

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

L.R., Appellant

and

**TENNESSEE VALLEY AUTHORITY,
Chattanooga, TN, Employer**

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**Docket No. 17-0031
Issued: July 11, 2017**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 10, 2016 appellant, through counsel, filed a timely appeal of an August 5, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that he developed Parsonage Turner Syndrome (PTS) or any other claimed medical condition causally related to the accepted July 29, 2014 insect sting.

FACTUAL HISTORY

On August 28, 2014 appellant, then a 43-year-old property maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that he was stung on his top lip by a hornet while cutting vegetation on July 29, 2014 in the performance of duty. He alleged that he had an allergic reaction to the sting and was hospitalized. Appellant's supervisor completed the Form CA-1 and agreed that appellant was stung by an insect while performing job duties. He noted that appellant received medical treatment and returned to work on July 30, 2014. Appellant's supervisor reported that appellant then claimed that he developed a groin infection and back injuries as a result of the sting. He noted that the employing establishment did not support appellant's claim for a groin infection or back injuries as occurring in the performance of duty as these conditions preexisted the July 29, 2014 employment insect sting.

Appellant submitted a series of notes beginning on August 4, 2014 from Dr. W. David Bruce, an orthopedic surgeon, diagnosing cervical nerve root pain and left shoulder joint pain. Dr. Bruce reported on August 4, 2014 that appellant's lumbar pain and left shoulder pain had begun a few days before he was stung in the lip by a bee. He noted that appellant was stung by a wasp, and after the sting, he threw the loppers he was using. Appellant had an allergic reaction and went to the emergency room. Dr. Bruce found that, since the sting and emergency treatment, appellant had diffuse unrelenting pain in his shoulder and down his arm. He opined, "I have never seen [PTS] result from a bite, but I suspect it could. I know that jellyfish can sometimes cause it. This sounds like [PTS] to me, especially the amount of pain he is actually in."

In his August 12, 2014 note, Dr. Bruce reviewed appellant's treatment and failure to improve. He found, "I cannot rule out [PTS] as a direct result of his sting. It is rare, but it does happen." Dr. Bruce also noted that appellant had a pustule in his groin which appeared to be a staph infection.

Dr. Richard G. Pearce, a Board-certified orthopedic surgeon, examined appellant on August 22, 2014. He noted that appellant had been stung by a bee on July 29, 2014 and developed neck and left upper extremity pain with weakness. Dr. Pearce diagnosed possible brachial plexus neuritis on the left. He noted that appellant's clinical examination appeared to be out of proportion to his cervical anatomic findings. Dr. Pearce found that the diffuse motor weakness in appellant's left arm was puzzling.

Appellant submitted medical records from Dr. David Lowry, an osteopath, noting that he developed left upper extremity pain with radiation down his arm following an allergic reaction to a bee sting on July 29, 2014. Dr. Lowry diagnosed cervical nerve root pain, shoulder joint pain, degeneration of cervical intervertebral disc, neck pain, and displacement of cervical intervertebral disc without myelopathy on August 26, 2014.

In a report dated August 27, 2014, Dr. Tareck A. Kadrie, a Board-certified neurologist, examined appellant due to severe left upper extremity numbness, pain, tingling, and weakness. He indicated that appellant's condition began the day after he was stung by an insect. Dr. Kadrie found that appellant had left upper extremity weakness and pain of "unclear etiology." He noted that appellant's symptoms suggested a diffuse left cervical polyradiculopathy such as left brachial plexopathy of idiopathic origin, PTS. Dr. Kadrie noted that there were cases of encephalon myeloradiculopathy associated with bee stings.

In a letter dated September 18, 2014, OWCP requested additional factual and medical evidence in support of appellant's claim. It allowed 30 days for a response. Appellant submitted additional medical evidence from Dr. Eugene H. Ryan, an internist, dated August 1, 2014. Dr. Ryan examined appellant due to left neck and thoracic muscle spasm and noted that appellant had been stung by a hornet on July 29, 2014.

In a note dated September 18, 2014, Dr. Bruce again opined that appellant's condition was PTS. He noted, "I think it is direct from the stings [appellant] got." Dr. Bruce gave the differential diagnosis of PTS or brachial plexus disorder.

By decision dated October 23, 2014, OWCP denied appellant's claim finding that the medical evidence was insufficient to establish a causal relationship between his accepted insect sting on July 29, 2014 and any other medical condition.

