United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
and	)	**Docket No. 17-0195**
	)	**Issued: August 7, 2018**
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Salem, OR, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 November 7, 2016 appellant, through counsel, filed a timely appeal from a September 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 a traumatic injury causally related to an accepted April 13, 2015 employment exposure.

FACTUAL HISTORY

On May 13, 2015 appellant, then a 49-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 2015 he developed flu-like symptoms, including fever, chills, extreme headache, body ache, light headedness, joint ache, and weight loss, as a result of cleaning up roads after storm damage. He explained that he had unplugged culverts and had thrown rocks and limbs from the roadway. Appellant related that he developed flu-like symptoms that evening and was later admitted to a hospital where he stayed for six days. He noted that an emergency room doctor told him that he had Lyme disease. Appellant stopped work on April 17, 2015 and returned on May 4, 2015.

In an April 16, 2015 office visit note, Dr. Mahnaz Ahmad, Board-certified in geriatric and internal medicine, indicated that appellant had been sick since the prior Sunday and described symptoms of fever, positive chills, generalized body ache, nausea, and vomiting. He related that appellant "had a lot of pulled pork and felt sick afterwards." Dr. Ahmad reviewed appellant's history and provided physical examination findings. He noted abnormal laboratory test results. Dr. Ahmad opined that appellant had acute onset of gastroenteritis symptoms that could be bacterial or viral.

Appellant received treatment in the emergency room. In an April 17, 2015 hospital record, Dr. Joseph A. Campbell, Board-certified in emergency medicine, related that approximately four days prior appellant was at work and experienced insatiable appetite, diffuse myalgia, soreness, chills, and headache. He noted that appellant's primary care physician observed abnormal laboratory test results and advised that appellant should be evaluated at a hospital. Dr. Campbell reviewed appellant's history and provided examination findings. He reported that he was concerned for possible central nervous system infection, more likely aseptic than bacterial. Appellant was admitted to the hospital.

Dr. Christina Stratis, a Board-certified internist, reported in an April 17, 2015 hospital progress note that appellant presented at the emergency room for fever, myalgia, headaches, and abnormal laboratory test results by his primary care physician. She indicated that appellant owned a farm and worked long hours. Dr. Stratis reviewed appellant's history and provided physical examination findings, including abnormal laboratory test results.

In an April 18, 2015 hospital progress note, Dr. Amit Anil Barve, a Board-certified internist, reiterated appellant's sudden onset of symptoms four days ago. He noted that appellant worked with animals on his farm and recently delivered a baby sheep. Dr. Barve provided examination findings and reviewed appellant's recent laboratory test results. He indicated a principal problem of sepsis and differential diagnosis viral illness. The hospital records also included various diagnostic and laboratory test results.

Dr. John Gregory Van Eaton, a Board-certified internist, also examined appellant on April 18, 2015. He indicated that further evaluation revealed abnormal laboratory findings, including elevated liver enzymes and bilirubin. Dr. Van Eaton explained that he was concerned about possible leptospirosis as etiology of appellant's symptoms. He pointed out that appellant lived and worked on a farm and had significant contact with a variety of farm animals. Dr. Van Eaton recommended treatment with an infectious disease physician.

In an April 20, 2015 report, Dr. Shane Onion Rogosin, a Board-certified internist specializing in hematology and medical oncology, noted that appellant was admitted to the hospital for abrupt onset illness and referred to hematology due to abnormal blood count findings. He evaluated appellant's laboratory test results and explained that his hepatic abnormalities also raised the question of chronic liver disease. Dr. Rogosin opined that appellant's abnormal blood count was "most likely reflective of an acute inflammatory process, possibly infection." He recommended further testing to rule out the possibility of leukemia, lymphoma, or other infiltrative disorders.

