

FACTUAL HISTORY

On February 12, 2013 appellant, then a 44-year-old military customs inspector with the Department of Army in Germany, filed a traumatic injury claim (Form CA-1) alleging that on December 18, 2012 he felt a sharp pain in his lower vertebrae after extending his right arm and losing the grip of his right foot while attempting to observe the top of an M1A1 tank. He stated that the pain to his vertebrae, hip, upper leg muscle, and bone increased and became unbearable in a short period of time. Appellant further stated that his body's immune system may have reacted poorly to bacteria causing a cyst. The employing establishment controverted the claim stating that there were no witnesses to the claimed event and that the diagnosis appeared to be the result of a preexisting condition. Appellant stopped work on December 26, 2012 and returned to work on January 14, 2013. On August 14, 2014 OWCP accepted the claim for back bruise.

By letter dated March 4, 2013, 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.

Appellant sought medical treatment in Germany. The medical credentials of the German physicians cannot be verified. In a March 26, 2013 medical note, Dr. Rolf Hassel stated that appellant was treated for severe lower back pain after slipping accidentally at his work on December 21, 2012.²

By decision dated April 8, 2013, OWCP denied appellant's claim because he did not submit any evidence containing a medical diagnosis in connection with the accepted December 18, 2012 employment incident. It noted that the medical evidence submitted contained a diagnosis of "pain" which is a symptom and not a diagnosed medical condition.

On May 8, 2013 appellant requested reconsideration of OWCP's decision.

In an April 2, 2013 narrative statement, appellant reported that on December 18, 2012 he was working alone in cold and icy conditions inspecting the top of an M1A1 tank when he lost his grip and footing, as his right hand and foot went in opposite directions. His body simultaneously twisted and he struck the tank on the right side of his back. Appellant stated that he only noticed a bit of damaged skin on the right side of his lower back where he hit the tank. On December 21, 2012 he felt increased pain in his lower back which progressively worsened. Appellant sought emergency medical treatment at the local German hospital on December 23, 2012 and was diagnosed with lower back pain.

Appellant submitted witness statements from fellow coworkers. Medical reports in German were also submitted containing no English translation.

In an April 25, 2013 medical report, Dr. Markus Dietrich, a neurosurgeon, reported that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed likely inflammation.

² The Board notes that two medical reports written in German dated January 4 and December 24, 2013 were also submitted.

However, it could not be excluded that a super infection of soft tissue hematoma resulted because of specified trauma to the area.

In a June 24, 2013 medical report, Dr. Jochen Radle reported that appellant was first evaluated in the hospital on December 23, 2012 for severe abscess/infection near the lumbar spine at L4-5 caused by Staphylococcus aureus. He noted that appellant had fallen against a U.S. Army tank several days before admission. Dr. Radle opined that the work incident caused appellant an injury to his lower back that brought him to the medical facility. Appellant's internal injury required several tests over an extended period of time since only the lower back pain and laboratory results with rising inflammation were obvious. Dr. Radle noted that the severe local infection could only be seen by a final MRI scan. It appeared that a super infection of soft tissue occurred after an initial lesion (potential soft tissue hematoma) of the injured area. Appellant developed severe Staphylococcus aureus infection during the process. In order to save his life, strong antibiotics were given. This coupled with the necessary pain medication caused appellant's liver blood levels to elevate to abnormal conditions requiring additional extensive liver and blood examination and controls. Given appellant's treatment, ongoing observation, and final results, Dr. Radle opined that appellant's fall on the tank was the leading factor to his current clinical problems and final diagnosis.

By decision dated June 27, 2013, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted December 18, 2012 employment incident.³

On June 28, 2013 appellant requested reconsideration of OWCP's decision.

In a December 23, 2012 translated hospital report, Dr. Dietrich reported that appellant presented to the emergency room for back pain. He diagnosed lumbago.