Dr. Bruce completed a report on November 18, 2014 and described appellant's history of insect sting and initial treatment. He noted that appellant reported numbness and tingling, which had been nonstop since the sting. Dr. Bruce reported that he requested electrodiagnostic testing to assist with the possible diagnosis of PTS. He noted that there was no standardized test for PTS and that it was a diagnosis of exclusion. Dr. Bruce reported that appellant made progress with nerve blocks which indicated that the original diagnosis of PTS developed from the sting was correct. He diagnosed PTS secondary to bee sting on July 29, 2014. Dr. Bruce again explained that to reach a diagnosis of PTS he had to rule out other possible diagnoses. He noted, "Prior to the sting on July 29th, [appellant] did not have a history of numbness and tingling in the upper extremity. The physical findings on his initial visit on August 4th remained consistent if not worse on each subsequent visit until he received the nerve blocks.... After receiving the nerve blocks I saw some improvement...." Dr. Bruce again opined that the wasp sting on July 29, 2014 was the origin of appellant's condition.

Appellant, through counsel, requested an oral hearing from OWCP's Branch of Hearings and Review on November 21, 2014. He submitted his emergency room records from July 29, 2014, which indicated that he sustained multiple stings to his face with swelling of his lip and throat.

In a note dated December 3, 2014, Dr. Bruce opined that appellant developed PTS and that the nerve blocks were working well for him. He found that there was no doubt that PTS was the correct diagnosis.

Dr. Gregory N. Ball, a Board-certified anesthesiologist, examined appellant on December 11, 2014 and diagnosed reflex sympathetic dystrophy of the upper limb, brachial plexus lesions, and other symptoms affecting the cervical region.

Dr. Bruce completed a note on November 1, 2014 and diagnosed PTS or brachial plexitis from the wasp sting. He opined that appellant's testing was required to rule out other causes of his conditions. In a note dated January 7, 2015, Dr. Bruce again diagnosed PTS from the work-related stings. He opined that appellant's condition fit the syndrome and the "way it happened."

Appellant returned to regular duty on March 9, 2015. In a note dated June 4, 2015, Dr. Bruce diagnosed PTS caused by a sting that occurred at work. He found that appellant had reached maximum medical improvement and provided an impairment rating.

Appellant testified at the oral hearing on June 19, 2015 before a representative of OWCP's Branch of Hearings and Review. He indicated that while at work on July 29, 2014 he was stung on the upper lip by what he believed was a hornet, that his lip began to swell, that his throat began closing, and that he could not breathe. Appellant received emergency attention for his reaction to the sting. He testified that his left shoulder began hurting the afternoon of July 29, 2014 following the stings. Appellant reported for work the next day, but did not work an entire shift because his shoulder was hurting. He sought medical treatment for his left shoulder on August 4, 2014 with Dr. Bruce. OWCP's hearing representative allowed appellant an additional 30 days to submit medical evidence. No additional evidence was received.

By decision dated August 11, 2015, OWCP's hearing representative reviewed the medical evidence and found that Dr. Bruce had not explained how an insect bite could cause PTS. He further noted that Dr. Bruce had not explained what test results confirmed the diagnosis of PTS. The hearing representative concluded that Dr. Bruce had not provided medical rationale causing his opinions to be of reduced probative value. He found that appellant had not met his burden of proof to establish an injury causally related to his employment.

On January 28, 2016 counsel requested reconsideration from the August 11, 2015 decision. In support of this request, he submitted an additional medical note from Dr. Bruce. Dr. Bruce completed a report on January 12, 2016 and diagnosed PTS. He opined that appellant's insect bites resulted in this diagnosis. Dr. Bruce concluded that as appellant's insect bites were work related and caused the PTS, then PTS was directly work related. He noted "The literature supports this in that other creatures and bites have resulted in [PTS] and this has been confirmed by neurologist."

By decision dated August 5, 2016, OWCP denied modification of its prior decision. It found that appellant had not submitted medical evidence establishing a causal relationship between his accepted employment-related insect stings and his diagnosed condition.

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.³ 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.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his disability and/or condition relates to the employment incident.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he developed PTS or any other diagnosed medical condition as a result of employment-related insect sting.

