United States Department of Labor
Employees' Compensation Appeals Board

GREGORY J. RESER, Appellant	)	
and	)	**Docket No. 05-1674**
	)	**Issued: December 15, 2005**
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Rock Springs, WY, Employer	)	

Appearances:
Gregory J. Reser, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 11, 2005 appellant filed a timely appeal from the January 20 and May 18, 2005 merit decisions of the Office of Workers' Compensation Programs, which denied his claim for compensation for failure to establish causal relationship. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on or about September 20, 2003.

FACTUAL HISTORY

On September 29, 2003 appellant, then a 26-year-old range technician (fire), filed a claim for compensation alleging that on September 20, 2003 he contracted poison oak while on a fire fighting assignment. A witness reported that appellant "got into poison oak," which "spread to his legs and arms." A supervisor indicated that appellant was injured in the performance of duty.

Appellant did not stop work and was given a Form CA-16, Authorization for Examination and/or Treatment.

The Office requested that appellant submit additional information to support his claim, including a detailed narrative medical report from his physician, who "must also indicate whether and explain why the condition diagnosed is believed to have been caused or aggravated by your claimed injury."

Appellant responded that he first came into contact with the poison oak on September 20, 2003 while working the Loma fire in the Shasta-Trinity National Forest. He stated that poison oak was in the area but was hard to identify at night. Appellant stated that he encountered the poison oak that night and on subsequent occasions during the five-day assignment. Contact was unavoidable, he stated, because sleeping bags and other equipment were covered with poison oak oil. Appellant noted that his rash progressively got worse from the time he contacted the poison oak and the first time he received medical attention. Appellant stated that he later had a recurrence of the poison oak on a part of his forearm in October 2003.

Appellant explained that he could not provide the requested medical opinion on causal relationship: "I am unable to provide a narrative medical report from the doctor who treated me since he no longer works at the hospital I visited and the hospital claims that they do n[o]t know how to contact the former doctor."

Appellant did submit the report of a physician who later saw him for what appellant thought was a recurrence of his poison oak rash. On February 22, 2004 Dr. T. Michael Mains, a specialist in emergency medicine, reported that he saw appellant on October 21, 2003 for an itchy rash. He diagnosed a nonspecific pruritic rash. As to whether this was caused by appellant's employment, he noted: "Cannot state if dermatitis was work related (though not likely the recurrent poison oak patient suspected)." Dr. Mains also noted: "Patient was seen September 29, 2003 by a different physician, with a different rash with diagnosis of 'poison oak rash.'"

In a decision dated January 20, 2005, the Office denied appellant's claim for compensation on the grounds that it was not established that the claimed medical condition was related to the accepted work-related events.

Appellant requested reconsideration. He submitted a March 10, 2004 letter from Kirk A. Strom, a fire management specialist, who stated:

> "This letter is written to certify that [appellant] was injured while performing work as a firefighter on September 20, 2003, on the Shasta-Trinity National Forest. When [he] returned to the BLM [Bureau of Land Management] office in Rock Springs, Wyoming, he was covered with a rash that appeared to be caused from sleeping in poison oak while on the fire line. Consequently, he was *ordered* to go to the emergency room at the Sweetwater Memorial Hospital in Rock Springs, Wyoming." (Emphasis in the original.)

Emergency room records from the Memorial Hospital of Sweetwater County indicate that appellant saw Dr. Charles Ford on September 29, 2003 with a history of having slept in poison

oak at work on September 20, 2003. Appellant complained of a rash all over his body. The admitting diagnosis was "rash on arms, legs, itching and burning." Dr. Ford noted poison oak "last week now rash." He examined appellant, diagnosed "poison oak rash" and prescribed prednisone.

In a decision dated May 18, 2005, the Office reviewed the merits of appellant's claim and denied modification of the January 20, 2005 decision. The Office found that the evidence provided did not establish a causal relationship of the diagnosed condition of "poison oak" to any work exposure, stating:

> "In the instant case, your employer supports the claimed exposure, we have a diagnosis of poison oak and a reported work exposure on the emergency room examination note of September 29, 2003, but no where does the physician address even a cursory reference to work exposure."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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. He must also establish that such event, incident or exposure caused an injury.[2]

The question of causal relationship is a medical issue that usually requires reasoned medical opinion for resolution.[3] But in supporting a compensation award, the absence of such evidence is not always fatal to the claim. There is good authority for the proposition that

