

realized it resulted from his employment on February 15, 2010. Appellant reported that the attending physician's assistant in the hospital emergency room advised him that his condition was contracted at the prison where he worked.

On March 17, 2010 the Office advised appellant that the evidence submitted was insufficient to support his claim and requested additional information. It requested that he describe where he was exposed to the alleged sources of infection, what he was exposed to, dates of exposure, the manner of exposure and the duration of the exposure. The Office also requested that appellant provide a comprehensive medical report which included his medical history, description of employment factors and exposure, description of symptoms, examination and test results, a firm diagnosis, treatment provided, and a physician's opinion, with medical rationale, as to whether the claimed work exposures were related to his alleged condition.

Appellant provided various hospital emergency room records. In discharge instructions dated February 15 to 18, 2010, D. Johnson, a physician's assistant, diagnosed appellant with cellulitis and a healing abscess in his right thigh and advised him to continue medication and heating treatments. In a February 15, 2010 lab report, it was noted that appellant suffered from staphylococcus aureus in his right thigh.

Appellant also provided handwritten hospital treatment notes with an illegible signature dated February 15 to 17, 2010. These notes indicated that he complained of pain, swelling, and redness in his right thigh and was diagnosed with an abscess and cellulitis in his right thigh.

In a letter dated April 28, 2010, the Office advised appellant that the evidence was insufficient to support his claim and requested additional factual and medical evidence. Appellant did not submit any additional evidence.

By decision dated June 2, 2010, the Office denied appellant's claim because fact of injury had not been established. It found that the factual evidence was insufficient to establish that appellant was exposed to infection at work and the medical evidence failed to provide a diagnosed condition that was causally related to his alleged work exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

ANALYSIS

Appellant filed an occupational disease claim alleging that he developed a staphylococcus infection as a result of his federal employment. The Office denied his claim on the grounds of insufficient factual evidence demonstrating exposure to infection at work and insufficient medical evidence establishing that his claimed condition was causally related to his employment. The Board finds the evidence of record supports that appellant suffers from a staphylococcus infection and cellulitis. The record, however, fails to establish that he experienced any exposure at work and that his condition is causally related to the alleged exposure.

Appellant claimed that his staphylococcus infection resulted from his work at the prison. He did not, however, submit any evidence to establish that he was exposed to any infection at work. Appellant did not provide any information regarding where he was exposed to the infection, how his exposure occurred and for how long he was exposed to the alleged infection. Office regulations provide that treatment can be authorized where there is actual or probable exposure to a known contaminant due to an injury. The record, however, is void, of any evidence providing an identifiable contaminant or specific exposure to infection. On appeal, appellant contends that numerous inmates have infections and that the Office should have cross referenced their laboratory reports to confirm the infection located at his work site. As previously noted, the claimant has the burden to prove the essential elements of his claim, including whether the specific employment factors or exposure actually occurred.⁵ The Board finds that the evidence fails to establish whether appellant was exposed to infection during his federal employment, and therefore, the factual component of his claim is not satisfied.⁶

The Board also finds that appellant failed to submit sufficient medical evidence establishing that his condition resulted from his employment. Appellant submitted hospital records and treatment notes from D. Johnson, a physician's assistant, dated February 15 to 18, 2010 which provided a diagnosis of staphylococcus infection, cellulitis and an abscess. This evidence, however, is not entitled to probative medical weight as a physician's assistant is not a physician as defined by the Act.⁷ None of the reports contain a rationalized medical opinion

⁴ *R.H.*, 59 ECAB 382 (2008); see *Roy L. Humphrey*, 57 ECAB 238 (2005); *Ruby I. Fish*, 46 ECAB 279 (1959).

⁵ *E.A.*, 58 ECAB 677 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144, (issued July 27, 2010).

⁶ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010) (finding that appellant failed to submit *prima facie* evidence establishing that she was exposed to black mold in her workplace); see also *M.M.*, Docket No. 09-920 (issued October 21, 2009).

⁷ A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report is a physician as defined under 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrist, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

explaining how appellant's alleged condition was caused by exposure to infection at work exposures. The medical evidence, therefore, is insufficient to establish a causal relationship between appellant's medical condition and his federal employment. As appellant failed to demonstrate that he suffered a staphylococcus infection and cellulitis as a result of his employment, the evidence is insufficient to support his claim.⁸

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁸ The Board notes that appellant submitted additional evidence following the June 2, 2010 decision. Since the Board's jurisdiction is limited to evidence that was before the Office at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).