

caused an infection which later resulted in swelling and cellulitis.¹ He noted that one of the rooms in which he worked was infested with red ants and he wore shorts and shoes without socks. Appellant recalled having ants on his ankles and legs. He arrived in Miami on January 25, 2004 to prepare for the training course. On January 27, 2004 appellant felt soreness in his ankle, his condition worsened and, on the night of January 29, 2004, his ankle and foot were swollen. He went to the emergency room across the street from his motel on January 30, 2004.

On May 14, 2004 the Office asked appellant to submit additional information, including a detailed medical report explaining how the diagnosed condition was causally related to his employment.

Appellant asked coworkers Chuck Gregg and Brock Long via emails if they could verify that ants were present in the workroom in Miami. Mr. Long responded that he had seen ants in a room in Miami where appellant had worked. He indicated that appellant should review the pest control logbook. Mr. Gregg stated that he had seen ants in the Hurricane Liaison Team (HLT) room in Miami. A pest sighting log indicated that on January 26, 2004 ants were found in the HLT room by Mr. Long.

In a February 23, 2005 letter, Robert Archila, who worked with appellant in Miami in 2004, remembered that his legs itched and he wondered if there were fleas present. He speculated that ants could have caused his itching but would have been hard to see because they were small and light-colored. In an April 18, 2005 letter, Marshall Mabry² stated that appellant was fine at the beginning of the Miami training in 2004 but later mentioned irritation on his ankle. They discussed the small black ants present in their workroom. An exterminator later sprayed the floor and lower walls and set some ant traps.

Emergency room medical notes dated January 31 through February 2, 2004 indicated that appellant had right leg pain, swelling and redness and mild fever and chills. An x-ray of the right ankle revealed soft tissue swelling. Appellant denied having experienced any trauma or insect bites. No open lesions were noted. He had a history of gout. The diagnosis was cellulitis of the right lower extremity and right ankle degenerative joint disease.

In a December 21, 2004 letter, Dr. Jorge Nasr, a podiatrist, responded to a November 9, 2004 inquiry from appellant. He stated that he had reviewed appellant's medical records. Dr. Nasr stated, "It is medically known that ant bites can be a cause of cellulitis (infection) of the skin and associated structures. Simply crawling on the skin without biting will not cause an infection." He noted that in the emergency room medical records appellant denied having an

¹ Appellant was asked by his treating physicians whether he was a diabetic and whether he had been bitten by an insect. Appellant answered in the negative but later recalled the ants in the Miami workroom.

² Mr. Mabry was the individual who took appellant to the emergency room.

insect bite but he later recalled seeing the ants. Dr. Nasr noted that it was unclear whether appellant was actually bitten by ants. In a September 9, 2005 letter, Dr. Nasr stated:

“In response to your letter dated September 15[, 2004]. If the [Office] accepted that you were bitten by ants, then your infection and cellulitis could have been caused by these bites. The fact that you had no other causative incident for the cellulitis then there is factual and medical background showing a causal relationship between the ant bites and your cellulitis.

“The ant bites were a probable cause of your cellulitis.”

In an October 3, 2005 report, Dr. Dwight I. Michael, a Board-certified family practitioner, stated that appellant had requested his opinion on the relationship between the ant bites he sustained on the job and the causal relationship to his cellulitis. He stated:

“As [appellant] related ... he experienced ant bites while working ... in Miami. He noticed a ‘tickling’ sensation at that time. Forty-eight hours later [appellant] began to experience slight discomfort in his right ankle. This gradually progressed through the next 48 hours. On the fourth eve after the bites, he experienced a marked worsening in his condition, including marked swelling of the skin over the ankle and horrible pain, and was unable to sleep. [Appellant] was taken to a nearby ER [emergency room] and was diagnosed with cellulitis and admitted to the hospital.

“Based on my knowledge as a Board-certified physician for the last 20 [plus] years, I believe that there is a very high likelihood that these ant bites that [appellant] experienced on the job [four] days prior to the diagnosis of cellulitis were the instigating factor in the development of cellulitis. It certainly makes the most sense. Therefore, my opinion is that the cellulitis was caused by the conditions he was exposed to while he was on the job.”

