

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

T.O., Appellant)
and) Docket No. 16-0423
DEPARTMENT OF HOMELAND SECURITY,)
FEDERAL AIR MARSHAL SERVICE,) Issued: June 20, 2016
Orlando, FL, Employer)

)

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 4, 2016 appellant, through counsel, filed a timely appeal from an August 12, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has met his burden of proof to establish that his right deep vein thrombosis (DVT) and blood clot were causally related to factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 8, 2014 appellant, then a 53-year-old retired supervisory federal air marshal, filed an occupational disease claim (Form CA-2) alleging that his right DVT and subsequent blood clot in his lung resulted from several instances of lower right leg swelling while being aboard flights serving as an air marshal. He first became aware of his medical condition and that it was caused or aggravated by his federal employment on December 15, 2011. Appellant retired from the employing establishment effective February 29, 2012. No further information was initially submitted with his claim.

In an October 17, 2014 letter, OWCP advised appellant of the factual and medical evidence needed to establish his claim, including a detailed narrative report from his physician which included a history of the injury and a medical explanation with objective evidence of how the claimed work factors would cause the medical condition. It afforded him 30 days to submit such evidence.

In an October 4, 2014 statement, appellant indicated his belief that his 11-year service as a federal air marshal resulted in the development of DVT of his lower right leg as well as resultant pulmonary embolisms in his left lung. He flew numerous domestic and international flights/missions monthly, which consisted of being in a seated position with limited movement of his legs several hours at a time in a pressurized compartment. Appellant first noticed the pain and swelling in the lower portion of his right leg after returning from a two-day international flight on December 15, 2011.

In a September 25, 2014 statement, Sonya R. Hightower-Lobosco, a federal air marshal, stated that on December 15, 2011 she observed appellant's right leg was swollen after he had returned from a flight mission.

In an August 4, 2014 emergency room report, Bradley M. Jahnke, D.O., an osteopath, noted a five-day history of right lower leg pain and diagnosed right DVT with multiple nonoccluding pulmonary emboli of the left lung. In an August 7, 2014 report, Thomas E. Chambers, D.O., an osteopath and Board-certified family practitioner, also diagnosed right DVT and pulmonary embolus. Copies of laboratory reports and diagnostic testing from appellant's hospital stay of August 4 to 6, 2014 were provided along with progress reports from Dr. Chambers dated December 15 and 16, 2011.

A venous Doppler test dated October 28, 2014 was positive for right DVT.

By decision dated January 9, 2015, OWCP denied the claim finding the medical evidence of record did not establish a causal relationship between appellant's flying missions and the diagnosed medical condition.

On January 20, 2015 counsel requested a telephonic hearing with a hearing representative of OWCP's Branch of Hearings and Review, which was held on July 1, 2015. Appellant testified that his former air marshal position included flying missions and also performing managerial tasks while seated primarily at a desk. He denied any hobbies or personal activities involving being seated for long periods of time.

Several medical reports from Dr. Chambers were received. In a November 10, 2014 report, Dr. Chambers noted that appellant experienced right leg DVT complicated by two small pulmonary embolisms in August 2014. He noted that appellant remained on anticoagulate medication and still had discomfort. In a July 2, 2015 report, Dr. Chambers indicated that prolonged periods of inactivity and/or sitting were generally believed to be contributing factors in DVT illness.

By decision dated August 12, 2015, OWCP's hearing representative affirmed OWCP's January 9, 2015 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (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.⁵

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.⁶

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

OWCP accepted that appellant's job involved numerous hours of being seated while flying and while sitting doing desk work, but denied the claim as the medical evidence did not establish a causal relationship between those factors and the claimed right DVT and resulting pulmonary embolism.

In an August 4, 2014 emergency room report, Dr. Jahnke diagnosed right DVT with multiple nonoccluding pulmonary emboli of the left lung. He did not mention appellant's work history or offer an opinion on the causal relation of appellant's condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷ As such, his report is insufficient to establish appellant's claim.

Several reports from Dr. Chambers were received. In August 7 and November 10, 2014 reports and progress notes of December 15 and 16, 2011, Dr. Chambers diagnosed right DVT and pulmonary embolus. However, he did not offer an opinion on the causal relation of appellant's condition.⁸ Thus, these reports are insufficient to establish appellant's claim. While Dr. Chambers noted in his July 2, 2015 report that prolonged periods of inactivity and/or sitting are generally believed to be contributing factors in DVT illness, such commentary is merely a general conclusion without providing necessary medical rationale. He did not explain how and why appellant's work factors of prolonged sitting would cause the diagnosed conditions. Dr. Chambers also did not discuss appellant's work duties and history. A mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work activities could result in the diagnosed condition is insufficient to meet his burden of proof.⁹ Thus, Dr. Chambers' reports are insufficient to discharge appellant's burden of proof as they do not present a rationalized medical opinion regarding causal relationship.

The remaining evidence submitted by appellant is insufficient to establish a causal relationship. The laboratory reports and diagnostic testing submitted are of limited probative value as they do not contain a physician's medical opinion that any diagnosed condition was causally related to appellant's work factors.¹⁰

Consequently, appellant has offered insufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.¹¹ The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or

⁷ See C.B., Docket No. 09-2027 (issued May 12, 2010); S.E., Docket No. 08-2214 (issued May 6, 2009).

⁸ *Id.*

⁹ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ *I.J.*, 59 ECAB 408 (2008).

aggravated his condition.¹² Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

On appeal counsel contends that the medical evidence supports causal relationship. As found above, appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his right DVT and blood clots were causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 12, 2015 is affirmed.

Issued: June 20, 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

¹² *Supra* note 6 (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).