreak as having occurred as a result of accidental exposure to chloroform positive surface water contaminated with various bacterial species. Dr. Schillinger noted that appellant’s condition tends to recur with repeated exposure to bacteria. He also noted that appellant had “job emotional stress.”

In an undated medical report received by the Office on July 2, 1996 Dr. Schillinger stated that a June 8, 1995 specimen of the right neck revealed a bacterial culture known as staphylococcus aureus.

Appellant also submitted a position description which defined the major duties of an hydrologic technician as gathering and reporting on a variety of hydrological, meteorological and water quality data throughout southern Florida including placing, testing and maintenance of a variety of data gathering equipment located throughout the area of jurisdiction.

By letter dated July 29, 1996, the Office notified appellant that it had received his claim for benefits but that the Office was uncertain regarding what appellant was claiming and how he believed that his condition was related to his work. The Office required appellant to submit a medical report from his doctor indicating whether appellant’s condition was related to work and medical support for that conclusion.

On August 1, 1996 appellant submitted multiple medical reports. In a September 20, 1995 report, Dr. Schillinger stated that appellant had dermatitis and was symptomatic with

itching, swelling and blisters, but that he would be able to return to work on September 25, 1995. He noted that appellant was restricted to five hours of office work per day, and that his medication “may cause depression and confusion.” Appellant also submitted a January 12, 1996 medical report from Dr. Schillinger in which he stated that appellant had an acute flare-up that day, with recurrent intensely pruritic papular eruptions on the trunk and extremities as well as discomfort and insomnia. He noted that appellant had complained of adverse side effects to therapy and that his prognosis was “indefinite as it is a chronic problem at this time.” In an attending physician’s supplemental report dated July 12, 1996, Dr. Schillinger stated that appellant had recurrent dermatitis herpetiformis with folliculitis, that he was disabled for more than 90 days, that he will need to remain on medication and on a treatment regimen, and that his prognosis was unpredictable and uncertain at present. In response to what permanent effects, if any, are anticipated, the doctor noted that appellant has “lost minimal sedentary activity (and) significant loss of psychological personal and social adjustment, inability to achieve optimum wellness.”

In a medical report dated August 28, 1996, Dr. Schillinger stated that appellant has dermatitis herpetiformis which has been intermittently under control, and an additional cutaneous involvement in the form of a highly pruritic folliculitis of the trunk and extremities. He added that “[i]t was speculated that the source of these bacteria was coliform-positive surface water which [appellant] was contaminated with while on the job.” Dr. Schillinger related appellant’s history of injury, noting that “the wet mass of his working environment exceeded Department of Environmental Resources (DER) surface water standards in terms of bacterial contamination. Repeated exposures to this water produced various episodes of folliculitis and seemed to be responsible for additional flare-ups of the underlying dermatitis.”

In an Office memorandum dated October 4, 1996, a claims examiner stated that appellant “now has hepatitis B which is caused by the original exposure. It needs to be treated.”

In a decision dated October 7, 1996, the Office denied appellant’s claim on the grounds that he failed to establish fact of injury.

In a medical report dated September 30, 1996 and received by the Office on November 7, 1996, Dr. Amita Kamireddy, Board-certified in internal medicine, advised appellant that “test results indicate a strong possibility of hepatitis,” and that he “should see a gastroenterologist for further evaluation.”

In response to a congressional inquiry, the Office, on August 4, 1997 stated that it would reconsider its October 7, 1996 decision.³

In a decision dated August 14, 1997, the Office denied appellant’s request for reconsideration on the grounds that appellant had failed to establish that an injury had occurred. In an attached memorandum, the Office noted that appellant failed to answer the Office’s July 29, 1996 questions; that it was difficult for the Office “to understand exactly what

³ The Office received a letter from appellant on November 7, 1996 which it considered to be appellant’s request for reconsideration.

[appellant] is claiming;” that he had not stated what his work involved; when, for how long and how often he was exposed to contamination; and an explanation as to what exactly happened. The Office noted that appellant’s medical reports were vague about the nature of the exposure. The Office also stated that appellant should explain more about his preexisting skin condition and submit medical reports which show his condition prior to his exposure.

In a request for reconsideration dated September 17, 1997, appellant responded to the issues that the Office addressed in its August 14, 1997 decision denying his request for reconsideration. Appellant cited various memoranda and reports which he stated explained his functions, the locations of those activities and contamination reports which demonstrated exposure which, in turn, gave rise to his condition. Appellant also submitted a September 1, 1995 medical report from Dr. Schillinger which the Office had not yet considered. In that report, Dr. Schillinger stated that appellant was originally seen on June 8, 1995 with a fast spreading bacterial infection called staphylococcus which had rendered appellant disabled from July 28, 1995 to that date. He also noted that appellant had poor resistance to infection due to an underlying dermatitis herpetiformis which causes recurrent clusters of blisters on various body parts which, in this case, burst and became infected. He further noted that appellant could return to work after the infection is gone and the dermatitis is under control. Appellant also included a November 7, 1995 memoranda from the employing establishment which stated that appellant had been unwilling to work at a full-time position due to his medical condition, and that he would no longer be in a paid status at the end of that day. In a medical report dated August 5, 1996 and received on November 17, 1997, Dr. Schillinger stated that appellant had been under a variety of medical regimens for his dermatological condition.

