

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

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<b>K.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 13-827</b>
	)	<b>Issued: November 25, 2013</b>
<b>DEPARTMENT OF LABOR, ENERGY</b>	)	
<b>EMPLOYEES OCCUPATIONAL ILLNESS</b>	)	
<b>COMPENSATION PROGRAM, Denver, CO,</b>	)	
<b>Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 25, 2013 appellant filed a timely appeal from the February 5, 2013 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 her burden of proof to establish that she sustained an injury in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 18, 2008 appellant, then a 53-year-old senior workers' compensation claims examiner, filed a traumatic injury claim alleging that she was bitten on her body by fleas at work. The employing establishment controverted the claim and stated that there were no fleas found. Appellant stopped work on August 18, 2008.

By letter dated September 2, 2008, OWCP informed appellant of the evidence needed to support her claim. It requested that she submit additional evidence within 30 days.

In a memorandum of telephone call dated September 4, 2008, appellant alleged that she was bitten by mites or fleas at work on August 18, 2008. She noted that she went to the state health department but no mites or fleas were found at the employing establishment.

In an e-mail dated August 21, 2008, the employing establishment explained that it hired an exterminator. There were no fleas, mites or insects, with the exception of a fungus gnat, "which does not bite."

In a September 2, 2008 memorandum, E. Martin Walker, the employer's regional director, explained that an exterminator was unable to find any evidence of fleas or mites, with the exception of a nonbiting fungus gnat.

By decision dated October 3, 2008, OWCP denied appellant's claim on the grounds that the evidence did not establish that the claimed events occurred as alleged.

Appellant requested reconsideration. In an October 1, 2008 statement, she noted that she had eye surgery on July 17, 2008 and returned to work on July 22, 2008. Appellant did not encounter any pest problems on the two days of that week which she worked. However, she was out again and returned on August 4, 2008, which is when the problem began in her office area. Appellant explained that her coworkers had similar problems. She believed the source of her bites were mites. Appellant confirmed that she had two dogs; but did not believe they were the source of the insect bites.

OWCP received statements from appellant's coworkers. On October 7, 2008 Kristina Picker advised that she was bitten the second week of June and "immediately received a big red welt with a fiery itch." She indicated "I know they happened at work, as I could tell immediately when I was bitten and the bite didn't happen until the afternoon, long after I had left home. The last incident was about two weeks ago. I was standing in the aisle talking to Steve and Dennis and told both of them that something had just bitten me and showed Dennis the welt. I haven't had a bite since that time." On September 5, 2008 Eudocio Garcia noted that on August 15, 2008 he heard appellant stated that she was being eaten alive by fleas. Initially, he thought it was funny, but as he continued to work with appellant, he also felt bites. Mr. Garcia later had bite marks on his legs and neck. This was reported to a supervisor on August 18, 2008 which resulted in a discussion about fleas being present in the office. In a September 5, 2008 statement, Cathy Perez noted that she had several bites on her neck and arms in June 2008; but when she went to her physician, the cause of her bites was uncertain. Coworkers Beatrice Calvert, Kathryn

Thompson and Wanda Gomes noted that they experienced similar bug bite symptoms while at the employing establishment.

In an August 22, 2008 report, Dr. Scott R. Freeman a Board-certified dermatologist, examined appellant for bug bites on the skin since July 21, 2008. Appellant indicated that the bugs were invisible but followed her home and also bite her on the train and at her home. Dr. Freeman noted a history of chronic cutaneous lupus on her arms and hands and dermatographia.

OWCP also received treatment records from Dr. Janet Pederson, a Board-certified family practitioner, dated August 26 to September 30, 2008. Dr. Pederson stated that appellant was seen for possible insect bites that started at her workplace. Appellant felt that she was being eaten alive, especially if she came in on a Monday. She related that at least 10 of her coworkers had similar symptoms. Appellant also believed that she had brought the bugs home and that her husband and dogs had similar symptoms. She advised that the employing establishment had the health department inspect but no insects, mites or spiders were recovered. Dr. Pederson diagnosed "possible infestation vs. neurodermatitis." On September 4, 2008 she noted treating appellant on August 26, 2008 after she was seen by two dermatologists about possible insect bites. Appellant related that, since the end of May, she thought bug bites had started at her workplace. Dr. Pederson advised that appellant would have stinging, and breaks in the skin on her arms and legs. Appellant had an exterminator come to her home and treat it for mites which improved her home situation. She hoped that similar extermination could be done at the employing establishment. Dr. Pederson stated that "[b]ecause of intolerable itching and discomfort in her skin she has not been to work since August 18[, 2008] and does not feel comfortable returning to worksite until the site has been treated." When appellant was seen on September 4, 2008, she had persistent redness and breaking skin which was resolving. Since she was just starting to improve, she should not return to work. Dr. Pederson diagnosed lupus and opined that "those symptoms seem to have been aggravated by the above skin irritation. In a September 30, 2008 attending physician's report, she noted that appellant felt stinging pain in her hair, scalp and nasal passages and had sores on her arms. Dr. Pederson diagnosed mite infestation and checked the box "yes" to indicate that appellant's condition was caused or aggravated by her employment. She stated that appellant could return to work when the environment was safe and her symptoms were controlled.