On July 29, 2014 appellant was stung on the top lip by an insect while performing his federal job duties. This aspect of his claim is not in dispute. Appellant testified that, following his hospitalization and treatment for allergic reaction to the insect sting, he developed left shoulder and upper extremity pain. He initially sought treatment for this condition on August 4, 2014 from Dr. Bruce. Beginning on August 4, 2014, Dr. Bruce tentatively diagnosed PTS as a result of the insect sting. He continued to support this diagnosis and relationship on November 1, 2014 and January 7, 2015. In his August 27, 2014 note, Dr. Kadrie also suggested that appellant’s condition could be PTS or left brachial plexopathy of idiopathic origin. These initial reports were insufficient to meet appellant’s burden of proof as neither Dr. Kadrie nor Dr. Bruce provided a firm diagnosis.⁸ The remainder of appellant’s physicians, Drs. Pearce, Lowry, Ryan, and Ball, provided alternative diagnoses and did not suggest that appellant’s left shoulder and upper extremity conditions were due to his employment injury of July 29, 2014. As

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

⁸ *See Val D. Wynn*, 40 ECAB 666 (1989); *A.R.*, Docket No. 16-1416 (issued April 10, 2017) (medical evidence which does not provide a firm diagnosis is insufficient to establish a traumatic injury claim).

these reports do not provide an opinion on the cause of appellant's left shoulder and upper extremity conditions, these opinions are insufficient to establish causal relationship.⁹

Dr. Bruce submitted a series of notes confirming his opinion that appellant developed PTS as a result of his accepted insect stings on July 29, 2014. Following his initial examination on August 4, 2014, he repeated his diagnosis of PTS and his conclusions on September 18, 2014 noting, "I think it is direct from the stings [appellant] got." This report goes further in supporting the diagnosis of PTS as work related. Dr. Bruce was clear in his diagnosis and provided a definite opinion on causal relationship. On November 18, 2014 Dr. Bruce explained that he requested electrodiagnostic testing to assist with the possible diagnosis of PTS. He noted that, as there was no standardized test for PTS, it must be diagnosed through the exclusion of other conditions. Dr. Bruce reported that appellant made progress with nerve blocks which indicated that the original diagnosis of PTS developed from the sting was correct. This report offers support for appellant's diagnosis of PTS from his July 29, 2014 employment injury, but does not contain the necessary medical reasoning necessary to meet his burden of proof to establish that any of the diagnosed medical conditions are causally related to the accepted insect sting. A mere conclusion without the necessary rationale explaining how and why Dr. Bruce believes that an incident resulted in a diagnosed condition is not sufficient to meet appellant's burden of proof.¹⁰ Dr. Bruce did not explain why a positive response to nerve blocks would support his diagnosis of PTS. He also opined that there was a temporal relationship between appellant's stings on July 29, 2014 and onset of his symptoms of numbness and tingling in the upper extremity. The Board has held that medical reasoning which relies solely on the temporal relationship between a condition and employment is insufficient to meet appellant's burden of proof. Neither the fact that the condition became apparent during a period of employment nor the belief that the employment cause or aggravated a condition is sufficient to establish causal relationship.¹¹

In a note dated January 12, 2016, Dr. Bruce attributed appellant's diagnosis of PTS to the July 29, 2014 insect bite. He noted, "The literature supports this in that other creatures and bites have resulted in [PTS] and this has been confirmed by neurologist." Dr. Bruce did not provide specific citations to medical publications and did not explain how and why he reached the conclusion that appellant's PTS was related to the July 29, 2014 insect bite. The Board has held that excerpts of medical publications have probative value only to the extent that the material is interpreted and cited by a physician rendering an opinion on the causal relationship between a condition and specified employment injury.¹² Furthermore, his reliance on Dr. Kadrie's findings are not supportive of appellant's claim, as Dr. Kadrie indicated that appellant's condition could be left brachial plexopathy of idiopathic origin.

As there is no medical evidence in the record clearly explaining how or why appellant could have developed PTS or any other diagnosed condition causally related to an insect sting

⁹ *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

¹⁰ *Id.*

¹¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹² *Harlan L. Soeten*, 38 ECAB 566-67 (1987).

sustained in the performance of duty, he has not submitted the necessary medical opinion evidence to meet his burden of proof to establish an injury due to his July 29, 2014 insect sting.

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he developed PTS or any other claimed medical condition causally related to the accepted July 29, 2014 insect sting.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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