

FACTUAL HISTORY

On December 21, 2011 appellant, then a 53-year-old security assistant, filed a traumatic injury claim alleging that on November 25, 2011, while moving boxes in an employing establishment attic, she sustained cellulitis and a blood clot in her left leg. She stopped work on November 28, 2011.

In a November 28, 2011 report, Dr. Warren K. Churgin, an internist, noted a history that appellant had a sore throat, cough and tender left calf for one week. He provided physical examination findings, noting that the left calf was tender to palpation but not hot, red or swollen. Dr. Churgin diagnosed acute tonsillitis and deep vein thrombosis (DVT) of the left lower extremity and recommended a venous Doppler study. He noted additional conditions of rosacea, anxiety disorder, Crohn's disease, herpes simplex, thyroid nodule, lumbar and thoracic radiculitis, reflux esophagitis and postgastric bypass for obesity.

On December 29, 2011 the employing establishment controverted the claim. It submitted a November 28, 2011 venous Doppler study report advising that there was no sonographic evidence of DVT in the left lower extremity. In separate disability slips dated November 28, 2011, Dr. Churgin advised that appellant could return to work on November 30, 2011 and also on December 5, 2011.

On prescription blanks dated December 12, 2011, Dr. Venitha Yadalla, a Board-certified internist, advised that appellant had been under her care since December 3, 2011 for a left leg DVT. She should not work for one week and then could perform light duty. In a January 9, 2012 report, Dr. Churgin noted that appellant was diagnosed with a left DVT after a second Doppler study.

On January 5, 2012 OWCP informed appellant of the evidence needed to develop her claim. In a January 25, 2012 statement, appellant provided a timeline regarding the claimed injury. She indicated that the attic in which she was working on Friday, November 25, 2011, had mice droppings, spiders and centipedes. Appellant and other employees went up to the attic that morning. When they returned downstairs for lunch, she had left leg pain and her ankle was red. Appellant told someone that something bit her. She spent the weekend resting and had chills and fever. On Monday, November 28, 2011, appellant went to work and told personnel that her leg was still bothering her and she went to see Dr. Churgin later that morning.

In a January 12, 2012 report, Dr. Yadalla noted that appellant reported that she injured her left leg at work on November 25, 2011 and was treated since December 3, 2011. She reviewed physician reports, hospital records and Doppler results, and opined that appellant's DVT diagnosis resulted in cellulitis and appellant's "injury to left leg is directly related to her present DVT condition." Dr. Yadalla noted that the condition required close monitoring and appellant had been removed from work until February 2, 2012. She appended a list of enclosed medical reports, including reports from Centra State Medical Center dated December 1 to 13, 2011. These reports are not in the case record.

By decision dated February 8, 2012, OWCP denied the claim finding that the medical evidence was not sufficient to establish that appellant's left leg condition was causally related to the accepted work event.

Appellant, through her attorney, timely requested a hearing.

In a December 12, 2011 certification of health care provider, Dr. Yadalla advised that appellant had a left DVT for which she was on medication and could not constantly walk, sit or stand. The condition commenced on December 3, 2011 and would probably last three to six months. Dr. Yadalla noted that appellant's pain could be crippling and that she was incapacitated for the period December 4, 2011 to January 4, 2012. In a second health care provider form dated February 6, 2012, she reiterated the diagnosis and conclusion that the condition would last three to six months. Dr. Yadalla advised that appellant needed continued leave for the period February 2 to 27, 2012, noting that appellant was still experiencing pain and cramps "at the site of injury/DVT" and had not reached a therapeutic anticoagulation level. Appellant was experiencing high blood pressure readings due to stress-related job issues, and the conditions were "directly related to current on-the-job injury, leave status and financial status." Dr. Yadalla noted that appellant was scheduled for a Doppler test on February 16, 2012. In an April 29, 2012 report, she stated that appellant provided a history of having been bitten by an unknown insect at approximately 11:00 a.m. on November 25, 2011. At 2:00 p.m. that day, appellant began to experience fever and chills. Dr. Yadalla described Dr. Churgin's reports and the negative Doppler study. She indicated that appellant went to the emergency room on December 3, 2011 due to increasing left leg pain, cramping, swelling and rash and a Doppler test there revealed a blood clot that caused a DVT. Dr. Yadalla described appellant's treatment and the physiology of a DVT and noted that she also had Crohn's disease which included a weakened immune system. She stated:

"An insect bite penetrated the skin spreading to deeper tissues. As the bacteria spreads, patient experiences fever, chills and swollen glands as a common sign. The antibiotics given to treat at home do not go directly to the blood stream and intravenous drugs are often required, thus resulting in a diagnosis of with [c]ellulitis."

Dr. Yadalla continued that, when bacteria from an insect goes into the blood and creates this reaction, there is no way of diagnosing what type of insect bit appellant. She opined that appellant's reaction was from an insect that carried a bacteria that the patient's immune system could not obliterate. In an April 30, 2012 treatment note, Dr. Yadalla noted that appellant felt less stressed, but still had heightened anxiety and still had soreness and cramps of the left leg. She diagnosed status post left leg DVT, anxiety and hypertension.

