

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. GEISLER and PROBATION OFFICE,
U.S. DISTRICT COURT, Kansas City, MO

*Docket No. 02-1761; Submitted on the Record;
Issued December 6, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that he contracted hepatitis C virus (HCV) in the performance of duty as alleged.

On March 30, 2001 appellant, then a 46-year-old probation officer, filed an occupational claim alleging that on March 27, 2001 he had "exposure to contaminated blood – [HCV]" at work. Appellant stated that, when he went to visit an offender he was assigned to supervise, the offender had attempted suicide and as he helped him, he was exposed to HCV blood.

An undated hospital emergency report stated that appellant had body fluid exposure and should use condoms for three to six months.

In a medical report dated March 29, 2001, Dr. Curtis J. Fitzsimmons, a Board-certified internist, considered appellant's history of injury and noted that appellant and the offender went to the emergency room after his visit to the offender, and a blood test at the hospital revealed that "he" had HCV but it is not clear whether Dr. Fitzsimmons is referring to appellant or the offender. Appellant stated that he had a paper cut that morning from work. Dr. Fitzsimmons stated that the offender told appellant that he had HCV. He performed a physical examination and diagnosed occupational exposure to HCV and that it was "unclear on the patient's HCV status at this time." Dr. Fitzsimmons prescribed obtaining hepatitis B and HCV antibodies, a HCV plasma clearance rate (PCR) test, surface and antigen studies and a chemistry profile. A handwritten note dated April 3, 2001 at the top of the report signed by a person whose name is illegible stated that appellant was notified of negative hepatitis B and C serologies. In another copy of the same report, a handwritten note at the end of the report dated May 3, 2001 by the same individual stated that appellant was notified of negative HCV testing.

In an attending physician's report dated April 4, 2001, Dr. Fitzsimmons stated that appellant was exposed to blood infected with hepatitis C while on duty and checked the "yes" box that appellant's condition was work related.

By letter dated April 18, 2001, the Office of Workers' Compensation Programs requested that appellant provide copies of the hepatitis test results and that he sign and return medical release forms for each physician or medical facility that had treated him for the claimed condition.

By letter dated May 1, 2001, appellant explained that on the morning of March 27, 2001 he sustained a paper cut on the middle finger on his right hand while working at his assigned office. He stated that, in the afternoon, he made a home visit to the offender who had attempted suicide and passed out in his bathroom. Appellant stated that the area had blood and it was coming from the offender's arm. He stated that he treated the offender and in the process got blood on his hands and clothes. Appellant stated that the offender advised that he was hepatitis C positive. He stated that when medics saw the cut on his finger, they advised him to seek medical treatment and his supervisor transported him to the hospital.

A chemistry test dated March 29, 2001 was negative for hepatitis B surface antigen, hepatitis B surface antibody (acid bismuth yeast) qualitative, hepatitis C antibody and hepatitis C virus by PCR qualitative. The report stated that "[f]ailure to detect HCV by PCR suggests either resolved infection or a false positive anti-HCV EIA result." Supplemental anti-HCV testing by "RIBA" was recommended.

In an officer's hazardous duty incident report dated April 17, 2001, appellant stated that, when he went to the offender's home, the offender was unconscious and had attempted suicide by slitting his arm with a razor. He stated that he wrapped the wound to stop the bleeding, that he discovered the razor blade and secured it while still attending and restraining the offender. Appellant stated that he continued to undergo blood tests for six months to determine whether or not he had contracted hepatitis C.

A viral serology test dated July 2, 2001 was negative for hepatitis C antibody and HCV virus by PCR qualitative.

A surgeon's report dated July 10, 2001 stated that appellant was exposed to hazardous body fluid when he helped someone at work who tested positive for hepatitis C.

By decision dated November 26, 2001, the Office denied appellant's claim, stating that appellant did not meet the requirements for establishing that he sustained an injury as alleged.

By letter dated December 5, 2001, appellant requested reconsideration of the Office's decision.

By decision dated February 14, 2002, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty as alleged.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment

factors alleged to have caused or contributed to the 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 medical evidence required to establish causal relationship, generally, is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.¹

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.²

In this case, appellant did not establish that he contracted hepatitis C. Appellant's claim was for "exposure to contaminated blood -- hepatitis C" but all the tests appellant underwent for hepatitis C were negative. While the medical reports and related documentation support that he was exposed to hepatitis C, none of them state that he actually contracted it. Dr. Fitzsimmons' March 29, 2001 report stated that appellant's hepatitis C status was unclear at that time and appellant required further testing. In the handwritten notes on the report dated April 3 and May 3, 2001, the individual indicated that appellant's hepatitis C testing was negative. The March 29, 2001 chemistry test and July 2, 2001 viral serology test were also negative. Since none of the medical evidence of record establishes that appellant contracted hepatitis C or that he sustained any harm at work, he has failed to establish his claim.³

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

³ See *Duane B. Harris*, 49 ECAB 170, 173-74 (1997); *O. Paul Gregg*, 46 ECAB 624, 634 (1995).

The November 26, 2001 and February 14, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 6, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member