

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

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**B.S., Appellant**

**and**

**DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE, REGULAR  
EMPLOYEE FUNCTIONS, Luray, VA,  
Employer**

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**Docket No. 16-1122  
Issued: October 17, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 5, 2016 appellant filed a timely appeal from a February 25, 2016 merit decision and a March 28, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 these issues.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish a traumatic injury causally related to a May 13, 2015 employment incident; and (2) whether OWCP properly

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

<sup>2</sup> On appeal appellant submitted new evidence. The Board cannot consider this evidence on appeal, however, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1); *see Steven S. Saleh*, 55 ECAB 169 (2003).

refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On December 14, 2015 appellant, then a 40-year-old tractor operator, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 2015 he was working outdoors and installing blocks in the parking area. He noted that he was wearing appropriate clothing and insect repellent. Appellant indicated that he found an imbedded deer tick in his stomach. He did not stop work. The employing establishment checked the box marked "yes" in response to whether appellant was injured in the performance of his duties and with regard to whether the knowledge of the facts about the injury agreed with the statements of the employee and/or witnesses. In a separate statement, it also noted that appellant routinely worked outdoors and had logged several instances of deer tick bites in the past.

In a December 16, 2015 letter, OWCP advised appellant that additional factual and medical evidence was needed. It informed him of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. No evidence was received.

By decision dated January 29, 2016, OWCP denied appellant's claim as he had not established an injury as alleged, finding that he had not submitted any medical evidence and there was no evidence to support that an injury and or medical condition occurred.

On February 1, 2016 appellant provided a January 4, 2016 report from Dr. Sasha L. Grams, Board-certified in family medicine. Dr. Grams noted that he saw appellant on November 30, 2015 with the chief complaint of fatigue, which appellant related going on for about two weeks and advised that "the fatigue felt similar to a prior episode of Lyme disease." He noted that the last tick bite that appellant could remember was reported as a work-related injury occurring on May 13, 2015. Dr. Grams reported that appellant continued to work outdoors for the employing establishment although he could not recall any tick bites since then. He explained that a Lyme titer done on December 2, 2015 came back nonreactive. Dr. Grams advised that he ordered other tests as part of the work up and noted that they all were essentially normal. He explained that he suspected Lyme disease, which might not show up on testing, and started him on a course of doxycycline. Dr. Grams noted that appellant had a dramatic improvement in his fatigue with return to his baseline energy level within a short time of being on doxycycline. He opined that "the most likely explanation for his fatigue was Lyme disease due to tick bite given the resolution of his symptoms with treatment for this."

On February 10, 2016 appellant requested reconsideration.

By decision dated February 25, 2016, OWCP modified the January 29, 2016 decision, finding that appellant submitted medical evidence diagnosing a condition, but that the claim remained denied as the medical evidence did not contain rationale to support causal relationship.

On March 10, 2016 appellant requested reconsideration.

In a March 10, 2016 letter, Michelle Kerns, an administrative officer with the employing establishment, confirmed that appellant documented a tick exposure at work on May 13, 2015.

She also indicated that appellant was constantly working outdoors in the field and was routinely exposed to ticks and the elements in the park. Ms. Kerns explained that appellant did not become ill from his exposure until December, which was common in tick exposure cases. She attached a copy of tick report documenting his exposure.

By decision dated March 28, 2016, OWCP denied appellant's request for reconsideration without a review of the merits as the evidence submitted was insufficient to warrant review of the February 25, 2016 decision. It explained that the factual evidence from the employing establishment was irrelevant, as it failed to address the deficiencies in the medical evidence. OWCP advised that appellant had not provided diagnostic testing results to confirm that appellant in fact contracted Lyme disease and he did not provide a physician's well-reasoned opinion explaining how the May 13, 2015 tick exposure was related to the diagnosed Lyme disease.

### **LEGAL PRECEDENT -- ISSUE 1**

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 timely filed within the applicable time limitation period of FECA,<sup>3</sup> and that an injury was sustained in the performance of duty.<sup>4</sup> 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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.<sup>6</sup> In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>7</sup> 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.<sup>8</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

In this case, appellant alleged that on May 13, 2015 he sustained a tick bite in the performance of duty. OWCP accepted that the tick bite occurred. The issue to be determined is whether the medical evidence established that appellant's diagnosed condition is causally related to the May 13, 2015 employment incident.

