

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

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C.C., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, FEDERAL AIR )  
MARSHALL SERVICE, DETROIT FIELD )  
OFFICE, Romulus, MI, Employer )**

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**Docket No. 14-1667  
Issued: December 3, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 28, 2014 appellant filed a timely appeal from a July 11, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim. 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 established that he sustained cellulitis causally related to travel during his federal employment.

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

## **FACTUAL HISTORY**

On January 14, 2014 appellant, then a 37-year-old federal air marshal, filed an occupational disease claim. He returned from an international work trip on December 23, 2013 and, two days later, he began to experience shooting pains up his right arm. On December 26, 2013 the pain grew progressively worse and red streaks shot up appellant's arm. He sought medical treatment that day and was diagnosed with a staph infection in his right thumb and hospitalized for eight days. In a memorandum dated January 14, 2014, appellant stated that it was his first day back to work and that he had been cleared for full, active status. Prior to the injury, he traveled from December 13 through 18, 2013 to Asia, including Manila, and from December 21 to 23, 2013 to London. On the evening of December 24, 2013 appellant felt a sore sensation in his right hand. On December 25, 2013 the pain became more intense and, that evening there was a noticeable swelling in his right thumb. On December 26, 2013 appellant went to the nearest urgent care center, and was subsequently admitted to Huron Valley-Sinai Hospital. He was diagnosed with cellulitis, likely caused by unsanitary conditions. Appellant noted that, due to the severity of the infection, he was hospitalized for a total of eight days.

Appellant was treated at Huron Valley-Sinai Hospital by Dr. Catherine C. Guido, an osteopath. In a December 27, 2013 report, Dr. Guido diagnosed right upper extremity cellulitis in the right hand and forearm. When discussing appellant's history, she noted that he was a federal air marshal who had been to London and Japan in the prior week. Dr. Guido noted that appellant had a lesion on his thumb which he stated that he induced by picking on a hair follicle, but that this was after the swelling had already started. She noted that he was previously hospitalized for hand cellulitis and was treated for Methicillin Resistant Staphylococcus Aureus (MRSA). In a January 3, 2014 discharge report, Dr. Guido noted that appellant was discharged in stable condition for outpatient follow-up and dressing changes. She medically cleared him to return to work as of January 17, 2014.

In a December 27, 2013 consultation report, Dr. James J. Gordon, Board-certified in infectious diseases and internal medicine, noted that appellant had a three-year history of MRSA on his left elbow and arm. Appellant recently traveled to Japan and the United Kingdom but denied any injury to his right arm or thumb. Dr. Gordon listed appellant's impression as right hand and arm cellulitis, the possible source was MRSA, and mild leukocytosis. He also noted soft tissue swelling without fracture, dislocation or radiopaque foreign body.

In a January 7, 2014 treating physician status report, Dr. Barak Tanzman, an osteopath specializing in plastic and reconstructive hand surgery, diagnosed appellant with cellulitis and a right thumb abscess. He noted that appellant was placed on oral antibiotics and made good progress. Dr. Tanzman provided physical restrictions for the right hand.

In a January 23, 2014 incident report, the employing establishment discussed appellant's history of injury and treatment. The report noted that appellant started experiencing symptoms in his hand on December 24, 2013, after he had returned from international travel.

By letter dated April 23, 2014, OWCP informed appellant that he needed to submit further information in support of his claim.

In a May 15, 2014 response to questions, appellant alleged that he was exposed to the source of the infection while he was in Asia from December 13 to 18, 2013. He noted that he traveled through airports, airplanes, taxis, hotel rooms, bathrooms and toilets, stores, restaurants, and outdoor environments where people bathed in the streets. Appellant noted that the locations were very dirty and unclean.

In an undated report received by OWCP on May 20, 2014, Dr. Jamie Taweel, an osteopath, advised that she treated appellant during his stay at Huron Valley-Sinai Hospital from December 25, 2013 through January 3, 2014. Appellant presented with a significant infection to his right hand that required intravenous therapy antibiotics and surgical intervention. Dr. Taweel noted that the magnetic resonance imaging scan of the right hand revealed an early abscess formation. Appellant was also evaluated by an infectious disease physician and a hand surgeon. Dr. Taweel stated that the etiology of this type of infection was quite broad. She noted the possibility that appellant's exposure was the result of his employment and recent travel. Appellant was diagnosed with MRSA, which was commonly found in infections specific to his type.

In a decision dated July 11, 2014, OWCP denied appellant's claim. It found that the medical evidence of record was not sufficient to establish his infection was causally related to his international travel for work.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 and that an injury<sup>3</sup> was sustained in the performance of duty. 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>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, 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.<sup>5</sup>

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<sup>2</sup> *Id.* at §§ 8101-8193.

<sup>3</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>4</sup> *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>6</sup>

### ANALYSIS

OWCP accepted that appellant traveled to Asia and Europe as part of his federal employment from December 13 to 18, 2013. He alleged being exposed to unsanitary conditions during this trip. The evidence also establishes that appellant was diagnosed on December 26, 2013 with cellulitis in his right upper extremity. OWCP denied his claim as he failed to establish that his cellulitis was causally related to the accepted traveling in his federal employment.

The Board finds that the medical evidence does not establish that appellant sustained an injury causally related to factors of his federal employment. Dr. Guido noted that he had recently traveled to London and Japan, and diagnosed right upper extremity cellulitis. However, she did not specifically address how the diagnosed condition was related to the accepted factors of appellant's employment. Similarly, Dr. Gordon did not relate any injury to appellant's employment. He noted soft tissue swelling, cellulitis, and mild leukocytosis, but did not relate these conditions to any exposure from appellant's travel. Dr. Tanzman diagnosed cellulitis and an abscess of appellant's right thumb, but did not discuss his travel or causal relation. Dr. Taweel noted that he had a significant infection in his right hand. She stated that it was possible it was a result of appellant's exposure during recent travel. The Board finds that Dr. Taweel's opinion is speculative and equivocal regarding causal relationship and of diminished probative value.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.<sup>8</sup> He did not submit sufficient medical evidence, based on a reasonable degree of medical certainty, to establish that his medical condition was causally related to the accepted international travel, OWCP properly denied his claim.

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.

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<sup>6</sup> See *T.W.*, Docket No. 13-1125 (issued August 27, 2013).

<sup>7</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).

<sup>8</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

**CONCLUSION**

The Board finds that appellant did not establish that he suffered from cellulitis causally related to travel during his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 11, 2014 is affirmed.

Issued: December 3, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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