U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS S. McMAHON and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Hillsboro, OR

Docket No. 99-2254; Submitted on the Record;
Issued August 1, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury on July 9, 1997 while in the performance of duty.

On July 25, 1997 appellant, then a 52-year-old aviation safety inspector, filed a traumatic injury claim for a left eye infection which he alleged occurred while in the performance of duty.[1] Appellant stopped work on July 9, 1997 and returned to work on July 14, 1997. On the claim form, appellant indicated that his physician told him that a bug bite probably was responsible for his left eye infection. Appellant's supervisor indicated that appellant was injured while in the performance of duty and sustained a bug bite in the left eye.

By decision dated October 5, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence was insufficient to establish fact of injury. By letter dated December 15, 1998, appellant requested a review of the written record in lieu of a hearing. In a decision dated April 8, 1999, a hearing representative affirmed the Office's October 5, 1998 decision.

The Board finds that appellant has not established that he sustained an injury while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition is causally related to factors of his federal employment.[3] Where an employee is on a temporary-duty assignment away from his regular place of employment, he is covered by the Act

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[1] Appellant was on travel for the employing establishment in Oklahoma on July 9, 1997.

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Cherie L. Hutchings*, 39 ECAB 639, 643 (1988).

24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.[4] However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of the employment.[5] A condition that occurs spontaneously during a special mission or in travel status is not compensable. The medical evidence must establish a causal relationship between the condition and factors of employment.[6]

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[7] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, states whether these employment factors caused or aggravated appellant's diagnosed condition.[8]

In a statement dated September 18, 1998, appellant related that on July 9, 1997 he "became dizzy, had a headache, my vision became starry and blurry and was impaired and I became sick to my stomach while in the classroom of my [employing establishment] required training program." He related that he went to the emergency room and that later that night his left eye began to swell. Appellant stated that his wife flew in the next day to Oklahoma and took him to Dr. S. Dean Brown, a Board-certified internist, who admitted him to the hospital for intravenous antibiotics. Appellant noted:

> "[Dr. Brown] stated that this was severe periorbital cellulitis and was a very serious condition in my left eye that could lead to meningitis or encephalitis…. Dr. Brown asked me if I had been bitten by a bug and I could not remember any bug bite. Please check with Dr. Brown as to why he suspected a bug bite because I still have no memory of any bug bite…."

In an office visit note dated July 11, 1997, Dr. Brown diagnosed severe periorbital cellulitis of the left eye and noted that appellant "knows of no bite." Dr. Brown hospitalized appellant for intravenous antibiotics due to the severity of his condition "and the risk for meningitis or encephalitis." In a follow-up report dated July 17, 1997, Dr. Brown found that appellant was "looking extremely well."

[4] *Richard Michael Landry*, 39 ECAB 232, 236 (1987).

[5] *Cherie L. Hutchings*, *supra* note 3.

[6] *See William B. Merrill*, 24 ECAB 215 (1973).

[7] *William S. Wright*, 45 ECAB 498 (1993).

[8] *Id*.

In a report dated November 18, 1998, Dr. Brown noted that appellant had asked him to provide an opinion about the cause of his periorbital edema. He stated:

> "By review, [appellant] presented to me with swelling of his eye which in my opinion was probably due to an insect bite as it had a very typical appearance for such. There was no known injury or trauma to my knowledge regarding the swelling, to lend itself to a better explanation."

In a discharge summary dated March 17, 1998, Dr. Keith B. Riley, a Board-certified internist, diagnosed, *inter alia*, fungal meningitis, obstructive hydrocephalus, multiple cranial nerve palsies and status post pneumonia.[9] In a form report dated September 21, 1998, Dr. Riley indicated that the relationship between the diagnosed condition and appellant's employment was "unknown to me." In a report dated September 22, 1998, Dr. Riley found that appellant possibly "acquired an indolent, invasive fungal infection around the time that he was treated in Oklahoma for an orbital cellulitis." He related: "The relationship of that infection to his employment is not clear to me, but it seems very possible that he acquired an infection while in Oklahoma, that has resulted in his subsequent disability."

In a report dated December 10, 1998, Dr. Riley opined that appellant "most likely acquired a chronic fungal meningitis following an episode of orbital cellulitis that appears to have resulted from an insect bite." Dr. Riley's opinion that appellant's orbital cellulitis "most likely" came from orbital cellulitis apparently due to an insect bite is, without further medical justification, speculative in nature and insufficient to establish causal relationship.[10]

In a report dated November 9, 1998, Dr. Soldevilla opined that appellant was recovering from fungal meningitis which he probably contracted "as a sequelae to an orbital infection triggered by an insect bite."

The medical evidence in this case is insufficient to establish that appellant's left eye condition was sustained while in the performance of duty. Initially, Dr. Brown, appellant's treating physician, did not address the cause of appellant's periorbital cellulitis. When asked to provide an opinion, Dr. Brown speculated that the swelling was probably due to an insect bite in that no trauma "lent itself to a better explanation." Such a conjectural opinion has little probative value in establishing that appellant was injured while on travel duty.[11]

Similarly speculative are the opinions of Dr. Riley and Dr. Soldevilla. The former indicated that the relationship of appellant's diagnosed conditions to his employment was "unknown to me" but "it seems very possible" appellant acquired an infection in Oklahoma.

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[9] After the episode of orbital cellulitis, appellant received treatment for recurrent headaches and Bell's palsy. On January 27, 1998 Dr. Francisco X. Soldevilla, a Board-certified neurosurgeon, admitted appellant to the hospital for acute hydrocephalus. He noted that appellant's medical history was significant for orbital cellulitis. While in the hospital, appellant underwent numerous surgeries including the placement of a ventriculoperitoneal shunt, a meningeal biopsy, multiple lumbar punctures, and placement of a percutaneous endoscopic gastrostomy.

[10] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[11] *Geraldine H. Johnson*, 44 ECAB 745 (1993).

Dr. Soldevilla stated that appellant "probably contracted" fungal meningitis due to an infection from an insect bite. While a medical opinion supporting causal relationship need not reduce the cause or etiology of a disease or a condition to an absolute medical certainty, an opinion that is equivocal or speculative is insufficient to establish causal relationship.[12]

The April 8, 1999 and October 5, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 1, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[12] *Roger Dingess*, 47 ECAB 123 (1995).