

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

G.W., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Martinsburg, WV, Employer)

Docket No. 09-1555
Issued: May 5, 2010

Appearances:
Deborah Munford, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 1, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 29, 2009 which denied his claim. The Board also has jurisdiction over the May 15, 2009 decision which denied his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment; and (2) whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On October 27, 2008 appellant, then a 44-year-old laundry machine operator, filed an occupational disease claim alleging that the cellulitis in his right hand and finger were sustained in the performance of duty. He first became aware of the condition and its relation to his work on October 17, 2008. Appellant did not stop work.

In a statement received by the Office on November 17, 2008, appellant noted that on October 17, 2008 his right fourth finger began to ache and swell, but he “could not remember how or when I hit it on something.” He told his wife and a coworker, when they picked him up from work. On October 20, 2008 appellant was still experiencing pain in his fourth right finger and his supervisor indicated that he needed to report the injury. He stated that an occupational health nurse advised him that he had cellulitis, and that he needed to see his physician. Appellant went to his physician on October 21, 2008, who diagnosed cellulitis and “possibly mercur” in his finger and prescribed medicine. He noted that his finger worsened and he went to the emergency room on October 23, 2008, where he was admitted and treated for three days.

In an October 20, 2008 report, Dr. Gracia Z. Santos, a Board-certified physiatrist, noted that appellant related that he had “pain and swelling without definite injury to the right hand at 6:00 p.m. on Friday while at work at the laundry.” Appellant noted that the hand became swollen and more painful over the weekend. Dr. Santos diagnosed cellulitis in the right hand from a puncture wound, “insect bite most likely.” He advised that appellant should see his primary physician for antibiotics as soon as possible. Dr. Santos provided a duty status report of the same date and diagnosed cellulitis.

In an October 21, 2008 report, Dr. Stephen Mallott, a Board-certified physiatrist, diagnosed cellulitis of the right hand. He indicated that there was a “question of insect bite. No fever or chills. Has eczema.” Dr. Mallott referred appellant to another physician, Dr. Chesley Yellott, a Board-certified family practitioner. In a report of the same date, Dr. Yellott drained an abscess from the cellulitis. On October 21, 2008 Dr. Mallott placed appellant off work for two days and indicated that he could return to work on October 23, 2008.

In an October 23, 2008 report, Dr. Madhur Solanki, a Board-certified family practitioner, related that appellant’s primary care physician had diagnosed cellulitis and prescribed an antibiotic. However, he noted that appellant might have a methicillin-resistant staphylococcus aureus (MRSA) infection. Dr. Solanki advised that appellant had apparently been in the hospital recently for cardiac issues. He diagnosed cellulitis of the right fourth finger and noted that appellant had a failed outpatient oral antibiotic with a “suspicion that this is a[n] [MRSA] infection.” Dr. Solanki advised that appellant would be admitted and placed on vancomycin. He also diagnosed hypertension, gastroesophageal reflux disease, coronary artery disease, elevated glucose, anxiety disorder and insomnia. Emergency room records of the same date, which contained a finding of cellulitis, accompanied his reports.

In an October 23, 2008 report, Dr. Timothy K. Bowers, Board-certified in emergency and family medicine, noted that a culture was positive for MRSA. He examined appellant and noted that the abscess of the MRSA carbuncle had been drained. In a November 5, 2008 report, Dr. Bowers advised that appellant could return to work on November 5, 2008.

In an October 29, 2008 report, Dr. Yellott noted that appellant was seen for follow-up of cellulitis, which was improved.

By letters dated November 21, 2008, the Office advised appellant and the employing establishment that additional factual and medical evidence was needed. It explained that a physician's opinion on causal relation was crucial to his claim and allotted appellant 30 days within which to submit additional information.

On December 15, 2008 appellant stated that, as a laundry machine worker, he was exposed to chemicals used to launder heavily soiled fabrics. He indicated that they included materials, such as alkali, soaps, bluing, and bleach and he was exposed to them on a daily basis while working. Appellant was not involved in other sports activities or recreational activities that could have caused his illness. He advised the Office that he believed that his infection occurred while working in the laundry, as a machine operator on Friday, October 17, 2008.