On April 21, 2015 appellant was discharged from the hospital. In a discharge summary report, Dr. Sun Jung Park, a Board-certified internist specializing in pulmonary disease and critical care, indicated that appellant had a possible viral illness and electrolyte abnormality. He reported that appellant worked long hours and owned a farm with horses, goats, sheep, donkeys, chickens, turkeys, dogs, and cats. Dr. Park related that a few days prior to the development of symptoms, appellant delivered a baby calf. He noted that approximately four days later appellant experienced a high-grade fever, soreness, and chills. Dr. Park reviewed the medical treatment appellant received, including various diagnostic and lab test results. He reported that appellant had febrile illness with sepsis, clear organism and hyponatremia. Dr. Park recommended an infectious disease follow-up and discharged appellant with a prescription of doxycycline for his infection.

Appellant sought follow-up treatment with Dr. Ahmad. In a narrative report dated April 23, 2015, he noted that appellant had been hospitalized the prior week for abnormal liver enzymes, hyperbilirubinemia, and thrombocytopenia. Dr. Ahmad indicated that because appellant worked on a farm and handled a variety of farm animals, he was prescribed doxycycline. He noted that since starting on doxycycline, appellant had resolution of fever, joint pain, and body ache. Dr. Ahmad reviewed appellant's history and provided physical examination findings. He diagnosed headache and gastrointestinal infections. Dr. Ahmad remarked that the source of infection was unclear.

On April 24, 2015 appellant visited a different hospital emergency room for treatment because he continued to feel sick. In a hospital record dated April 24, 2015, Dr. Brandon Beckley, Board-certified in emergency medicine, related appellant's complaints of fatigue and malaise and abnormal laboratory test results by his primary care physician. He diagnosed nonspecific elevation levels of transaminase or lactic acid dehydrogenase and other malaise and fatigue. In an April 25, 2015 hospital record, Dr. Beckley reported that appellant's Lyme screening laboratory test results were positive that morning. He indicated that appellant was contacted at home and advised to continue with doxycycline oral medication. Dr. Beckley noted that appellant lived and worked on a farm in a rural area.

In a June 3, 2015 handwritten clinic form, Dr. Stacey Raffety, a naturopathic doctor, indicated that on April 13, 2015 appellant went to work and experienced chills, fatigue, fever, and overall pain by the end of the day. Appellant noted that on the third day of being sick he pulled something off his neck that was crawling on him. Dr. Raffety reported that appellant lived on a farm and was exposed to feces. She reviewed appellant's history and provided physical examination findings. Dr. Raffety discussed the standard of care with appellant and his wife.

By development letter dated September 8, 2015, OWCP informed appellant that his claim had been initially accepted and handled administratively as a minor injury but was reopened for consideration because his medical bills exceeded $1,500.00. It requested additional medical evidence to establish a diagnosed medical condition as a result of alleged work exposure on April 13, 2015. Appellant was afforded 30 days to submit the additional information.

Appellant provided several medical reports by Dr. Kai Li, a Board-certified internist. In examination notes dated August 25 and September 28, 2015, he reported that appellant had a recent history of Lyme disease with symptoms now resolved. Dr. Li reviewed appellant's systems and provided physical examination findings. He diagnosed hyperlipidemia and Lyme disease. Dr. Li indicated that appellant was off work on the following dates: April 14, 15, 16, 20, 21, 22, 23, and 27 through 30, 2016 for medical reasons.

Dr. Raffety examined appellant again and in a September 29, 2015 report described the April 13, 2015 work incident. She discussed the medical treatment appellant received and explained that it was determined that he had a leptospirosis infection. Dr. Raffety explained that appellant continued to seek medical treatment because he still felt sick. She reported that his western blot met the criteria for Lyme disease. Dr. Raffety prescribed another dose of antibiotics for two more months. She provided a June 2, 2015 Western Blog laboratory test result report, which showed a positive result for Lyme disease.

Appellant resubmitted his various hospital records dated April 16 to 21, 2015 and Dr. Ahmad's April 23, 2015 narrative report.

OWCP denied appellant's claim in a decision dated October 14, 2015. It accepted that the April 13, 2015 incident of cleaning up roads after storm damage occurred as alleged and that there had been a medical diagnosis of Lyme disease. However, OWCP denied appellant's claim because the medical evidence of record failed to establish causal relationship between his diagnosed condition and the accepted work exposure. It determined that none of appellant's physicians opined on how any work activity on April 13, 2015 had caused or contributed to appellant's diagnosed condition.