In a report dated September 27, 2008, Dr. Leslie Cepin, a dermatologist, determined that appellant had a normal skin examination with no visible bites or mites.

In an October 22, 2008 report, Dr. Renata Oliveira, a Board-certified dermatologist, noted that appellant's husband had scabies but she found no lesions. She diagnosed infestation per patient history only. In an October 22, 2008 report, Dr. Oliveira noted that an infestation of mites had not been documented in the clinic but that appellant improved after treatment as well as fumigating her house and isolating her dogs.

In a November 7, 2008 report, Kathleen Sandal-Miller, Ph.D., a licensed clinical psychologist, stated that appellant developed major depression and post-traumatic stress disorder due to "the infestation of skin mites which she feels she acquired at her workplace."

In a November 20, 2008 decision, OWCP denied the modification of the October 3, 2008 decision.

On December 15, 2008 appellant submitted a November 18, 2008 statement reiterating her belief that the bites stemmed from her workplace. On November 7, 2009 she requested reconsideration. Appellant repeated her arguments of an infestation of mites at work as supported by the medical evidence. OWCP received copies of previously submitted evidence.

In a September 11, 2008 report, Dr. Juan Miranda-Seijo, a Board-certified family practitioner, diagnosed dermatitis. He noted that he could only say that a mite etiology was possible.

In a November 5, 2008 report, Dr. Oliveira advised that the infestation of mites was never documented and that appellant brought in strip of what she thought were mites. Under the microscope, the material brought in for examination was found to be “pieces of fiber and fabric.” In a December 2, 2008 report, Dr. Shayla Francis, a Board-certified dermatologist, noted that there was no evidence of mites on any examination.

In an October 14, 2008 report, Dr. Pederson diagnosed possible mite infestation and anxiety and depression/reactive. In a November 17, 2008 report, she advised that the “mites have returned.” On December 5, 2008 Dr. Pederson noted symptoms of small papules, puncture wounds and angiomas.

In a May 12, 2009 report, Gilbert Milburn-Westfall, Ph.D., a clinical psychologist, noted appellant’s history and treatment. He was unable to verify the presence of mites. In a September 23, 2009 report, a Dr. Sandal-Miller, related appellant’s assertions regarding possible mite infestation at work and diagnosed disabling depression due to the infestation. In an April 7, 2009 Public Health Report on Dermatologic Illness, it was noted that, while several employees had noted similar symptoms, there was not enough evidence to conclusively determine the cause.

By decision dated January 29, 2010, OWCP denied modification of the October 3, 2008 decision.

On November 10, 2010 appellant requested reconsideration. She provided a copy of a November 2, 2010 decision of the Board, concerning the claim of a coworker for bug bites at the workplace on October 23, 2008. Appellant argued that OWCP had disregarded the Board’s decision that accepted insect bites. She asserted that her employer’s statement was not sufficient to overcome the statements of her former coworkers.

By decision dated February 14, 2011, OWCP denied modification of the January 29, 2010 decision.

On February 13, 2012 appellant requested reconsideration. She submitted a pathology report dated January 12, 2009 which revealed no evidence of mite infestation. In a February 7, 2012 report, Dr. Pederson noted that the diagnosis of mite infestation was never proven. Appellant believed that the “temporary improvement in her symptoms lends support to the diagnosis of mite infestation.”

In a May 22, 2012 decision, OWCP found that appellant's reconsideration request was untimely. On January 25, 2013 the Board issued an order remanding case.<sup>2</sup> The Board found that appellant's request for reconsideration was timely. It remanded the case for application of the regulatory standard applicable to timely requests for reconsideration.

In a February 5, 2013 decision, OWCP denied the claim finding insufficient evidence to establish that the claimed incident occurred. There was also insufficient medical evidence explaining how work exposures contributed to her medical condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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<sup>4</sup> and that an injury was sustained in the performance of duty.<sup>5</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and the circumstances and his subsequent course of action.<sup>9</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>10</sup> An employee's statement alleging that an injury occurred at a given time and in a

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<sup>2</sup> Docket No. 12-1349 (issued January 25, 2013).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *James E. Chadden Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.*

<sup>9</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>10</sup> *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>12</sup>

### ANALYSIS

Appellant alleged that she was bitten by mites or fleas at work on August 18, 2008 and sustained multiple bites to her body. The issue is whether such insect bites occurred in the performance of duty.

The Board finds that appellant's claim of exposure to insect or biting pests is consistent with the facts and her subsequent course of action. Appellant alleged that she was bitten by mites or fleas at work and provided statements from her coworkers, who reported similar symptoms. The Board notes that a fellow coworker, Mr. Garcia, reported that on August 15, 2008 he heard appellant state that she was being eaten alive by fleas. He explained that he, too, began to feel bites on his legs and neck. Mr. Garcia noted that this was reported to a supervisor on August 18, 2008 and resulted in a discussion about fleas being present in the office. The fact that an infestation occurred at her home or that she had pets does not preclude an exposure at work. Although, the employing establishment provided documentation that no fleas or mites were found at the premises, the statements from appellant and her coworkers are consistent with the facts of her case. In the present case, the Board finds that appellant established that the incident, exposure to insects or other biting pest occurred on and around August 18, 2008, as alleged.

