

FACTUAL HISTORY

On January 6, 2015 appellant, then a 58-year-old human resources assistant, filed an occupational disease (Form CA-2) alleging that he developed MRSA due to his work in patient wards.

On November 30, 2014 appellant sought treatment for a skin abscess on his right buttock. Dr. Erica L. Olsen, a physician Board-certified in emergency medicine, diagnosed an abscess on his right thigh, and lower buttock. She found no systemic symptoms and no history of MRSA. Dr. Olsen drained the abscess and packed it with antibiotics.

In letters dated March 11, 2015, OWCP requested additional factual and medical evidence from appellant and the employing establishment and allowed 30 days for a response. It requested that the employing establishment provide a list of potentially harmful substances to which appellant had been exposed, the tasks he performed which resulted in exposure, and the precautions taken to minimize effects of exposure. OWCP informed the employing establishment that, if it failed to respond, appellant's allegations would be accepted as factual.

Appellant provided additional medical records. In a note dated December 2, 2014, Dr. John E. Przylucki, a Board-certified surgeon, found that appellant's right buttock abscess cultures positive for MRSA. On January 4, 2015 appellant developed a lesion on his right fourth finger and sought treatment from the employing establishment emergency room. On February 8, 2015 he developed a left buttock abscess. Appellant sought treatment from the emergency room on December 2, 10, 2014, January 8, and February 10, 12, 14, and 21, 2015 for MRSA abscesses wound packaging change.

On February 18, 2015 Dr. Przylucki found a history of recurrent MRSA abscesses. He noted that appellant was concerned that the abscesses may have origin at the employing establishment. Dr. Przylucki noted that appellant began experiencing recurrent abscesses in November 2014. He related that appellant had traveled to see his ex-girlfriend in Florida shortly before developing the initial abscess and that she had substance abuse problems. Since the initial abscess in November 2014 appellant experienced recurrences in addition to lesions on his finger and axilla. He used to work in the laundry at the employing establishment, but currently worked in human resources. Dr. Przylucki found that by sensitivity pattern and phenotype of disease appellant's condition appeared most closely related to community associated MRSA. He further noted, "However, I cannot rule out either nosocomial acquisition of a hospital associated strain, nor can I rule out hospital acquisition of a community associated MRSA strain."

In a note dated March 18, 2015, Dr. Przylucki found that appellant's condition had improved. He noted that appellant believed that the toilet bowls at the employing establishment were a source of MRSA.

Appellant completed a statement in response to OWCP's request for factual information and described his work in patient care areas in three different employing establishment hospitals from September 2008 through July 2013, as a food service tray passes, and as a housekeeper. He noted that he returned to work in customer service from January 2014 through January 2015. Appellant was currently employed in the engineering department of the employing

establishment. He alleged that the men's restroom did not have a housekeeper assigned to clean it for six months and received only light cleaning when staffing permitted it. Appellant alleged that the restroom was visibly dirty during the period that he contracted and recontracted MRSA. He also attributed the MRSA on his finger to handling dirty identification cards which he collected in human resources. Appellant alleged that the cards were visibly soiled. He opined that he contracted MRSA on his finger by touching dirty employee cards, and that he contracted MRSA on his buttocks by sitting on a dirty toilet seat at work. Appellant noted that there were no toilet seat covers and that he did not wear gloves when collecting cards. He indicated that he had a total of four lesions and that he was currently free of MRSA.

By decision dated April 14, 2015, OWCP denied appellant's occupational disease claim finding that he had not submitted the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition and his alleged employment exposures.

Appellant requested an oral hearing from OWCP's Branch of Hearings and Review on May 14, 2015. He submitted a statement from Dave Mills, a housekeeper at the employing establishment. Mr. Mills asserted that from October 3, 2014 and March 23, 2015 there was no housekeeper assigned to clean the restrooms in appellant's area of the employing establishment. He noted that the area was rarely cleaned and that the restrooms were unsanitary. Mr. Mills noted that during the period of no assigned housekeeper, he was occasionally assigned the extra duty of picking up the trash in appellant's area. He opined, "As a trained and qualified housekeeper, I observed the unsanitary conditions in the restrooms ... and reported that to my supervisor."

Appellant testified at the oral hearing on December 7, 2015. He described his duties of making and collecting employee identification cards as a human resources assistant. Appellant opined that he had a compromised immune system due to a traumatic brain injury. He noted that housekeeping stopped cleaning his area of the employing establishment and that the restrooms were not cleaned for six months. Appellant concluded that he contracted MRSA from sitting on the unclean toilet seats. He noted that the employing establishment did not provide paper linings or sanitary wipes to prevent disease spread.

By decision dated February 18, 2016, OWCP's hearing representative found that appellant had not submitted the necessary medical opinion evidence to establish that his MRSA lesions were due to employment-related exposures.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence,

based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.²

ANALYSIS

Appellant has attributed his diagnosed condition of MRSA abscesses on his buttocks and finger to exposures in his federal job duties. He asserted that he developed this infection due to collecting dirty identification cards and utilizing a restroom which was not regularly cleaned. The employing establishment did not respond to OWCP's request for information. Appellant submitted a statement from a coworker supporting that the restroom in appellant's duty area was not regularly cleaned for six months including the time period that he developed MRSA. The Board finds that he has established a diagnosis of MRSA based on the reports from Dr. Przylucki. The Board further finds that the statement of Mr. Mills is sufficient to establish that the employing establishment did not regularly clean the restrooms in appellant's work area during the period that he developed MRSA.

OWCP requested that the employing establishment provide answers to specific questions regarding appellant's alleged exposure to MRSA at the employing establishment. The employing establishment did not respond. Without information regarding any incidences of MRSA infection at the employing establishment, appellant cannot establish that his infection occurred at work. It is well established that proceedings under FECA are not adversarial in nature and that, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.³ In a case where OWCP "proceeds to develop the evidence and to procure evidence, it must do so in a fair and impartial manner."⁴ The employing establishment's reluctance or refusal to submit the requested evidence regarding appellant's possible employment exposure to MRSA should not be an impediment to his successful prosecution of his claim. The type of information being sought is normally within the custody of the employing establishment and not readily available to him.⁵ Accordingly, appellant should not be penalized for the employing establishment's failure to submit the requested information. OWCP informed the employing establishment of the consequences for failing to respond, but it is not clear from OWCP's decision why it declined to invoke this consequence on appellant's behalf given the employing establishment's failure to submit the requested information concerning his alleged occupational exposure.

On remand, OWCP should again request that the employing establishment provide information regarding appellant's possible exposure to MRSA at the employing establishment and any other relevant information. It should instruct the employing establishment of the

² *Lourdes Harris*, 45 ECAB 545, 547 (1994).

³ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

⁴ *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

⁵ See e.g., *Jess Hall*, 9 ECAB 831 (1958); *Willie Mae Johnson*, 4 ECAB 571 (1952).

consequence of its continued failure to respond.⁶ After this and such other development as OWCP deems necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision as OWCP failed to obtain all necessary information from the employing establishment.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2016 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: August 2, 2016
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁶ *Jerome J. Kubin*, Docket No. 03-1830 (issued October 1, 2003).