[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] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.0805.3 (July 2000).

medical evidence need not be entirely relied upon to sustain a compensation award, as weight may be given to the "common sense of the situation."[4]

ANALYSIS

Appellant's occupational exposure to poison oak is not in dispute. An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[5] Appellant's statement is not refuted. He has provided a consistent account to his physicians, to the employing establishment and to the Office. A witness confirmed that appellant was exposed to poison oak, which spread to his legs and arms. The employing establishment supported the claimed exposure, noting that when appellant returned from his assignment he was covered with a rash that appeared to be caused from sleeping in poison oak while on the fire line. The Board finds that appellant has met his burden of proof to establish that he experienced a specific exposure occurring at the time, place and in the manner alleged. The question for determination is whether this exposure caused an injury.

The Office denied appellant's claim for compensation because it was not established that the claimed medical condition was related to the accepted work-related events. Indeed, the record contains no physician's opinion attributing appellant's diagnosed condition to his accepted exposure at work. However, the Board finds that the circumstances of this case are such that no opinion on causal relationship is necessary. The diagnosis given by Dr. Ford, the emergency room physician who saw appellant on September 29, 2003, speaks for itself. Where occupational exposure to poison oak is established, where appellant was admitted to the

---

[4] *Elizabeth Maypother* (*Francis J. Maypother*), 5 ECAB 604 (1953); *Mary Anna MacLean* (*Harold S. MacLean*), 3 ECAB 72, 76 (1949); *Anna Strehl* (*William Strehl*), 2 ECAB 74 (1948) (citing *Avignone Freres v. Cardillo, Deputy Commissioner*, 117 F.2d 385 (D.C. Cir. 1940); *Commercial Casualty Insurance Co. v. Hoage, Deputy Commissioner*, 75 F.2d 677, 678 (D.C. Cir. 1935), *cert. denied*, 295 U.S. 733 (1935)); *see Estus L. Frost* (*Major Herschell Clifford Frost*), 9 ECAB 78 (1956) (denying a petition for clarification of the phrase "common sense of the situation," as the Board and many other jurisdictions, had employed the test innumerable times and as there was no room for doubt as to its application where the Board summarized the facts that it found strongly suggested the causal nexus necessary to sustain an award). *Cf. Elsbeth Severin* (*Nicholas Severin*), 9 ECAB 91 (1956) (the "relative circumstances" doctrine permits the award of compensation in cases where circumstances strongly suggest causal relationship if these factors are present: a condition the etiopathogenesis of which is in doubt; the occurrence of a dramatic incident; supported by some medical evidence and immediate onset of symptoms continuing thereafter); *see Ferne P. Frickey* (*Henry P. Frickey*), 9 ECAB 308 n.1 (1957) (noting that the Board had, in an earlier case, inappropriately applied the "relative circumstances" doctrine when the decision should have been confined to the "common sense of the situation"). The Office recognizes that a case may be accepted without a medical report if (1) the condition reported is a minor one that can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting or animal bite); (2) the injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and (3) no time was lost from work due to disability. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.0805.3.d(1) (July 2000). *But see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Disease*, Chapter 2.0806.3.d(1) (June 1996) (stating that a basic occupational disease case, such as a claim for poison ivy where the claimant's employment involves exposure to the plant and the medical evidence confirms the diagnosis, may be accepted if the file contains a statement describing the employment-related exposure and a medical report that both defines the medical condition and relates it to the claimed exposure).

[5] *Virgil F. Clark*, 40 ECAB 575 (1989); *Robert A. Gregory*, 40 ECAB 478 (1989).

emergency room on September 29, 2003 with a history of having slept in poison oak at work a week or so earlier and where the emergency room physician diagnosed "poison oak rash," the common sense of the situation strongly suggests the causal nexus necessary to sustain an award: that appellant's accepted exposure to poison oak at work caused his diagnosed poison oak rash. Given the accepted exposure at work, the timing of appellant's symptoms, the history reported to the medical provider and the nature of the diagnosed condition, appellant's claim for compensation may reasonably be accepted. The Board finds that appellant's accepted exposure to poison oak at work caused an injury.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on or about September 20, 2003.

ORDER

IT IS HEREBY ORDERED THAT the May 18 and January 20, 2005 decisions of the Office of Workers' Compensation Programs are reversed. The case is remanded for payment of appropriate compensation.

Issued: December 15, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board