

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

A.R., Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL AIR STATION, Norfolk, VA, Employer**

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**Docket No. 13-191
Issued: March 21, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2012 appellant filed a timely appeal from an October 9, 2012 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) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he developed left leg cellulitis causally related to factors of his employment.

FACTUAL HISTORY

On May 31, 2012 appellant, then a 58-year-old assistant cook, filed an occupational disease claim (Form CA-2) alleging cellulitis in his leg as a result of his federal employment duties. He stated that, for the prior seven months, he had worked 12 hours a day, 7 days a week,

¹ 5 U.S.C. § 8101, *et seq.*

which aggravated the cellulitis and caused it to swell. Appellant struck his leg on the ship ladders when going down to his compartment and the bandage would move on his leg, preventing it from healing. He first became aware of his condition on March 10, 2012 and of its relationship to his employment on May 6, 2012. Appellant notified his supervisor, stopped work and first received medical care on May 4, 2012.

By letter dated July 23, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a May 4, 2012 treatment record, Thomas Thimlar, a Medical Services Officer, reported that appellant complained of nonhealing sores on the posterior left lower leg for the past eight weeks. In February 2012, he sought treatment for sores, swelling, fever and extreme malaise. Appellant was diagnosed with cellulitis and completed his three-week regimen of antibiotics but the sores never completely went away. Mr. Thimlar noted that appellant had a history of diabetes. He stated that physical examination revealed two irregular round weeping sores to the posterior left lower leg with deep bluish purple skin discoloration from mid-calf to the foot which was warm to the touch and edematous. In addition, appellant developed a raised red sore on his right knee which was infected. Mr. Thimlar recommended that appellant be paid off the ship as soon as possible.

In May 23 and August 8, 2012 medical notes, a Dr. Stephen Sprague reported that he was treating appellant for left leg cellulitis. He noted a history of cellulitis and diabetes and stated that appellant complained of pain and draining fluid. Dr. Sprague provided appellant with antibiotics and instructed him not to return to work until the infection had resolved.

In September 7 and 9, 2012 narrative statements, appellant reported that his leg was infected while working on a naval ship that was over 30 years old. He stated that the ladders on the ship were made of metal steps, were very narrow and caused him to scrape the back of his calf when he would climb up and down. Appellant's open wounds were exposed to germs and bacteria from close living conditions aboard the ship. In support of his claim, he provided a copy of his pay stubs to reflect the 70 hours of overtime he worked every two weeks.

By decision dated October 9, 2012, OWCP denied appellant's claim, finding that the medical evidence did not demonstrate that the left leg cellulitis was causally related to the accepted work-related events.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the

employment injury.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit 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 claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

OWCP accepted appellant's employment duties as an assistant cook aboard a Naval Supply Ship. It denied his claim, however, on the grounds that the medical evidence failed to establish a causal relationship between those activities and his left leg cellulitis. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained left leg cellulitis causally related to factors of his federal employment as an assistant cook.

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Elaine Pendleton, *supra* note 2.

⁵ See Roy L. Humphrey, 57 ECAB 238, 241 (2005); Ruby I. Fish, 46 ECAB 276, 279 (1994).

⁶ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

⁷ James Mack, 43 ECAB 321 (1991).

In his May 4, 2012 report, Mr. Thimlar reported a history of diabetes, cellulitis and sores on the left posterior leg. He stated that physical examination revealed two irregular round weeping sores to the posterior left lower leg with deep bluish purple skin discoloration from mid-calf to the foot and a raised red sore on the right knee which was infected. Mr. Thimlar recommended appellant be paid off the ship as soon as possible and prescribed antibiotics for treatment. It is not apparent from the record that a medical services officer, Mr. Thimlar, is a physician as defined under FECA.⁸ Therefore, his report is of no probative value.

Moreover, while Mr. Thimlar provided a diagnosis of appellant's condition, he failed to provide any opinion on the cause of appellant's left leg cellulitis. The Board has held that 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.⁹ The report is insufficient to meet appellant's burden of proof.

In the May 23 and August 8, 2012 medical notes, Dr. Sprague noted a history of cellulitis and diabetes and stated that he was treating appellant for left leg cellulitis. Appellant complained of pain and draining fluid and was provided with antibiotics. Dr. Sprague instructed appellant to remain off work until the infection had resolved.

The Board finds that the opinion of Dr. Sprague is not well rationalized. Dr. Sprague failed to provide any opinion on the cause of appellant's left leg cellulitis or explain how his condition was caused or aggravated by his federal employment duties. He did not provide an adequately detailed medical history or describe appellant's employment duties as an assistant cook aboard a Naval Supply Ship. Medical reports without any rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁰ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹¹ Dr. Sprague's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

On appeal, appellant argued that his left leg cellulitis was caused by his federal employment duties. He noted three other cases of cellulitis that had occurred on his ship and provided a fellow shipmate's medical report verifying treatment for cellulitis. Medical evidence documenting his shipmate's cellulitis does not establish appellant's claim. Appellant must submit medical evidence documenting his own treatment which establishes a causal connection between his left leg cellulitis and factors of federal employment. His belief that work caused his medical condition is not in question; however sincerely held, that belief does not constitute the medical evidence necessary to establish causal relationship.

⁸ See *Paul Foster*, 56 ECAB 208 (2004). A nurse practitioner as physician's assistant is not a physician.

⁹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁰ *Id.*

¹¹ See *Lee R. Haywood*, 48 ECAB 145 (1996).

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his left leg cellulitis is causally related to factors of his federal employment as an assistant cook.

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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