

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

<b>K.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 15-1660</b>
	)	<b>Issued: September 16, 2016</b>
<b>DEPARTMENT OF LABOR, ENERGY</b>	)	
<b>EMPLOYEES OCCUPATIONAL ILLNESS</b>	)	
<b>COMPENSATION PROGRAM, Denver, CO,</b>	)	
<b>Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 3, 2015 appellant filed a timely appeal from the July 24, 2015 merit 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 the merits of appellant's claim.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty.

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

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> In a November 25, 2013 decision, the Board affirmed on August 9, 2012 decision 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. In a November 18, 2014 decision, the Board affirmed a May 29, 2014 decision, which denied modification of the August 9, 2012 decision of OWCP denying appellant's claim. The Board found that appellant failed to submit rationalized medical evidence to establish an injury caused by the August 18, 2008 bug bite. The facts and history contained in the prior appeal are incorporated herein by reference.

On March 28, 2015 appellant requested reconsideration and submitted new medical evidence from her treating physician, Dr. James DeVito, a Board-certified dermatologist.

In a March 26, 2015 report, Dr. DeVito noted that on August 19, 2008 appellant was seen for evaluation of bug bites. He related that she believed that she might have fleas or other infestation. Appellant recalled having been bitten on her ankle at her workplace the day before. Dr. DeVito advised that during the period August 4 to 18, 2008 she had sensations of insects scurrying and biting on her body while she was in her cubicle at work. He related that on the morning of August 18, 2008 appellant went to work as usual and "was only there for a short time when the feeling that bugs were crawling all over her body began yet again." Dr. DeVito indicated that appellant related that "she felt a bite on her left ankle and upon looking down saw a red mark that looked as if something had bitten her." He also noted that she indicated that she showed the bite to her supervisor and filed a report. Dr. DeVito noted that afterwards, appellant called his office to schedule an appointment but the earliest appointment was for the next day. He indicated that, upon examining her left ankle, "she presented with an erythematous papule consistent with an arthropod bite." Dr. DeVito advised that although appellant complained there was sensation of movement on her scalp and hair, no lesions were noted. He indicated that his diagnosis at that time was infestation of mites/insects (arthropod assault). Dr. DeVito explained that the objective findings supporting the diagnosis were his clinical expertise. He also found that the history provided by appellant supported his diagnosis. An undated treatment from Dr. DeVito reported that appellant's chief complaint was having fleas.

By decision dated July 24, 2015, OWCP denied modification of its prior decision.

## **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 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

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<sup>2</sup> Docket No. 13-0827 (issued November 25, 2013); Docket No. 14-1691 (issued November 18, 2014).

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

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

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 must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>6</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>7</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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

### ANALYSIS

Appellant has established that on August 18, 2008 she was bitten by an insect or other biting pest. However, the medical evidence provided by appellant is insufficient to establish that she sustained an injury as a result of the accepted August 18, 2008 incident.

Appellant provided the March 26, 2015 report from Dr. DeVito in which he noted that on August 19, 2008 she was seen for evaluation of bug bites. She believed that she might have fleas or other infestation and recalled having been bitten on her ankle at her workplace the day before. From August 4 to 18, 2008, appellant had sensations of bugs scurrying and biting on her body while she was at work. Dr. DeVito related that on August 18, 2008 appellant was at work for a short time when she felt “that bugs were crawling all over her body began yet again.” Appellant related that something had bitten her leg. Dr. DeVito noted seeing her the next day where “she presented with an erythematous papule consistent with an arthropod bite” on her left ankle. Although appellant complained of a sensation of movement on her scalp and hair, no lesions were noted. Dr. DeVito diagnosed infestation of mites/insects (arthropod assault). He explained that the objective findings supporting the diagnosis were his clinical expertise, and that of the history given by the patient.

The Board finds that Dr. DeVito did not sufficiently address how the employment exposure caused a particular diagnosed condition. Dr. DeVito noted an erythematous papule on her left leg consistent with an arthropod bite but did not adequately explain a medical condition due to the bug bite. As such, he did not provide a clear and firm diagnosis of a medical condition.

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

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.*

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Furthermore, while OWCP procedures recognize that, with certain “clear-cut” traumatic injuries, such as a fall from a ladder resulting in a broken leg, the record may require only an affirmative statement by a physician to establish causal relationship; this was not such a situation as the employing establishment controverted the claim.<sup>9</sup>

Based on the foregoing, the Board finds that appellant has failed to establish an injury caused by the August 18, 2008 incident.

Appellant may submit evidence or argument with a written request for reconsideration 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 to establish an injury in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 24, 2015 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: September 16, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

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

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<sup>9</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013).