On November 12, 2015 OWCP received appellant's request, through counsel, for a telephone hearing before an OWCP hearing representative.

Appellant resubmitted hospital records dated April 17 to 21, 2015. He also submitted reports dated November 8 and 9, 2015 by Dr. Francisco X. Soldevilla, a Board-certified neurosurgeon, for treatment for lumbar disc herniation.

Dr. Li continued to treat appellant. In a November 13, 2015 report, he related that appellant complained of Lyme disease as a work-related injury and discussed the medical treatment that

appellant had received for his condition. Dr. Li indicated that appellant had recently been seen in the emergency room and admitted to the hospital for lower back and left leg pain. He reviewed appellant's history and provided physical examination findings. Dr. Li diagnosed osteoarthritis, intervertebral disc degeneration, lumbar canal stenosis L3-4 laminectomy and discectomy, lumbar radiculopathy, and Lyme disease.

Appellant began to receive treatment from Dr. Chris Hatlestad, a family practitioner. In a March 23, 2016 narrative report, Dr. Hatlestad related appellant's account that on April 13, 2015 he developed initial onset of acute severe flu-like symptoms. Appellant indicated that he had been working in a culvert, clearing brush and operating heavy equipment when he felt something on his neck. When he pulled an insect off of his neck, it looked like a tick. Dr. Hatlestad reviewed the medical treatment appellant received and noted that appellant had not been diagnosed with Lyme disease until three weeks after initial onset. He reviewed appellant's history and provided physical examination findings, including laboratory test results. Dr. Hatlestad diagnosed sequelae of infectious and parasitic disease, chronic fatigue, headache, muscle cramp, and Lyme borreliosis. He advised that appellant had contracted this from work exposure and the recalled tick on your neck. Dr. Hatlestad indicated that there was no generally accepted scientific support for the Communicable Disease Control's (CDC) opinion that a tick needed to be attached for 36 hours before transmission could occur. He advised that, following transmission, symptoms may occur within several days.

In May 4 and June 27, 2016 follow-up examination reports, Dr. Hatlestad reported overall improvement with most of appellant's symptoms the last two weeks. He provided physical examination findings and noted that he reviewed appellant's urine testing, which was positive for Lyme Borrelia. Dr. Hatlestad diagnosed lyme borreliosis, bartonella infection, insomnia, and chronic fatigue. He recommended that appellant continue medical treatment for at least three months beyond resolution of appellant's symptoms. Dr. Hatlestad provided March 19 and April 13, 2016 urine sample test results, which demonstrated the presence of targeted microbials that were the causative agent of Lyme disease and other tick-transmitted infections.

Dr. Hatlestad treated appellant again and in a July 11, 2016 report provided a history of the April 13, 2015 work incident and the medical treatment appellant received. He reported that testing for Lyme disease and co-infections were positive for Borrelia burgdorferi, bartonella bacilliformis, and bartonella henselae. Dr. Hatlestad explained that appellant was very healthy prior to the above-described event and had no significant exposure to other infectious illnesses, sick persons, or animals with any similar symptoms prior to this event. He opined that the work exposure was the direct and proximate cause of the diagnosis. Dr. Hatlestad explained that there may be other causes for these medical problems, but one of the causes was clearly the activities of work described by appellant.

On July 14, 2016 a telephone hearing was held. Appellant testified regarding his employment duties as a heavy equipment operator for the employing establishment. He related that on April 13, 2015 he drove about 80 miles to one of the employing establishment's remote areas of storm-damage. Appellant explained that he cleared roadways by throwing brush and limbs into a ditch and cleaned culverts with a shovel. He indicated that he began to experience flu-like symptoms and about two days into feeling sick he felt something on his neck and pulled it off. Appellant noted that he did not know if it was a tick or a spider. He reported that he was

hospitalized a few days later but the doctors were not able to diagnose a medical condition. Appellant explained that he continued to feel sick so he sought additional medical treatment. He indicated that he was admitted to a different hospital where they ran some laboratory test results and discovered that he had Lyme disease. Appellant reported that, after getting a medical diagnosis, he sought treatment from Dr. Hatlestad because he was known for treating Lyme disease. Counsel noted that due to appellant's employment and his interaction with the outdoors there was a likelihood he may have been exposed to fleas, ticks, flies, and other insects and bites therefrom. Appellant noted that he knew of other coworkers who contracted Lyme disease while working. He stated that he did not believe that he got a tick bite at home because he had lived and worked there for most of his life and never seen a tick.

