

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

_____)	
T.O., Appellant)	
)	
and)	Docket No. 17-0093
)	Issued: March 22, 2018
DEPARTMENT OF HOMELAND SECURITY,)	
FEDERAL AIR MARSHAL SERVICE,)	
Orlando, FL, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 October 24, 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 Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

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 his right deep vein thrombosis (DVT) and blood clot were causally related to accepted factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as presented in the Boards prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 8, 2014 appellant, then a 53-year-old retired supervisory federal air marshal, filed an occupational disease claim (Form CA-2) alleging that many years of flights as an air marshal caused his right DVT and subsequent blood clot in his lung. He retired from the employing establishment effective February 29, 2012.

By decision dated January 9, 2015, OWCP denied the claim, finding the medical evidence of record did not establish a causal relationship between appellant's accepted factors of his federal employment and the diagnosed medical conditions. On January 20, 2015 counsel requested a telephonic hearing before an OWCP hearing representative. A hearing was held on July 1, 2015. Appellant testified that his former air marshal position included flying missions and also performing managerial tasks while seated primarily at a desk. By decision dated August 12, 2015, OWCP's hearing representative affirmed OWCP's January 9, 2015 decision. The hearing representative found that appellant had not established causal relationship between the accepted factors of his federal employment and his diagnosed medical conditions.

On January 4, 2016 appellant appealed to the Board. By decision dated June 20, 2016, the Board affirmed the August 12, 2015 OWCP hearing representative's decision denying appellant's claim.⁴ The Board noted that, while appellant established that his job involved numerous hours of being seated while flying and doing desk work, there was insufficient medical evidence to establish causal relationship between those employment factors and the claimed right DVT and blood clot. Specifically, the Board found that the medical reports from Dr. Thomas E. Chambers, an osteopath and Board-certified family practitioner, who noted that prolonged periods of inactivity and/or sitting were generally believed to be contributing factors in DVT illness, failed to provide the necessary medical rationale which described appellant's work duties and medically explained the pathophysiological process by which those duties would have caused or aggravated his condition.

Appellant, through counsel, requested reconsideration on September 23, 2016.

OWCP thereafter received an August 29, 2016 report wherein Dr. Samuel P. Martin, Board-certified in general and vascular surgery, related that appellant was seen on August 22, 2016 for a history of two previous DVTs involving the right leg. The first DVT occurred approximately December 15, 2011, when he was an air marshal engaged in air travel. Appellant had made a 16-

³ Docket No. 16-0423 (issued June 20, 2016).

⁴ *Id.*

hour trip to France, turned around and flew back. Afterwards, he noted swelling and pain in the right leg and was seen at a Florida hospital where an ultrasound was performed. Dr. Martin noted he did not have the complete history of that encounter, but appellant was told he had a DVT and, surprisingly, he was placed on just aspirin. The second DVT occurred in August 2014, while appellant was working as a counselor in the Recovery Village of Eustis and had traveled back and forth from Maitland, approximately an-hour trip. Dr. Martin indicated that these episodes of DVT impacted appellant's work status, as he was not working partly because he developed blood clots while traveling. He opined that given appellant's history, his current condition was the result of his two previous DVTs. Dr. Martin also noted, however, that he did not have complete information regarding appellant's first episode in 2011, but noted that appellant did have a significant DVT in 2014.

By decision dated September 28, 2016, OWCP denied modification of its prior decision. It found that Dr. Martin's opinion was of diminished probative value. OWCP determined that Dr. Martin had not explained the mechanism of injury nor had he distinguished between appellant's alleged federal and private employment injuries.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 employment injury.⁶ 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.⁷

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁸ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship

⁵ *Supra* note 2.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See S.P.*, 59 ECAB 184, 188 (2007).

⁹ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹⁰

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that his right DVT and resulting pulmonary embolism were caused by the accepted factors of his federal employment as a federal air marshal.

In its previous decision, the Board had reviewed several medical reports of record, including a number of reports from Dr. Chambers, who noted that prolonged periods of inactivity and/or sitting were generally believed to be contributing factors in DVT illness. The Board found that as Dr. Chambers had failed to provide the necessary medical rationale which described appellant's work duties and medically explained the pathophysiological process by which those duties would have caused or aggravated his condition, his opinion was of diminished probative value. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹¹

On reconsideration following the Board's June 20, 2016 decision, appellant submitted an August 29, 2016 report from Dr. Martin. In that report, Dr. Martin related that appellant had two DVT's, one on December 15, 2011 and the other in August 2014. He indicated that the first DVT occurred approximately on December 15, 2011, when appellant was an air marshal and had made a 16-hour trip to France, turned around and flew back. Dr. Martin, however, noted that he did not have the complete history of that encounter and knew only that appellant was told he had a DVT. He further indicated his surprise that appellant was placed on just aspirin. Dr. Martin's statements indicate that he did not have a complete history of appellant's 2011 DVT condition, which occurred during his federal employment. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.¹² The Board also noted that Dr. Martin did not explain why he believed that appellant's federal employment caused or contributed to his diagnosed condition. Dr. Martin did not offer sufficient rationalized explanation as to how a 16-hour flight or excessive sitting resulted in appellant's DVT conditions. A mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work activities could result in the diagnosed condition is insufficient to meet his burden of proof.¹³

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *See H.G.*, Docket No. 16-1191 (issued November 25, 2016).

¹² *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹³ *See Beverly A. Spencer*, 55 ECAB 501 (2004).

Dr. Martin further indicated that appellant experienced a second DVT in August 2014, while working as a counselor in private employment. He did not clearly distinguish between the residuals from the first DVT, which occurred during appellant's federal employment, and the second DVT, which occurred in subsequent private employment. Therefore, Dr. Martin's opinion does not provide the necessary medical rationale to establish that the residuals from appellant's first DVT caused or contributed to the significant DVT he suffered in 2014. Without a rationalized medical report describing why appellant sustained a second DVT caused by his accepted federal employment factors, appellant has not met his burden of proof.¹⁴

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's 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.¹⁵ Dr. Martin did not adequately explain or describe the pathophysiological process by which the December 2011 DVT employment incident or appellant's work duties as a federal air marshal caused or contributed to his claimed conditions, his opinion is of diminished probative value.¹⁶

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁷ Appellant's honest belief that his employment duties caused his medical injury is not in question, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.¹⁸

It is appellant's burden of proof to establish that the claimed DVT and blood clot conditions are causally related to factors of his federal employment. Appellant has submitted insufficient evidence to establish that the claimed conditions were caused by his employment factors.

On appeal appellant, through counsel, argues that OWCP's decision was contrary to fact and law as causation was clearly stated. However, for the reasons discussed above, the submitted evidence is insufficient to establish appellant's 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.

¹⁴ See *W.S.*, Docket No. 14-1022 (issued July 1, 2014).

¹⁵ *A.D.*, 58 ECAB 149 (2006).

¹⁶ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). See also *S.T.*, Docket No. 11-0237 (issued September 9, 2011).

¹⁷ *D.D.*, 57 ECAB 734 (2006).

¹⁸ See *J.S.*, Docket No. 17-0967 (issued August 23, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his right DVT and blood clot were causally related to accepted factors of his federal employment.

ORDER

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

Issued: March 22, 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