

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

---

**L.R., Appellant**)  
)  
)  
**and**)  
)  
**DEPARTMENT OF HOMELAND SECURITY,**)  
**TRANSPORTATION SECURITY**)  
**ADMINISTRATION, Madison, WI, Employer**)

---

**Docket No. 16-1673**  
**Issued: February 20, 2018**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 17, 2016 appellant filed a timely appeal from an August 2, 2016 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 this claim.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she developed recurrent facial cellulitis in the performance of duty.

---

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

<sup>2</sup> The record provided the Board includes evidence received after OWCP issued its August 2, 2016 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On April 15, 2015 appellant, then a 46-year-old transportation security officer (screener), filed an occupational disease claim (Form CA-2) for recurrent facial cellulitis, which she attributed to alleged exposure to bacteria in the employing establishment's breakroom. She indicated that the breakroom had not been consistently maintained and the conditions were deplorable. Appellant also indicated that the water closet she used to get water for mopping (PODS) had not been cleaned in the 10 years she worked at the airport facility.<sup>3</sup> She noted that the water closet basin had a hose lying at the bottom surrounded by filth. Appellant believed the dark, moist, dirty environment was a perfect setting for bacteria to grow. She first became aware of her condition on December 28, 2006, and she first realized it was caused or aggravated by factors of her federal employment on January 28, 2015. The employing establishment indicated that appellant initially reported her condition on October 19, 2010, and that each year she had been off work intermittently due to recurrent facial cellulitis. It further explained that appellant was permitted to use the break area, but not required to do so. Appellant was last exposed to the alleged working conditions on April 16, 2015.

OWCP received various medical treatment records covering the period December 2008 through March 2015. Appellant provided a chronology of the treatment she received for facial cellulitis, erysipelas, urticaria/hives, angioedema, dermatitis, skin infection(s), lesions and/or rash/blotchiness. She also noted that she had been hospitalized on five occasions between November 2012 and March 2015 due to recurrent facial cellulitis.

In a March 30, 2015 attending physician's report (Form CA-20), Dr. Keith Konkol, a Board-certified internist specializing in infectious diseases, diagnosed recurrent facial cellulitis. He also indicated that it was possible appellant's condition was caused or aggravated by her employment.

In an undated letter/report received on May 12, 2015, Dr. Konkol advised that he had seen appellant on a number of occasions for recurrent facial cellulitis. Appellant had this infection a minimum of four to five times, which was quite unusual. Moreover, every time the condition recurred, she required a two-week course of intravenous antibiotics. Dr. Konkol indicated that he had written the letter because appellant expressed concern that these recurrent infections were a result of her work environment. Appellant informed him that some of her work duties included cleaning up areas she deemed as not being the most sanitary of conditions. She expressed concern that, while cleaning these areas, she contaminated her face with bacteria, and thus, subsequently developed recurrent infections. Dr. Konkol noted that he had not visited appellant's workplace, but she was quite concerned that her work environment was the trigger of her recurrent infections. He surmised that, if this were true, removal of appellant from her present work environment would result in less frequent recurrent infections and eventual resolution of the condition completely. Dr. Konkol further noted that, while he did not know appellant's entire job description, if she could avoid the cleaning part of the job then hopefully her recurrent facial infections would decline.

---

<sup>3</sup> Appellant worked at the Dane County Regional Airport, Madison, WI.

On May 15, 2015 OWCP advised appellant that the evidence received to date was insufficient to support her claim. It explained that it was unclear whether appellant provided timely notification of her claimed work injury. OWCP also noted that the evidence of record was insufficient to establish that she actually experienced the employment factor(s) alleged to have caused her injury. It further advised that the evidence was insufficient to support that appellant was injured while performing any specific employment duty. OWCP provided a factual development questionnaire for her to complete and return. It afforded appellant 30 days to submit the requested information. OWCP similarly requested information from the employing establishment regarding appellant's occupational exposure and what, if any, precautions were taken to minimize the effects of the exposure.

In an undated narrative statement received June 12, 2015, appellant asserted her belief that she contracted facial cellulitis while cleaning the breakroom, which was excessively dusty and dirty and caused frequent sneezing. She stated that covering her face while sneezing caused bacteria to spread on her face. Appellant reported that isopropyl alcohol was used as a cleanser when she began working at the employing establishment, but management ultimately began using a cleanser called Simple Green. It was at this time that she allegedly began to experience facial cellulitis. Appellant alleged that she researched Simple Green's website in January 2015 and read that it does not kill germs. She asserted that the breakroom is used by 30 employees on a daily basis and is rarely cleaned. Appellant added that dirty water frequently accumulated in a warm, dark, moist environment and it was not always poured out, creating an unsanitary workplace.

Appellant reported that in January 2015 she asked management if she could use bleach to clean the kitchen sink, as she had done previously, after it ran out of bleach in December 2014. She alleged that management ignored her request and she soon became ill again with cellulitis around the end of January 2015 after mopping the breakroom floor. Appellant alleged that other employees told her that they too became ill after working in the breakroom.

Appellant also submitted copies of e-mails from January, February, and May 2015. The e-mails documented her attempts to have management restock the breakroom with a bleach-based cleanser.