By decision dated January 29, 2009, the Office denied appellant's claim. It found that he was exposed to chemicals such as alkali, soaps, bluing and bleach while working as a laundry machine operator; however, the medical evidence was insufficient to relate his condition to the accepted employment factors.

On April 10, 2009 appellant requested a review of the written record.

By decision dated May 15, 2009, the Office denied appellant's request for an examination of the written record as untimely.

LEGAL PRECEDENT -- ISSUE 1

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

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).

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 -- ISSUE 1

The evidence supports that appellant was exposed to chemicals such as alkali, soaps, bluing and bleach while working as a laundry machine operator. The Board finds, however, that appellant submitted insufficient medical evidence to establish that his cellulitis or MRSA condition was caused or aggravated by his federal employment.

In reports dated October 20, 2008, Dr. Santos noted that appellant related that he had "pain and swelling without definite injury to the right hand" while doing his laundry work. He diagnosed cellulitis in the right hand from a puncture wound, and advised "insect bite most likely." In an October 21, 2008 report, Dr. Mallott diagnosed cellulitis of the right hand. He indicated that appellant's condition might be caused by an insect bite. The Board notes that these reports do not provide any support that appellant's condition was work related, but suggest that the cause was due to an insect bite.

The October 23, 2008 report from Dr. Bowers noted that appellant's culture study established that he had an MRSA infection which required that the abscess of the MRSA carbuncle be drained on October 21, 2008 by Dr. Yellott. An October 23, 2008 report from Dr. Solanki diagnosed cellulitis and noted that appellant might have an MRSA infection. The physicians did not offer any opinion regarding the cause of appellant's condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵

The remaining medical reports submitted by appellant are insufficient to establish his claim. They do not contain a medical opinion supporting causal relationship between the diagnosed medical conditions and the factors of appellant's employment as a laundry machine operator.

In order to establish entitlement to compensation benefits, a claimant must provide a physician's opinion that is 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

⁴ *Id.*

⁵ *Willie M. Miller*, 53 ECAB 697 (2002).

employment factors identified by the claimant.⁶ Appellant did not submit a reasoned medical opinion explaining how employment factors caused his cellulitis condition or MRSA infection. The evidence of record is not sufficient to establish the critical element of causal relationship.⁷

On appeal, appellant reiterated his belief that his condition was caused by working in the laundry. As noted, he has not submitted a reasoned opinion from a physician explaining the nature of the relationship between the diagnosed condition and the specific employment factors which he identified. Appellant also submitted evidence with his appeal to the Board. The Board cannot consider this evidence, however, 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.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary.⁹ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁰ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹¹

ANALYSIS -- ISSUE 2

The Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. In a May 15, 2009 decision, it found that appellant was not, as a matter of right, entitled to a record review as his request, dated April 10, 2009, was not made within 30 days of the January 29, 2009 decision which denied his claim for an occupational disease. As appellant's request dated April 10, 2009, more than 30 days after the date of the January 29, 2009 decision, the Office properly determined that he was not entitled to a review of the written record as a matter of right as his request was untimely filed.¹²

The Office also has the discretionary power to grant a request for a record review when a claimant is not entitled to such as a matter of right. In the May 15, 2009 decision, it properly exercised its discretion by stating that it had considered the matter in relation to the issue

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *See John W. Montoya*, 54 ECAB 306 (2003).

⁸ 20 C.F.R. § 501.2(c)(1); *see Steven S. Saleh*, 55 ECAB 169 (2003).

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. §§ 10.616, 10.617.

¹¹ *Claudio Vasquez*, 52 ECAB 496 (2002).

¹² *Id.*

involved and had denied appellant's request on the basis that the issue in this case could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹³ In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. The Office therefore properly denied his request.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty, causally related to factors of his federal employment. The Board also finds that the Office properly denied his request for an examination of the written record.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 15 and January 29, 2009 are affirmed.

Issued: May 5, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ See *J.C.*, 58 ECAB 594 (2007).