In a December 27, 2012 translated hospital report, Dr. Radle reported that an MRI scan of the lumbar spine revealed para-vertebral abscess in the level of inflammatory involvement of the right inter vertebral joint at L4-5 with joint effusion and adjacent bone marrow edema. He diagnosed inflammatory involvement of the right inter vertebrae, Staphylococcus aureus, herpes zoster gluteal, and hemangioma of the liver.

In a June 6, 2014 medical report, Dr. Radle reported that appellant sought emergency treatment on December 23, 2012 for lower back pain as a result of falling on a tank a few days earlier at his employment. He was examined and treated with pain medication only for the small bruise and trauma signs discovered to his lower back area. Appellant was released with no signs of infections. He had been readmitted to the hospital two days later with increased pain in his lower back area and upper leg when it was discovered that his blood had developed signs of an infection. Appellant was hospitalized to treat the inflammation to his lower back and rising

³ The Board notes that on June 3, 2013, OWCP issued a decision denying appellant's claim for failing to establish that his diagnosed conditions were causally related to the accepted December 18, 2012 employment incident. By letter dated June 27, 2013, appellant notified OWCP that the medical reports reviewed in its decision did not pertain to his claim. By letter dated June 27, 2013, OWCP notified him that the June 3, 2013 decision was vacated and a new reconsideration decision would be issued which took into consideration the medical evidence pertaining to his claim only.

levels of blood infection. He underwent a heavy intake of antibiotics for approximately three months and underwent examination of his vital organs on June 24, 2013. An additional blood test and examination of appellant's physical status taken on May 21, 2014 confirmed Dr. Radle's opinion that appellant was generally in good health and the fall on the tank was the initial cause that required treatment from the hospital for his lower back injury.

By decision dated August 14, 2014, OWCP accepted appellant's claim for bruise of back.

In another decision dated August 14, 2014, OWCP affirmed in part the June 27, 2013 decision finding that appellant failed to establish that his Staphylococcus infection was consequential to the December 18, 2012 injury.

On October 6, 2014 appellant requested reconsideration of OWCP decision.

In an October 20, 2014 report, Dr. Radle reported that the following information was being provided for clarification of his prior June 24, 2013 report. He noted that on December 27, 2012 appellant was admitted to the hospital for examination but no visible signs of any zoster infection were noted. Inpatient charts revealed that on January 10, 2012 a newly developed zoster infection of the lower back was diagnosed. Dr. Radle noted that the zoster infection was triggered by appellant's bad medical situation at that time and not the cause of his lower back injury or Staphylococcus blood infection which was diagnosed two weeks earlier. He further stated that with respect to the hemangioma of the liver, this was a typical benign tumor of the liver which could be diagnosed through ultrasound examinations. The diagnosis was proven in the complete workup concerning the infectious situation which often causes no clinical problems. Dr. Radle stated that appellant's liver lesion existed before December 2012 and had no medical connection to his current problems and diseases.

By decision dated February 10, 2015, OWCP affirmed the August 13, 2014 decision finding that the evidence of record failed to establish that appellant's Staphylococcus infection, zoster infection, and liver lesion were causally related to the accepted December 18, 2012 employment injury.

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 are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁵

⁴ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁵ Michael E. Smith, 50 ECAB 313 (1999).

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 supporting such a causal relationship.⁶ 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. 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

The basic rule respecting consequential injuries is that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening event.⁸ Once the work-connected character of an injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent, nonindustrial cause.⁹

ANALYSIS

OWCP accepted that the December 18, 2012 employment incident occurred as alleged and accepted the claim for a back bruise. The issue is whether appellant established that the incident caused him any additional consequential medical conditions. The Board finds that this case is not in posture for decision and must be remanded for further medical development.

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.¹⁰ However, it is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹

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

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ See *Kathy A. Kelley*, 55 ECAB 206 (2004); *Carlos A. Marerro*, 50 ECAB 170 (1998).

⁹ *P.B.*, Docket No. 13-1866 (issued March 7, 2014); *S.W.*, Docket No. 11-1678 (issued February 22, 2012); *Arnold Gustafson*, Docket No. 89-438 (issued October 30, 1989).