On October 30, 1997 the Office requested additional information including the authorship and date of the abstract report. The Office also requested appellant’s doctor to provide his medical reasoning why he believed appellant’s skin condition was causally related to his work, whether appellant’s skin condition had cleared up as mentioned in an undated CA-20 report, and whether appellant’s condition was due more to nonwork-related matters such as humidity, heat and stress and not work-related factors.

In a facsimile transmission dated November 12, 1997, Dr. Schillinger stated that appellant’s staphylococcus aureus skin infection was caused by exposure to coliform-positive waste-water found in the wet mass of his working environment during the summer of 1995. He added that, “[T]he repeated exposure to agents or conditions such as infection, heat, humidity, elevated stress levels and recurring episodes ... produced a significant reduction in the patients mechanism of recovery.” Dr. Schillinger also noted that, “[I]t seems more medically probable that the work-related exposure to the coliform-positive water in 1995 to be totally responsible for the clinical (reversal) of his existing underlying dermatitis herpetiformis, the subsequent psychological symptoms and the ongoing physiological complications that created an unpredictable prognosis. [Appellant’s] condition differs significantly from the preexisting dermatitis herpetiformis.”

In a report dated November 21, 1997, the employing establishment stated that it was unaware of the author of the abstract report and that it was unaware that anyone could have been exposed to the stated elements as reported in the abstract report; that appellant was employed

fully on the stated dates; that the employing establishment did not question that sampling was done on the stated dates that airboats were used to access samples; that appellant was required to wade in water and that he was provided protective clothing.

In a decision dated December 3, 1997, the Office denied appellant's request for reconsideration on the grounds that he did not establish that he had been exposed to coliform bacteria at work.

The Board finds that the opinion of Dr. Schillinger establishes that appellant's staphylococcus aureus and dermatitis herpetiformis was contracted as a result of work-related exposure to coliform-positive waste water. There is no medical opinion evidence to the contrary. For this reason, the Office's December 3 and August 14, 1997 and October 7, 1996 decisions must be reversed.

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.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.⁵ Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.⁶

In this case, the Office denied appellant's claim on the grounds that appellant had failed to establish that an injury had occurred. The Office stated in its August 14, 1996 decision that appellant had failed to explain what he was claiming; that he had not stated what his work involved; that he had not indicated when, for how long and how often he was exposed to contamination; and that he had not provided an explanation as to what happened. The Office also stated that the medical reports were vague about the exposure. However, the record clearly demonstrates that appellant filed a claim for a work-related occupational disease, specifically staphylococcus aureus and dermatitis herpetiformis as diagnosed by his physician and as referenced by appellant in his claim form, and a separate claim for wage loss attributed to the condition. Further, appellant in a narrative report specified the times of his exposure to contaminated water; he also provided a position description which stated that he was responsible for monitoring and collecting water samples to determine their purity. The Board noted that the

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

employing establishment, in a report dated November 21, 1997, essentially concurred with appellant's statements that he indeed was employed fully on dates that appellant claimed in his February 1, 1996 narrative, that the employing establishment did not question that sampling was done on the stated dates, that airboats were used to access samples, and that appellant was required to wade in water. Further, appellant's treating physician, Dr. Schillinger, Board-certified in dermatology, stated that a June 8, 1995 specimen of appellant's right neck revealed staphylococcus aureus. He added that it was medically probable that work-related exposure to the coliform-positive water in 1995 to be causally related to appellant's dermatitis herpetiformis and additional psychological and physiological complications. Appellant also noted his condition differed significantly from the preexisting dermatitis herpetiformis. He therefore has met his burden of proof by demonstrating the existence of a medical condition, in this case, staphylococcus aureus and dermatitis herpetiformis; that his work required him to take measurements of water samples in Florida marsh land; and that his doctor, a Board-certified dermatologist, stated that appellant's condition was causally related to the wet mass exposure in 1995. The Board notes that the employing establishment's statement that it was unaware that anybody could have been exposed to the stated elements is vague and unpersuasive. Indeed, the signatory of the report is not completely identified either by complete name or title, thus undermining the credibility of the statements contained therein. Further the report's author identified a different employing establishment official who would be better able to identify the existence of the "stated elements," although no additional report from the employing establishment appears in the record.

The decisions of the Office of Workers' Compensation Programs dated December 3 and August 14, 1997 are reversed.

Dated, Washington, D.C.
November 19, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member