

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

C.S., Appellant)

and)

DEPARTMENT OF HEALTH & HUMAN)
SERVICES, Valparaiso, FL, Employer)

**Docket No. 12-1169
Issued: November 5, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 3, 2012 appellant filed a timely appeal of a November 1, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish necrotizing fasciitis due to his federal employment.

On appeal appellant alleged that there was nothing to suggest that a direct causal relationship did not exist.

¹ 5 U.S.C. § 8101 *et seq.*

² Following OWCP's November 1, 2011 decision, appellant submitted additional evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 31, 2011 appellant then a 64-year-old health technician/paramedic filed an occupational disease claim alleging that he had developed necrotizing fasciitis, clostridium septicum due to factors of his federal employment. He stated that he returned from a two-week deployment in Haiti on January 30, 2010 and was diagnosed with strep throat. Appellant stated that periodically after that he developed multiple episodes of uncontrolled fevers and on July 2, 2011 received a diagnosis of necrotizing fasciitis.

In a letter dated August 19, 2011, OWCP requested additional factual and medical evidence in support of appellant's claim and allowed 30 days for a response. Appellant completed a narrative statement on September 14, 2011 and stated that since his return from Haiti in January 2010 he experienced at least two bouts of uncontrolled shivering. On June 30, 2011 along with the shivering he experienced nausea and diarrhea with periods of reduced level of consciousness. On July 2, 2011 appellant sought treatment at the hospital and received a diagnosis of necrotizing fasciitis. He stated that necrotizing fasciitis was dormant in his colon since his strep throat.

In a report dated September 8, 2011, Dr. Robert E. Hruby, a Board-certified surgeon, stated that he first examined appellant on July 2, 2011 with necrotizing fasciitis and myonecrosis secondary to clostridium perfringens infection. He stated that appellant developed multisystem organ failure and required treatment for respiratory failure, renal failure and overwhelming sepsis. Dr. Hruby opined, "From a clinical standpoint, the infectious etiology of his disease may be related to his deployment to Haiti although deployment occurred months before. The medical literature suggests that these types of unusual infections mainly remain dormant in the gastrointestinal tract for extended periods of time."

Appellant submitted his hospital records. On July 2, 2011 Dr. Hruby examined appellant and diagnosed necrotizing fasciitis requiring wide debridement of the upper back, right flank and right anterior abdominal wall. He noted that appellant had a two-day history of loose stools, nausea and vomiting, hypotensive, acute renal insufficiency and hypovolemic with impending shock. Appellant had necrotizing fasciitis involving the shoulder and right hemithorax for which he received surgical debridement. He underwent surgical debridement on July 2 and 3, 2011. On July 3, 2011 Dr. John J. Kossuta³ noted that appellant attributed his condition to a contaminated salad. Dr. Hruby examined appellant on July 3, 2011 and diagnosed necrotizing fasciitis with no clear source, possibly spontaneous, with multisystem organ failure. On July 3, 2011 appellant underwent further surgical debridement of his right posterior shoulder and right lower quadrant anterior abdominal wall. On July 22, 2011 Dr. Hruby diagnosed clostridium perfringens necrotizing fasciitis involving the upper back, right flank and right anterior abdominal wall.

By decision dated November 1, 2011, OWCP denied appellant's claim on the grounds that the medical evidence did not establish that his diagnosed condition was due to his employment. It found that appellant, a federal employee, filed a timely claim, and that the

³ Dr. Kossuta's credentials cannot be determined.

employment factors occurred and a medical condition was diagnosed, but that he had not established a causal relationship between his diagnosed condition and his employment. OWCP noted that only Dr. Hruby discussed the possible relationship between appellant's deployment in Haiti and his diagnosed medical condition and that he did not provide an explanation of the relationship between the two.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."⁴ 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁵

ANALYSIS

Appellant alleged that he was deployed to Haiti in January 2011 and that in July 2011 he developed necrotizing fasciitis due to clostridium perfringens. He has established that he is a federal employee and has implicated a factor of employment, travel to Haiti as causing or contributing to his diagnosed condition of necrotizing fasciitis. However, appellant has not submitted sufficient medical opinion evidence to establish a causal relationship between his employment and his diagnosis.

Appellant initially attributed his injury to a contaminated salad eaten in July 2011. The medical evidence does not address this etiology and if appellant's condition was due to a contaminated salad, he has submitted no evidence that this was related to his employment in any way.

In a report dated September 8, 2011, Dr. Hruby stated that the infectious etiology of appellant's disease may be related to his deployment to Haiti. The Board has held that medical opinions that are speculative or equivocal in character diminish the probative value of the medical opinion.⁶ Dr. Hruby did not explain how or why he believed that appellant developed

⁴ 20 C.F.R. § 10.5(q).

⁵ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁶ *A.G.*, Docket No. 12-659 (issued August 22, 2012); *D.D.*, 57 ECAB 734, 738 (2006).

necrotizing fasciitis and myonecrosis due to his deployment to Haiti. He merely indicated that there was a possible connection. Without medical opinion evidence addressing mechanics by which appellant's deployment to Haiti would have resulted in the diagnosed condition, and offering a clear opinion that this deployment was the cause of his disease process, this report is not sufficient to meet his burden of proof. Dr. Hruby further noted that appellant's deployment was months before his disease process and stated that the medical literature suggested that clostridium perfringens infections "mainly remain dormant in the gastrointestinal tract for extended period of time." He did not provide any citations to medical literature and did not explain why he believed that appellant's clostridium perfringens infection developed due to his deployment to Haiti. The Board has held that excerpts of medical publications are of no evidentiary value in establishing a claim as they are of general application and are not determinative as to whether specific conditions or disability were the result of the employment. This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on the causal relationship between a condition and specified employment injury.⁷

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between his deployment to Haiti in January 2011 and his disease process in July 2011. On appeal appellant asserted that there was no evidence that his condition was not related to his deployment. As noted above, in order to establish a claim for an occupational disease he has the burden of proof to establish a causal relationship between his condition and his employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant had not submitted the necessary medical opinion evidence to establish a causal relationship between his implicated employment duties and diagnosed condition and to establish his occupational disease claim.

⁷ *Harlan L. Soeten*, 38 ECAB 566, 567 (1987).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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