

Appellant claimed continuation of pay (COP). An employing establishment supervisor signed the form on September 12, 2017. The supervisor controverted COP for the reason of “finger abscess.” In Box 23 of the form, titled “Date notice received,” the supervisor struck through the printed date “July 3, 2017” and wrote “September 12, 2017” beneath it. The employing establishment submitted the Form CA-1 to OWCP on September 12, 2017.

In support of his claim, appellant submitted a work status report dated July 5, 2017 from Dr. Azim Ahmady, an attending Board-certified family practitioner, who held appellant off work through July 7, 2017. He also provided a July 7, 2017 work status report from Dr. Phillip L. Wagner, an attending physician Board-certified in occupational medicine, who diagnosed a left finger abscess sustained on July 3, 2017. Dr. Wagner held appellant off work through July 11, 2017.

By development letter dated September 19, 2017, OWCP notified appellant of the deficiency of his claim and afforded him 30 days to submit additional medical and factual evidence. Appellant was also provided a list of questions for his physician regarding how the alleged employment incident would have caused the claimed left thumb abscess. OWCP emphasized that a physician’s detailed, well-rationalized opinion on causal relationship was crucial to establish appellant’s claim.

In response, appellant submitted a note dated October 6, 2017, asserting that he had given a statement with his Form CA-1. He did not provide additional medical or factual evidence prior to October 23, 2017.

By decision dated October 23, 2017, OWCP denied the claim as causal relationship had not been established. It accepted that the July 3, 2017 employment incident occurred at the time, place, and in the manner alleged. However, OWCP denied the claim as the medical evidence of record contained insufficient rationale to establish causal relationship between the accepted employment incident and the claimed left thumb abscess. It noted that as appellant’s claim was denied, the employing establishment would charge any previously paid COP to his sick or annual leave balance or declare it an overpayment.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 or specific condition for which compensation is claimed is causally related to the

² On March 8, 2018 OWCP issued a decision in this claim accepting the traumatic injury claim, and a second decision also dated March 8, 2018 denying appellant’s claim for COP. However, the Board acquired jurisdiction over the claim on December 19, 2017 when appellant filed his notice of appeal with the Board. Therefore, both March 8, 2018 OWCP decisions are null and void. The Board and OWCP may not have concurrent jurisdiction over the same issue in a case. *D.S.*, Docket No. 18-0061 (issued May 29, 2018). See *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990); see also 20 C.F.R. § 501.2(c)(3).

³ *Supra* note 1.

employment injury.⁴ 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.⁵

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been 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.⁶ 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.⁷ 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.⁸

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left thumb abscess causally related to an accepted July 3, 2017 employment incident.

The determination of whether an employment incident caused an injury is generally established by medical evidence.¹² Appellant submitted a July 5, 2017 work status report from Dr. Ahmady, an attending Board-certified family practitioner, who did not provide a diagnosis. Dr. Wagner, an attending physician Board-certified in occupational medicine, diagnosed a left finger abscess on July 7, 2017. Although he noted July 3, 2017 as the date of injury, he did not

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *D.J.*, Docket No. 17-0364 (issued April 13, 2018); *K.B.*, Docket No. 17-1363 (issued February 14, 2018); *Gary J. Watling*, *id.*

⁹ *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Id.*

¹² *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

describe the accepted employment incident. Dr. Wagner did not provide his medical reasoning as to how and why the accepted insect bite would result in the claimed left thumb abscess. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹³

In order to establish causal relationship, a physician must provide an opinion that the injury or condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.¹⁴ Appellant was provided an opportunity to submit evidence to establish how the claimed abscess occurred. By development letter dated September 19, 2017, OWCP requested that appellant obtain an opinion from his attending physician with medical rationale addressing causal relationship. Appellant has not submitted a medical report sufficient to show that the diagnosed left thumb abscess was causally related to the accepted July 3, 2017 employment incident, and thus did not meet his burden of proof.¹⁵

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 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 left thumb abscess causally related to an accepted July 3, 2017 employment incident.

¹³ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹⁴ See *J.W.*, Docket No. 17-0870 (issued July 12, 2017).

¹⁵ *K.B.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 23, 2017 is affirmed.

Issued: August 16, 2018
Washington, DC

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

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

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