The Board finds that the medical evidence is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the specific employment incident on May 13, 2015 caused or aggravated an injury.<sup>10</sup>

Appellant submitted a January 4, 2016 report from Dr. Gram, who noted that he saw appellant on November 30, 2015 for fatigue of weeks' duration which appellant felt to be similar to a prior episode of Lyme disease. Dr. Gram noted that the last tick bite that appellant could remember was reported as a work-related injury occurring on May 13, 2015. However, he indicated that a Lyme titer test performed on December 2, 2015 came back nonreactive and other tests were essentially normal. Dr. Gram explained that he "suspected Lyme disease, which might not show up on testing, and started him on a course of doxycycline." He indicated that appellant had a dramatic improvement in his fatigue with return to his baseline energy level within a short time of being on doxycycline and concluded that "the most likely explanation for his fatigue was Lyme disease due to tick bite given the resolution of his symptoms with treatment for this."

The Board finds, however, that Dr. Gram did not provide a definitive diagnosis, as he indicated he suspected Lyme disease despite testing being nonreactive and normal. Further, his opinion is speculative regarding causal relationship. Dr. Gram indicated that the most likely explanation for appellant's condition was the tick bite, as his symptoms resolved after treatment. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>11</sup> Moreover, Dr. Gram did not explain how appellant's condition was caused by the accepted May 13, 2015 employment incident. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>12</sup>

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<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>11</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>12</sup> See *R.C.*, Docket No. 15-315 (issued May 4, 2015); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

Because the medical report submitted by appellant does not address how the May 13, 2015 incident at work caused or aggravated his Lyme disease, this report is of limited probative value<sup>13</sup> and it is insufficient to establish that the May 13, 2015 employment incident caused or aggravated a specific injury.

The Board notes that OWCP procedures provide that in certain circumstances no medical report is required where all of the following criteria are satisfied, a claim may be accepted without a medical report: (1) The condition reported is a minor one which can be identified on visual inspection by a lay person (e.g., burn, laceration, insect sting or animal bite); (2) The injury was witnessed or reported promptly, and no dispute exists as to the fact of injury; and (3) No time was lost from work due to disability.<sup>14</sup> These procedures do not apply in this situation. Although it is undisputed that he received a tick bite, the issue is whether the tick bite caused the Lyme disease symptoms, a condition that could be identified on visual inspection and in fact test results could not confirm. As found above, the report from Dr. Gram is speculative and not rationalized.

On appeal, appellant argued that his physician, Dr. Grams, made a clinical diagnosis and his report was conclusive. He also argued that his personal physician also noted that it was common to have symptoms, but the blood test was negative. The Board finds, however, that the medical evidence is insufficient to establish a medical condition related to the accepted tick bite.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of FECA,<sup>15</sup> OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>16</sup>

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<sup>13</sup> See *Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

<sup>15</sup> 5 U.S.C. § 8128(a).

<sup>16</sup> 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>17</sup>

### ANALYSIS

Appellant disagreed with the denial of his claim for a traumatic injury and requested reconsideration on March 10, 2016. The underlying issue on reconsideration is medical in nature, whether the May 13, 2015 tick bite caused Lyme disease or any other medical condition.

Appellant, however, did not provide any relevant or pertinent new evidence to the issue of whether he sustained a traumatic injury due to his tick bite on May 13, 2015.

On reconsideration, appellant submitted documentation from the employing establishment confirming that he was bitten by a tick on May 13, 2015. However, the factual component of his claim had already been accepted. The relevant issue in this claim is medical in nature and must therefore be resolved by the submission of relevant medical evidence.<sup>18</sup> Thus, this evidence is irrelevant. Appellant did not submit new medical evidence, but rather submitted additional factual evidence. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>19</sup>

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, OWCP properly denied his request for reconsideration.

### CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish a traumatic injury causally related to the May 13, 2015 employment incident. The Board also finds that OWCP properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

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<sup>17</sup> *Id.* at § 10.608(b).

<sup>18</sup> *See Paul Foster*, 56 ECAB 208 (2004).

<sup>19</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28 and February 25, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 17, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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