In an August 10, 2016 statement, R.A., appellant's supervisor, indicated that he reviewed the July 14, 2016 hearing transcript and believed that what appellant had said was true. He believed that appellant got bit by a tick while clearing culvert and taking debris off logging roads on April 13, 2015. R.A. reported that as a heavy equipment operator for the employing establishment appellant performed much manual labor outside. He indicated that the employing establishment was finding more and more Lyme disease conditions in the State.

Appellant provided a November 16, 2015 report by Dr. Courtney Day, a naturopathic doctor. Dr. Day reviewed appellant's laboratory test results and diagnosed positive Lyme disease serology, fatigue, muscle pain and weakness, headache, peripheral neuralgia, lightheadedness, and sleep difficulties.

Appellant resubmitted Dr. Ahmad's April 16 and 23, 2015 reports and hospital records dated April 17 to 21 and April 24, 2015, including diagnostic testing and laboratory test results.

By decision dated September 28, 2016, an OWCP hearing representative affirmed the October 14, 2015 decision. She found that the medical evidence of record failed to establish that appellant's diagnosed condition was causally related to the accepted April 13, 2015 employment incident. The hearing representative noted the inconsistency in the factual evidence as to when appellant discovered the insect on his neck, and whether it was a tick or a spider. She determined that the reports of Dr. Hatlestad lacked medical rationale to establish that the accepted April 13, 2015 employment incident caused appellant's Lyme disease.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[5]

[3] *Supra* note 2.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[6] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

OWCP accepted that appellant performed work clearing a roadway and cleaning culverts on April 13, 2015 and that he had been diagnosed with Lyme disease, but it denied appellant's claim because the medical evidence failed to establish causal relationship between the accepted incident and appellant's medical condition. The Board finds that appellant has not met his burden of proof to establish that his diagnosed Lyme disease was due to an insect bite during his accepted April 13, 2015 work activity.

Dr. Ahmad initially treated appellant on April 16, 2015. In office visit notes dated April 16 and 23, 2015, he related that appellant experienced symptoms of fever, positive chills, generalized body ache, nausea, and vomiting since the prior Sunday. Dr. Ahmad noted that appellant worked on a farm and handled a variety of farm animals. He provided examination findings and indicated that appellant had abnormal laboratory test results. Dr. Ahmad diagnosed headache and gastrointestinal infections and reported that the source of infection was unclear. The Board notes that Dr. Ahmad did not provide any specific medical diagnosis, other than the generalized assessment of headache and gastrointestinal infections. The Board finds, therefore, that his

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[12] *James Mack*, 43 ECAB 321 (1991).

opinion lacked probative value because he failed to provide a firm, medical diagnosis, or any explanation as to the cause of appellant's symptoms.[13] Likewise, the hospital records dated April 17 to 21, 2015 by various physicians, including Drs. Campbell, Stratis, Barve, Eaton, Rogosin, and Park, also failed to establish causal relationship because none of the physicians provided a firm, definitive medical diagnosis or opinion on the cause of appellant's condition.[14]

Appellant was first diagnosed with Lyme disease by Dr. Beckley in an April 25, 2015 hospital record. Dr. Beckley reported that appellant had a positive screening for Lyme disease and noted that appellant lived and worked on a farm in a rural area. Although Dr. Beckley diagnosed a medical condition and described that appellant lived and worked in a farm, he did not opine as to whether appellant's work exposure on April 13, 2015 caused or contributed to appellant's diagnosed condition. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[15] Similarly, Drs. Raffety, Li, and Day indicated in reports dated June 3 to November 16, 2015 that appellant tested positive for Lyme disease and lived on a farm. They also related that he lived and worked on a farm with contact with several animals and that he pulled something off his neck that was crawling on him. None of the physicians, however, provided an opinion on where or how appellant contracted Lyme disease.