¹⁰ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 10; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

In its February 10, 2015 decision, OWCP denied appellant's claim because it found that his evidence did not establish that his Staphylococcus infection, zoster infection, and liver lesion were causally related to the December 18, 2012 employment injury. The Board finds that the medical evidence of record is sufficient to require further development of the case record.

In medical reports dated December 27, 2012 through October 20, 2014, Dr. Radle reported that appellant was first evaluated in the hospital on December 23, 2012 after he had fallen with his back against an army tank several days earlier. He noted that appellant was examined and treated with pain medication only for the small bruise and trauma signs discovered to his lower back area. Appellant was released with no sign of infections.

Appellant was readmitted to the hospital on December 27, 2012 for increased pain in his lower back and upper leg when it was discovered that he had developed signs of an infection revealed by MRI scan blood testing. The MRI scan revealed the appearance of a super infection of soft tissue occurring after an initial lesion (potential soft tissue hematoma) of the injured area. Appellant was hospitalized to treat the inflammation to his lower back and severe abscess/infection near the lumbar spine at L4-5 caused by Staphylococcus aureus. Dr. Radle opined that appellant's fall on the tank was the leading factor in the development of his clinical problems and final diagnosis. In his October 20, 2014 report, he found no visible signs of a zoster infection on examination on December 27, 2012. Inpatient charts revealed that on January 10, 2012 a newly developed zoster infection of the lower back was diagnosed. Dr. Radle noted that the zoster infection was triggered by appellant's bad medical situation at that time and not caused by his lower back injury or Staphylococcus blood infection which had been diagnosed two weeks earlier. He further stated that the hemangioma of the liver was a typical benign tumor which existed before December 2012 and had no medical connection to appellant's current problems and diseases.¹²

The Board notes that, while none of Dr. Radle's reports are completely rationalized, they are consistent in indicating that appellant sustained an employment-related consequential Staphylococcus infection and are not contradicted by any substantial medical or factual evidence of record.¹³ While Dr. Radle did not fully describe the mechanism of the injury, he provided a clear, if limited, opinion based on examination findings and an accurate factual and medical background, that appellant's Staphylococcus infection was caused by the December 18, 2012 employment injury.

Dr. Radle explained that appellant's fall on the tank caused severe abscess and Staphylococcus aureus infection near the lumbar spine at L4-5. He further explained that the hemangioma of the liver and zoster infection were not related to appellant's work injury. Dr. Radle demonstrated a clear understanding of the December 18, 2012 employment incident and provided a detailed medical history with findings based on diagnostic testing and physical examination. His opinion was supportive, bolstered by objective findings, and based on a

¹² Dr. Radle's December 27, 2012 hospital report diagnosed inflammatory involvement of the right hand intervertebrae, Staphylococcus aureus, herpes zoster gluteal, and hemangioma of the liver.

¹³ *Frank B. Gilbreth*, Docket No. 02-1310 (issued May 14, 2003).

firm diagnosis and accurate history.¹⁴ Though Dr. Radle's reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between appellant's Staphylococcus blood infection condition and the accepted incident and are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁵ The Board also notes that on remand OWCP shall obtain translation of all of the medical reports submitted in the German language.¹⁶

On remand, OWCP should prepare a statement of accepted facts which includes a description of the December 18, 2012 employment incident and obtain a rationalized medical opinion from an appropriate specialist as to whether appellant's Staphylococcus infection was causally related to accept back injury as a consequential injury. Following this and any other further development as deemed necessary, it shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant sustained an injury in the performance of duty on December 18, 2012.

¹⁴ See *L.D.*, Docket No. 09-1503 (issued April 15, 2010).

¹⁵ See *Virginia Richard*, *supra* note 10; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁶ See *Armando Colon*, 41 ECAB 563 (1990). The Board held that OWCP should have requested a translation of a medical report before ruling on the probative value of its contents. See also *M.T.*, Docket No. 09-208 (issued November 9, 2009).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: July 29, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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