In a statement dated June 4, 2015, appellant's supervisor, R.S., addressed her allegations. With regard to appellant's claim that she developed facial cellulitis after exposure to mop water, he acknowledged that officers periodically mopped floors. However, R.S. noted that appellant never provided a specific date of exposure. He also noted that appellant had issues with cellulitis since June 2010. R.S. further commented that appellant requested leave in January and March 2015 for recurrent cellulitis, which she alleged was due to mop water. He further noted that approximately 100 employees used the breakroom daily, but appellant was the only employee who raised these concerns. With regard to her assertion that the breakroom was dirty because it was cleaned with Simple Green as opposed to bleach, R.S. noted that management provided an approved cleaner that specifically addressed methicillin-resistant staphylococcus aureus (MRSA), pursuant to appellant's request. He also explained that employees mopped twice weekly, once by each shift. Mopping was performed by officers assigned to specific locations, and individual officers might find themselves performing this task perhaps once each month, but more likely once every quarter. R.S. noted that he did not dispute that appellant mopped the floor. As to precautionary measures, he advised that officers were provided with latex gloves for use during any task.

In her June 7, 2015 response to OWCP's developmental letter, appellant advised that she was exposed to gram positive bacteria that can cause cellulitis or MRSA. She asserted that she was not exposed to these elements except in unclean areas in the breakroom. Appellant alleged that the exposure occurred when she was accessing water for the mop bucket from the water closet located in the breakroom or by cleaning up the breakroom or using it during a time when no proper disinfectant was used. She reported that she used a bleach germicide from April 2014 until mid-December 2014 and did not become ill. Appellant also noted that the correct date of injury was December 21, 2008, not December 28, 2006.

In a June 7, 2015 statement, J.O., appellant's coworker, indicated that he developed a skin infection that he believed he contracted while working at the airport. J.O. indicated that he had worked there since 2008.

By decision dated October 29, 2015, OWCP denied the claim, finding that appellant failed to establish that the event(s)/exposures occurred as alleged.

Appellant timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on June 29, 2016.

At the hearing, appellant testified that management was not using the proper disinfectant and that the water closet had not been cleaned for 10 years. She asserted that the water closet in the breakroom contained a cutoff hose that was dirty and had not been disinfected. Appellant believed that bacteria formed in such water and that she was exposed to the bacteria when using the water for cleaning the room. She stated that such bacteria must have been present in the breakroom water because she was not exposed to bacteria at home. Appellant reiterated her assertions that Simple Green cleaner, used at the worksite from 2008 to 2015, was insufficient to kill harmful bacteria. She also stated that two of her coworkers also developed cellulitis as a result of this exposure. Appellant reported that she stopped working for the employing establishment sometime in 2015, and began working with the U.S. Department of Veterans Affairs in November 2015. When asked how she knew that the water in the breakroom contained specific bacteria in the absence of testing for such elements, she responded that an emergency room doctor told her that certain bacteria caused the cellulitis infection that she contracted.

In a June 15, 2016 report, Dr. Ronald L Ragotzy, a Board-certified allergist and immunologist, noted that he had treated appellant on eight occasions between October 2010 and June 2016. He followed her for asthma, rhinitis, and recurrent cellulitis. Dr. Ragotzy explained that cellulitis was an infection of the skin and underlying soft tissue that could be contracted from other infected individuals or any contaminated surface that had not been disinfected on a daily basis. He further noted that appellant's cellulitis had recurred over seven years exclusively while she worked for the employing establishment. Appellant's condition required frequent medical encounters, hospitalizations, and prolonged intravenous antibiotics. Dr. Ragotzy indicated that he was convinced the recurring nature of appellant's cellulitis was directly caused by her work environment. He explained that appellant's coworkers developed similar symptoms, some of whom had left employment. Dr. Ragotzy also noted that the breakroom was not cleaned with a disinfectant. Lastly, he explained that appellant's cellulitis completely resolved after she left the employing establishment, which was consistent with Dr. Konkol's prediction. In closing,

Dr. Ragotzy indicated that he was absolutely convinced that appellant's recurrent cellulitis was caused by her work environment.

By decision dated August 2, 2016, an OWCP hearing representative affirmed the October 29, 2015 decision. He determined that the evidence of record did not establish that exposure to bacteria occurred as alleged. The hearing representative found that appellant failed to meet her burden of proof to establish that the water in the breakroom tested positive for bacteria. He noted that, while the water in the employing establishment's breakroom might have been dirty on occasion, appellant failed to submit objective evidence that the water was contaminated with specific bacteria. The hearing representative found that her belief that she developed cellulitis because of a workplace exposure did not, by itself, establish that exposure to bacteria occurred. He therefore found that fact of injury was not established by evidence of exposure to bacteria in excess of a permissible level. The hearing representative further found that the record did not establish that Simple Green was insufficient to use for mopping the work area.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</sup> 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, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant has not submitted sufficient evidence that she was, in fact, exposed to particular bacteria at work. She has alleged that she was exposed to gram positive bacteria that can cause cellulitis or MRSA while accessing water from the water closet and/or

---

<sup>4</sup> See *supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). 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 factors. *Id.*

<sup>6</sup> *Victor J. Woodhams, id.*

when cleaning the breakroom without a proper disinfectant. Appellant, however, has not provided any evidence regarding whether such bacteria was present in the workplace. The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.<sup>7</sup> Temporal relationship alone will not suffice.<sup>8</sup> Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.<sup>9</sup>

The weight of the factual evidence, therefore, does not support that appellant was exposed to bacteria in the employing establishment breakroom and/or water closet while engaged in her employment duties. The factual evidence developed in this case does not substantiate appellant's claim of exposure. For this reason, the Board affirms the denial of appellant's occupational disease claim.

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 failed to meet her burden of proof to establish that she developed recurrent facial cellulitis in the performance of duty.

---

<sup>7</sup> 20 C.F.R. § 10.115(e).

<sup>8</sup> See *D.I.*, 59 ECAB 158, 162 (2007).

<sup>9</sup> See *M.H.*, Docket No. 16-0228 (issued June 8, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 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