Dr. Hatlestad began to treat appellant on March 23, 2016. In a narrative report, he described that on April 13, 2015 appellant worked in a culvert, clearing brush and operating heavy equipment and pulled an insect off of his neck, which looked like a tick. Dr. Hatlestad related that appellant developed flu-like symptoms later that day. He reviewed appellant's history and provided physical examination findings, including laboratory test results. Dr. Hatlestad diagnosed sequelae of infectious and parasitic disease, chronic fatigue, headache, muscle cramp, and Lyme borreliosis. He found that appellant contracted this condition from work exposure and the tick on his neck. In a July 11, 2016 narrative report, Dr. Hatlestad noted that appellant was healthy prior to the above-described event and had no significant exposure to other infectious illnesses, sick persons, or animals prior to the work event. He opined that "the facts of injury are the direct and proximate cause of the diagnosis … cited above."

The Board notes that Dr. Hatlestad provided a history of injury in July 2016 which does not correlate with the history of injury appellant provided on his May 13, 2015 claim form, or to Dr. Rafferty, in June 2015 just after his Lyme disease diagnosis, or to appellant's hearing testimony. Appellant did not note pulling an insect off of his neck on his claim form. He first related a history of pulling an insect off of his neck to Dr. Raffety. In her June 3, 2015 report, Dr. Raffety related that this happened on the third day that appellant was sick. At his OWCP hearing appellant testified that he found either a tick or a spider on his body two days after his symptoms first developed. However, Dr. Hatlestad related that appellant developed flu-like symptoms on the same day that he recalled the tick on his neck. Medical evidence submitted to

[13] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *Id.*

[15] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[16]

A rationalized medical opinion establishing causal relationship is particularly needed in this case where the evidence of record has demonstrated that appellant lived on a farm and had close contact with a variety of animals, including being involved with the delivery of a baby calf a few days prior to the symptoms. Dr. Hatlestad's reports failed to adequately explain how he could be sure that appellant's Lyme disease was due to his workplace exposure of cleaning roads on April 13, 2015, and not due to other factors such as to exposure to ticks on his farm. These reports, therefore, are insufficient to establish appellant's claim.[17]

The remaining medical reports such as Dr. Azer's May 7, 2015 report and Dr. Soldevilla's November 8 and 9, 2015 reports also fail to establish appellant's traumatic injury claim as they describe left shoulder and lumbar injuries, which are not relevant to appellant's current traumatic injury claim relating to his Lyme disease condition.

Because the medical evidence submitted by appellant does not establish that the accepted April 13, 2015 work exposure caused or contributed to his Lyme disease, appellant has not met his burden of proof.[18]

On appeal counsel alleged that the OWCP decision assumed facts not in evidence. He asserted that exposure and causation were clearly proven and that there was no contradictory evidence. However as previously noted, the alleged history of injury was inconsistent as to when and where appellant noticed the insect on his neck.[19] Appellant's testimony also indicated that he was unsure whether the insect was in fact a tick, or a spider. The history of injury therefore was inconsistent.

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 a traumatic injury causally related to an accepted April 13, 2015 employment exposure.

[16] *P.L.*, Docket No. 16-1445 (issued January 12, 2017).

[17] *See K.M.*, Docket No. 13-0827 (issued November 25, 2013); *Frederick H. Coward Jr.*, 41 ECAB 843 (1990).

[18] *See B.S.*, Docket No. 16-1122 (issued October 17, 2016).

[19] *See Quetraila W. Langford*, Docket No. 98-0899 (November 19, 1999). Appellant did not meet her burden of proof as she provided an inconsistent history as to when she sustained the alleged insect bite.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.[20]

Issued: August 7, 2018
Washington, DC

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

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

[20] Colleen Duffy Kiko, Judge, participated in his decision, but was no longer a member of the Board effective December 11, 2017.