By decisions dated June 16 2004 and January 28, 2005, the Office denied appellant’s claim on the grounds that the medical evidence did not establish that his cellulitis was causally related to factors of his employment. By decision dated August 23, 2005, the Office denied appellant’s request for reconsideration.

By decision dated January 31, 2006, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

Appellant 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 employment. Where an employee is on temporary-duty assignment away from his federal employment, he is covered by the Federal Employees’ Compensation Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.³

³ See *Cherie L. Hutchings*, 39 ECAB 639 (1988).

The Board has recognized that Larson, in his treatise, *The Law of Workers' Compensation*, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments as follows:

“Employees whose work entails travel away from the employer’s premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.”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 employment.⁵ The medical evidence must establish a causal relationship between the condition and factors of employment.⁶

ANALYSIS

Appellant was in travel status at the time of the claimed injury and he alleged that his cellulitis was caused by an ant bite. However, the medical evidence does not establish that his cellulitis was caused by an incident of his employment. Appellant submitted emergency room reports dated January 31 to February 2, 2004. The physicians noted right leg pain, swelling and redness and mild fever and chills. The reports indicated that appellant gave no history of trauma or insect bites and had no open lesions. The physicians diagnosed cellulitis of the right lower extremity and right ankle degenerative joint disease. However, they did not indicate the cause of appellant’s cellulitis. As the physicians did not explain how appellant’s condition was causally related to his employment, this evidence is insufficient to discharge appellant’s burden of proof.

In a December 21, 2004 letter, in response to appellant’s request for an opinion on causal relationship, Dr. Nasr indicated that he had reviewed appellant’s medical notes and stated, “It is medically known that ant bites can be a cause of cellulitis (infection) of the skin and associated structures. Simply crawling on the skin without biting will not cause an infection.” He noted that it was unclear whether appellant was actually bitten by ants. In a September 9, 2005 letter, Dr. Nasr stated:

“In response to your letter dated September 15[, 2004]. If the [Office] accepted that you were bitten by ants, then your infection and cellulitis could have been caused by these bites. The fact that you had no other causative incident for the cellulitis then there is factual and medical background showing a causal relationship between the ant bites and your cellulitis.

⁴ 1 A. Larson, *The Law of Workers' Compensation* § 25.01 (2000); see also *Lawrence J. Kolodzi*, 44 ECAB 818 (1993).

⁵ See *William B. Merrill*, 24 ECAB 215 (1973).

⁶ *Id.*

“The ant bites were a probable cause of your cellulitis.”

However, as Dr. Nasr noted, there is no evidence that appellant sustained insect bites. His opinion is premised on appellant having sustained insect bites, not merely having them crawl on the skin. Dr. Nasr indicated that, if there were actual insect bites, the bites were a probable cause of his cellulitis. His opinion on causal relationship is not based on an accurate factual background, as it has not been established that appellant sustained insect bites. In addition, Dr. Nasr did not actually examine appellant at the time his cellulitis was diagnosed. His opinion was based only on a review of the medical records. Due to these deficiencies, his reports are not sufficient to establish that appellant’s cellulitis was caused by insect bites while he was in Miami in travel status in January 2004.

In an October 3, 2005 report, in response to a request from appellant for an opinion on causal relationship, Dr. Michael, stated that appellant experienced ant bites while working in Miami, noting a “tickling” sensation. He stated that there was a very high likelihood that these ant bites that appellant experienced on the job four days prior to the diagnosis of cellulitis were the instigating factor and cause of his cellulitis. However, this factual background is not accurate as appellant has indicated that he felt ants on his leg but has not indicated that he was actually bitten. The emergency room reports indicate no open lesions were seen. Additionally, Dr. Michael did not examine appellant at the time he sustained his cellulitis. His opinion is based only on his review of the medical records. Due to these deficiencies, Dr. Michael’s report is not sufficient to establish that appellant’s cellulitis was causally related to his work in Miami while on travel status.

CONCLUSION

The Board finds that appellant failed to establish that his cellulitis was causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers’ Compensation Programs dated January 31, 2006 and August 23, 2005 are affirmed.

Issued: June 23, 2006
Washington, DC

David S. Gerson, Judge
Employees’ Compensation Appeals Board

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