

**United States Department of Labor
Employees' Compensation Appeals Board**

R.Y., Appellant

and

**DEPARTMENT OF THE ARMY, PICATINNY
ARSENAL, Picatinny, NJ, Employer**

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**Docket No. 07-1032
Issued: September 13, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 6, 2007 appellant filed a timely appeal of a January 23, 2007 merit decision of the Office of Workers' Compensation Programs, which denied modification of a November 16, 2006 decision denying his claim for Lyme disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he contracted Lyme disease in the performance of duty.

FACTUAL HISTORY

On August 22, 2006 appellant, then a 69-year-old mechanical engineer, filed an occupational disease claim alleging that he contracted Lyme disease while in the performance of duty. He first became aware of the disease and its relation to his work on August 11, 2006. Appellant did not stop work.

By letter dated September 12, 2006, the Office advised appellant that the evidence was insufficient to establish his claim. It requested that he provide additional factual and medical evidence within 30 days, including a rationalized medical opinion addressing causal relationship.

In e-mail correspondence dated September 28, 2006, appellant stated that he was never exposed to ticks with the exception of two occasions, both at the employing establishment. He alleged that once there was a tick on his lower leg and once he found one on his chest. The tick on appellant's chest was found on April 16, 2002 and it had dug into his chest, although, as much as possible was removed. He stated that an employing establishment physician removed the tick. Appellant further alleged that he was informed by an employing establishment physician on August 11, 2006 that testing revealed that he had contracted Lyme disease. The Office also received a copy of an August 11, 2006 laboratory report.

By decision dated November 16, 2006, the Office denied appellant's claim. The Office found that the factual evidence was sufficient to establish that he was bitten by ticks in the performance of duty. However, the Office found that the medical evidence was insufficient to establish that the diagnosed condition was due to being bitten by ticks at work.

The Office received a report from a physician whose signature is illegible. The physician indicated that appellant sustained a tick bite four years prior and now had Lyme disease. The Office also received a September 28, 2006 laboratory report, laboratory test results from March to November 2006 and a copy of e-mail correspondence dated September 28, 2006 in which appellant described his exposure to ticks.

On November 27, 2006 appellant indicated that his job activities included going to the pyrotechnics laboratory through tall grassy areas and the grassy Yuma Proving Grounds for ammunition testing. He also included a chronology of events involving the exposure to the second tick, which was partially imbedded in his chest and a description of places that he was required to visit as a result of his work duties. Appellant noted that he worked in grassy and bushy areas which included the pyrotechnics laboratory, the employing establishment and the Yuma Proving Grounds. He indicated that a second tick was discovered on April 16, 2002 and that he developed some symptoms such as weight loss and fatigue. Appellant alleged that testing at the employing establishment in August 2006 revealed that he had contracted Lyme disease.

Appellant requested reconsideration on November 27, 2006.

Appellant submitted copies of reports and treatment notes previously submitted. In treatment notes dating from July 30 to November 20, 2006, Dr. James F. Bilello, a Board-certified surgeon, noted that appellant was being treated for Lyme disease by an infectious disease specialist. On November 20, 2006 Dr. Bilello diagnosed Lyme disease. He noted that the location of the accident was the industrial premises and added that the "actual time of tick undetermined but [patient] has taken ticks off himself after testing in field performing his duties."

By decision dated January 23, 2007, the Office denied modification of the November 16, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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 claimant'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 the claimant.⁴

ANALYSIS

The Office accepted that appellant was bitten by ticks while in the performance of his federal employment duties. The Board finds that he submitted insufficient medical evidence to establish that he contracted Lyme disease as a result of exposure to ticks at work.

Appellant submitted medical reports establishing that he has Lyme disease. None of these reports, however, includes a rationalized medical opinion addressing causal relationship between appellant's condition and his federal employment. Appellant submitted a report from a physician whose signature is illegible. The report indicated that appellant had a tick bite four years prior and now had Lyme disease. He also submitted treatment notes dated July 30 to

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

November 20, 2006 from Dr. Bilello, a Board-certified surgeon, who indicated that appellant was being treated for Lyme disease. While Dr. Bilello diagnosed Lyme disease in his November 20, 2006 report and opined that the location of the accident was the industrial premises, he indicated that the “actual time of tick undetermined but [patient] has taken ticks off himself after testing in field performing his duties.” None of these reports contained an explanation of how or why appellant’s Lyme disease was caused by factors of his federal employment. Dr. Bilello indicated that the location of the exposure was the industrial premises; however, his response regarding the date of exposure was vague as he did not verify appellant’s date of alleged exposure to deer ticks while in the performance of duty. He simply speculated regarding a possible relationship between appellant’s Lyme disease and an alleged employment-related exposure to deer ticks while in the performance of duty by indicating that appellant had taken ticks off himself in the field after performing his duties. Dr. Bilello’s reports, therefore, are of little probative value with regard to the issue of causal relationship and insufficient to establish appellant’s claim.

Consequently, the Board finds that this evidence is insufficient to establish appellant’s claim. The remainder of the medical evidence fails to address the issue of causal relationship.

The Board, therefore, finds that appellant has failed to submit reliable, substantial and probative medical evidence sufficient to establish that his Lyme disease was causally related to an alleged employment-related exposure to deer ticks. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁵ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant’s responsibility to submit.

As there is no reasoned medical evidence explaining how appellant’s employment duties caused or aggravated his Lyme disease, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.⁷

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained Lyme disease in the performance of duty.

⁵ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁶ *Id.*

⁷ Following the issuance of the Office’s January 23, 2007 decision, appellant submitted additional evidence on appeal. However, the Board may not consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 23, 2007 and November 16, 2006 are affirmed.

Issued: September 13, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board