

FACTUAL HISTORY

This case has previously been on appeal before the Board.² In a November 25, 2013 decision, the Board affirmed the August 9, 2012 decision of OWCP denying appellant's claim. While appellant established that she was exposed to insects or other biting pests on or around August 18, 2008, there was insufficient medical evidence to establish that she sustained an injury as a result of the accepted employment condition. The facts of the case as contained in the prior appeal are incorporated by reference.

By letter dated April 10, 2014, appellant requested reconsideration. She argued that her physician, Dr. James DeVito, a Board-certified dermatologist, noted that she presented with a bite on her ankle when he first examined her. Appellant contended that the Board's decision indicated that she had some kind of infestation. She submitted additional medical evidence. In a March 20, 2014 treatment note, Dr. DeVito noted that appellant's last office visit was six to seven years prior for an infestation of mites. He noted that she requested a complete report about the mite infestation. Dr. DeVito examined appellant and determined that there were acute/subacute eczematous patches and plaques present on the bilateral arms and legs. He diagnosed dermatitis/eczema due to an unspecified cause.

In an April 1, 2014 report, Dr. DeVito provided a summary of his clinical observation and assessment of appellant in 2008. He noted that, while she did not sustain an "injury per se," she presented to the office on August 18, 2008 for what was an "erythematous papule at her ankle consistent with an insect bite. No scalp lesions were noted." Dr. DeVito advised that his diagnosis on that date was infestation of mites/insects. He noted that the objective findings supporting his diagnosis were his clinical examination and acumen as a dermatologist. Dr. DeVito opined that "a rationalized medical opinion on causal relationship is difficult to determine because there are a number of locations where this infestation could have occurred."

OWCP also received several treatment notes, some of which are not fully legible. In a September 11, 2008 treatment note, an unknown healthcare provider advised that appellant presented crying and believed that she had mites or parasites. The provider noted that appellant brought a piece of paper with "crud" on it. It was viewed under a microscope and was found negative for mites or eggs. The treatment notes indicate that three months earlier, appellant reported bites at work. The records advised that she had possible mites on her body and indicated animals were presently being treated for mites. Another undated note reported "fleas everywhere." There is no legible indication that these notes or records were authored by a physician.

By decision dated May 29, 2014, OWCP denied modification of its August 9, 2012 decision.

² Docket No. 13-827 (issued November 25, 2013). On August 18, 2008 appellant filed a traumatic injury claim alleging she was bitten by fleas at work.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 FECA⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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.⁷ 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.⁸

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 circumstances and his subsequent course of action.⁹ A consistent history of the injury as reported on medical reports to appellant’s supervisor and on the notice of injury can also be evidence of the occurrence of the incident.¹⁰ 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.¹¹ Although an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹²

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.*

⁹ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

¹⁰ *Id.* at 255-56.

¹¹ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

¹² *Id.*

ANALYSIS

Appellant alleged that she was bitten by mites or fleas at the employing establishment in the performance of duty on August 18, 2008 and sustained multiple bites to her body. In the prior decision, the Board found that she established exposure to insects or other biting pest occurred on or about August 18, 2008. However, the medical evidence provided by appellant was insufficient to establish that she sustained injury as a result of the accepted employment incident.

Appellant submitted a March 20, 2014 treatment note from Dr. DeVito, who noted that her last office visit was six to seven years earlier for an infestation of mites. Dr. DeVito diagnosed dermatitis/eczema due to an unspecified cause. This report does not support causal relationship as he attributed the diagnosed conditions to an unspecified cause.

In an April 1, 2014 report, Dr. DeVito noted that he was providing a summary of his clinical observation and assessment of appellant in 2008. He advised that she did not sustain an “injury per se,” when she presented to the office on August 18, 2008 for what was an “erythematous papule at her ankle consistent with an insect bite. No scalp lesions were noted.” Dr. DeVito explained that his diagnosis on that date was infestation of mites or insects and the objective findings supporting his diagnosis were his clinical examination and acumen as a dermatologist. He opined that “a rationalized medical opinion on causal relationship is difficult to determine because there are a number of locations where this infestation could have occurred.” The Board finds that the April 1, 2014 report does not support causal relationship. Dr. DeVito’s opinion is speculative in nature as he did not attribute appellant’s condition to any exposure at work. At most it provides equivocal support for causal relationship and is of limited probative value.¹³

OWCP also received several treatment records from unknown healthcare providers. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a “physician” as defined in 5 U.S.C. § 8102(2). The Board has found that reports lacking proper identification do not constitute probative medical evidence.¹⁴ Thus, these treatment notes and records are of no probative medical value in establishing the claim.

The Board finds that appellant failed to submit rationalized medical evidence to establish that she sustained an injury caused by the August 18, 2008 employment incident.

On appeal, appellant argued that her physician stated that she had a bug bite the first time he met with her. She noted that Dr. DeVito indicated that she was diagnosed with an infestation of mites or an insect bite on her ankle. The Board notes that Dr. DeVito did not provide a clear or unequivocal opinion on causal relationship.

¹³ The Board has held that medical opinions which are speculative or equivocal in character have little probative value. *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹⁴ *R.M.*, 59 ECAB 690 (2008).

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 has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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