At the hearing, held on June 12, 2012, appellant testified regarding the November 25, 2011 visit to the attic at work. At lunch, she noticed her leg hurt and she developed chills and fever. Appellant reported to coworkers that maybe something bit her. She left work early, was sick all weekend and went to work Monday morning. Appellant went to see Dr. Churgin who prescribed medication. She stated that her condition worsened, and that she went to the emergency room on Friday, December 2, 2012 and Saturday, December 3, 2012, when she was admitted. Appellant was discharged on December 6, 2012 and saw Dr. Yadalla for follow-up

care. She discussed photographs of record showing her left lower extremity with a rash and a purported insect/spider bite. Appellant stated that at the present time she was working four hours a day with restrictions. The hearing representative advised appellant and her attorney that contemporaneous medical evidence was needed to support that she was bitten at work. The record was left open for 30 days.

In a June 12, 2012 statement, a Cheri A. Williams, indicated that on November 28, 2011 appellant reported that she had been ill with chills and fever the previous weekend, that her left leg hurt, and that she thought something bit her while she was in the attic. Appellant showed her ankle, which was swollen and red.

In correspondence dated July 9, 2012, Marcy Claire Boyle-Fetherman, an injury compensation specialist, noted that the employing establishment had no medical documentation as to when a bug bite might have occurred. The employing establishment submitted a December 21, 2011 e-mail from a coworker who indicated that on November 25, 2011 she, appellant, and other personnel were in the attic.

In treatment notes dated June 28 and July 12, 2012, Dr. Yadalla noted that appellant reported having problems at work and with her workers' compensation claim. Appellant had gone to the emergency room with a panic attack and was planning on quitting her job because it was too stressful. Dr. Yadalla diagnosed hypertension, anxiety, depression, panic attacks and insomnia.

In an August 29, 2012 decision, an OWCP hearing representative denied appellant's claim finding that the evidence did not establish that her left leg condition was due to her work activity on November 25, 2011. She noted that the contemporaneous medical evidence did not establish that appellant sustained a bug bite, and that Dr. Churgin's November 28, 2011 report stated unequivocally that there was no swelling or redness in the calf.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.³ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an

² Gary J. Watling, 52 ECAB 278 (2001).

³ 20 C.F.R. § 10.5(ee); Ellen L. Noble, 55 ECAB 530 (2004).

employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁴

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ 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.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

The Board finds that on November 25, 2011 appellant was moving boxes in an attic at the employing establishment. The incident was accepted by OWCP. The Board, however, finds that the medical evidence of record is insufficient to establish that she sustained a bug bite or left leg injury caused by this incident.

The medical evidence contemporaneous with the claimed injury includes Dr. Churgin's November 28, 2011 report. Dr. Churgin noted that appellant had a history of a tender calf for a week. Physical examination demonstrated left leg tenderness, but the extremity was not hot, red or swollen. Dr. Churgin did not mention a history of a bug bite or other trauma to the leg. He diagnosed acute tonsillitis and ordered a Doppler study that was negative for DVT. The history reported to Dr. Churgin, his physical findings and the November 28, 2011 Doppler study fail to support that appellant sustained a bug bite at work on November 25, 2011 or any other work-related medical condition.

Dr. Yadalla submitted reports beginning on December 3, 2011. While appellant testified at the hearing and Dr. Yadalla reported that appellant had been hospitalized with a diagnosis of DVT, there are no hospital records before the Board. On January 12, 2012 Dr. Yadalla reported that appellant's injury to her left leg was related to the DVT but did not report a history of calf tenderness as reported to Dr. Churgin. She submitted additional reports in which she advised that appellant could not work and diagnosed other conditions, such as hypertension and stress. It was not until April 29, 2012, five months after the November 25, 2011 employment incident,

⁴ Gary J. Watling, *supra* note 2.

⁵ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

⁶ *I.J.*, 59 ECAB 408 (2008); Victor J. Woodhams, 41 ECAB 385 (1989).

⁷ Dennis M. Mascarenas, 49 ECAB 215 (1997).

that Dr. Yadalla noted that appellant reported that she was possibly bitten by an insect on November 25, 2011, which could lead to cellulitis or DVT. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁸

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁹ Dr. Yadalla did not provide sufficient explanation as to how appellant sustained a bug bite on November 25, 2011 that caused her DVT and necessitated total disability. Her opinion is therefore insufficient to meet appellant's burden of proof.

The photographs submitted by appellant do not constitute competent medical evidence as they include no certification of the specific time and place of photography or a medical opinion as to what the photographs demonstrate.

The Board finds that as appellant did not submit sufficient medical evidence to establish that she sustained a left leg condition caused by the November 25, 2011 employment incident. She did not meet her burden of proof.

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 did not establish that she sustained an injury causally related to the November 25, 2011 employment incident.

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁹ *Patricia J. Glenn*, 53 ECAB 159 (2001).

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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