The Board, however, finds the medical evidence of record insufficient to establish that appellant sustained an injury as a result of the accepted employment incident.

Appellant provided numerous reports from her treating physicians. In her August 26 and September 4 2008 reports, Dr. Pederson indicated that appellant was being seen for possible insect bites which started at her workplace and diagnosed "possible infestation vs. neurodermatitis." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>13</sup> Thus, these reports are of limited probative value. In her September 30, 2008 attending physician's report, Dr. Pederson diagnosed mite infestation and checked a box "yes" that the condition was caused or aggravated by her work. However, the checking of a box yes in a form report, without additional explanation or rationale, is not

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<sup>11</sup> *Id.*

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *Ricky S. Storms*, 52 ECAB 349 (2001) (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).

sufficient to establish causal relationship.<sup>14</sup> In a February 7, 2012 report, Dr. Pederson acknowledged that the diagnosis of mite infestation was never proven or disproven but she believed that the “temporary improvement in her symptoms lends support to the diagnosis of mite infestation.” The Board notes that this report does not provide any medical rationale explaining how or why appellant’s condition was caused by the accepted employment incident and, therefore, the report is insufficient to establish her claim. This type of report, without more medical rationale explaining how workplace pest exposure caused a diagnosed condition is insufficient to establish causal relationship and is of diminished probative value.<sup>15</sup> Dr. Pederson submitted an additional report dated October 14, 2008 in which she diagnosed possible mite infestation and anxiety and depression/reactive. The Board finds that this report is speculative and is of limited probative value.<sup>16</sup> Other reports from Dr. Pederson do not clearly and unequivocally attribute a diagnosed medical condition to appellant’s workplace exposure.

In a November 7, 2008 report, Dr. Sandal-Miller indicated that appellant developed major depression and post-traumatic stress disorder due to “the infestation of skin mites which she feels she acquired at her workplace.” However, without a rationalized opinion to explain how she arrived at this diagnosis, this report is of limited probative value. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.<sup>17</sup> A September 23, 2009 report of Dr. Sandal-Miller is also of limited probative value as she provides insufficient medical rationale explaining how the employment exposure contributed to a diagnosed medical condition and why appellant’s condition is not attributable to any preexisting conditions.

In a September 11, 2008 report, a Dr. Juan Miranda-Seijo, diagnosed dermatitis and opined that a mite etiology was possible. The Board notes that this report is speculative and offers no opinion on causal relationship.<sup>18</sup>

In a November 5, 2008 report, Dr. Oliveira advised that appellant brought in strip of what she thought were mites; however, under the microscope, the “mites” brought in for examination were found to be “pieces of fiber and fabric.” Furthermore, in a December 2, 2008 report, Dr. Francis noted that there was no evidence of mites on any examination. The Board notes that these reports do not offer any support that appellant had a condition caused by mites at work. Other reports submitted by appellant also did not offer any support for causal relationship.

Based on the foregoing, the Board finds that appellant has failed to submit sufficient rationalized medical evidence to establish that she sustained an injury caused by the August 18,

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<sup>14</sup> See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

<sup>15</sup> See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>16</sup> See *supra* note 13.

<sup>17</sup> *S.D.*, 58 ECAB 713 (2007).

<sup>18</sup> See *supra* note 13.

2008 employment incident.<sup>19</sup> The evidence of record is therefore insufficient to meet appellant's burden of proof and OWCP properly denied appellant's claim for compensation.

On appeal, appellant argued that she submitted documentation sufficient to establish her claim. The Board notes that the first component, the factual incident, of her claim was established. However, the medical evidence was insufficient to establish that the incident caused or contributed to a diagnosed medical condition. Appellant also asserted that her claim should be accepted because the claim of a coworker had been accepted. However, while the other matter may have some similarities with the present case, this does not establish compensability in appellant's situation which involves different medical evidence specific to appellant's situation. Appellant also submitted additional evidence with her appeal. The Board has no jurisdiction to review this evidence for the first time on appeal.<sup>20</sup>

Appellant may submit evidence or argument with a written request for reconsideration 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 has not established that she sustained an injury in the performance of duty on August 18, 2008 as alleged.

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<sup>19</sup> See *Laura Swilley*, Docket No. 93-1769 (issued November 16, 1994) (appellant alleged that she sustained a tick bite in the performance of duty resulting in Lyme Disease). In affirming OWCP's denial of the claim for failure to establish fact of injury, the Board found that assuming appellant had established a tick bite, this did not obviate the necessity of appellant submitting rationalized medical evidence, based on a complete and proper background establishing causal relationship between appellant's condition and the employment incident.

<sup>20</sup> 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).



**ORDER**

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

Issued: November 25, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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