

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

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<b>B.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0011</b>
	)	<b>Issued: March 9, 2021</b>
<b>DEPARTMENT OF THE ARMY, U.S. ARMY</b>	)	
<b>MEDICAL RESEARCH INSTITUTE OF</b>	)	
<b>INFECTIOUS DISEASES, Fort Detrick, MD,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On October 2, 2019 appellant, through counsel, filed a timely appeal from a June 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish that he contracted an intestinal parasite infection (*entamoeba polecki*) causally related to the accepted employment-related exposures.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On November 16, 2011 appellant, then a 29-year-old animal caretaker, filed an occupational disease claim (Form CA-2) alleging that he contracted systematic *entamoeba polecki* infection as a result of factors of his federal employment while working with host animals associated with parasitic infection. He indicated that he first became aware of his condition and that it resulted from factors of his federal employment on October 19, 2011. Appellant stopped work on October 19, 2011 and returned to work on November 7, 2011.

In a November 29, 2011 development letter, OWCP advised appellant of the type of factual and medical evidence necessary to support his claim and provided a questionnaire for completion. It afforded him 30 days to respond. In a separate letter of even date, OWCP also requested additional information from the employing establishment regarding appellant's employment duties and whether it concurred with his allegations.

OWCP received an October 19, 2011 report cosigned by Dr. Alexander Ambroz, a Board-certified occupational medicine physician. Dr. Ambroz recounted appellant's complaints of bloody diarrhea, vomiting, nausea, and abdominal pain for the prior two weeks. He indicated that appellant worked as an animal caretaker. Dr. Ambroz ordered laboratory testing, which was completed on October 20, 2011, and appellant subsequently tested positive of *entamoeba polecki* trophozoites in his stool.

In a November 2, 2011 memorandum, Dr. Larry Shelton, deputy director of the veterinary medicine division at the employing establishment, informed Dr. Roger McIntosh, the employing establishment's biological surety medical director, that an animal caretaker who worked with nonhuman primates (NHP) recently missed work due to diagnosis and treatment of symptomatic *entamoeba polecki* infection. He indicated that NHPs were quarantined and screened upon arrival at the employing establishment and that animal caretakers were provided with protective equipment. Dr. Shelton opined that it was highly unlikely that this case of *entamoeba polecki* was a result of contact with the NHP at the employing establishment.

OWCP received copies of e-mails dated November 2 and 3, 2011. In a November 2, 2011 e-mail, Dr. Ronald Reisler, an employing establishment physician, indicated that 25 percent of the NHP infections that were detected and subtyped contained polecki and that some of the NHP had

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<sup>3</sup> Docket No. 13-0081 (issued August 23, 2013); *Order Granting Remand*, Docket No. 17-1305 (issued October 4, 2017).

multiple types of entamoeba subtypes. He also submitted a 1998 journal article about entamoeba histolytica that was contracted from well water in the Republic of Georgia.

In a November 22, 2011 report, Dr. Benjamin Palmer, a Board-certified preventive medicine physician, recounted that on the week of October 12, 2011 appellant began to feel ill and experienced worsening gastrointestinal symptoms. He indicated that recent testing of stool was positive for entamoeba polecki. Dr. Palmer described appellant's work duties as an animal caretaker and noted that he used protective equipment while at work. He diagnosed parasitic infestation. Dr. Palmer reported that appellant clearly experienced a case of gastroenteritis due to *entamoeba polecki* and listed a number of possibilities for infection, but explained that the cause and route of this infection could not be positively identified. He concluded that there was no clear evidence that the infection was a result of an exposure at the employing establishment.

By decision dated February 15, 2012, OWCP denied appellant's occupational disease claim. It accepted that he was exposed to NHP feces while working with animals as part of his employment duties and that he was diagnosed with a medical condition, but denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment exposure.

On March 12, 2012 appellant, through counsel, requested a telephonic hearing, which was held on June 15, 2012. By decision dated September 13, 2012, an OWCP hearing representative affirmed OWCP's February 15, 2012 decision. Appellant filed an appeal to the Board.

By decision dated August 23, 2013, the Board set aside the September 13, 2012 OWCP decision and remanded the case for further factual development of the record. The Board specifically requested that OWCP develop whether the employing establishment performed testing on certain NHP that would have been in quarantine at the same time that appellant worked with them and clarify the meaning of Dr. Reisler's e-mail regarding the detection of NHP infections.

Following the Board's decision, OWCP issued an October 30, 2013 letter to the employing establishment requesting additional information about whether any of the primates tested positive for the *entamoeba polecki* organism and any relative records to this claim, including the results of bacterial testing on the laboratory animals.

According to a memorandum of a telephone call (Form CA-110) dated December 16, 2013, a physician at the employing establishment informed the claims examiner that fecal samplings performed on the monkeys were "negative."

In a December 16, 2013 decision, OWCP again denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that his *entamoeba polecki* infection was causally related to the accepted factors of his employment.

On December 27, 2016 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated January 12, 2017, OWCP denied appellant's request for hearing as it was not timely filed within 30 days of the most recent OWCP decision.

Appellant appealed to the Board. By order dated October 4, 2017, the Board set aside the January 12, 2017 OWCP decision. It found that OWCP's December 16, 2013 and January 12,

2017 decisions were not properly issued as they were mailed to an incorrect address. The Board remanded the case with instructions to issue a *de novo* decision to the proper mailing address.

By December 6, 2017 *de novo* decision, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish causal relationship between the *entamoeba polecki* infection and the accepted employment factors.

On December 15, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 31, 2018.

By decision dated August 14, 2018, an OWCP hearing representative set aside the December 6, 2017 decision and remanded the case for OWCP to obtain specific records about the bacterial testing of the animals to which appellant was exposed and to provide context about Dr. Reisler's November 2011 e-mail regarding positive results from the testing of primates.

In a September 13, 2018 letter, OWCP requested that an appropriate person from the employing establishment respond to the fact that Dr. Reisler had included in his November 2011 e-mail that there were some positive results for polecki from the testing of primates.

In an October 5, 2018 statement, Dr. Reisler explained that the e-mail, which referenced that 25 percent of the NHP infections that were detected and subtyped contained polecki, was referring to an enclosed document. No additional evidence, however, was received.

In a November 1, 2018 letter, OWCP requested that the employing establishment provide the results of any testing on animals of appellant's work area during the time of his exposure while performing his work activities.

In a November 14, 2018 letter, Dr. Kenneth O. Jacobsen, Deputy Director of Administration and Training for the veterinary medicine division at the employing establishment, related that their division no longer had any relevant animal medical records or test results from the requested time period.

OWCP received a December 16, 2013 statement from Dr. Pedro L. Rico, director of the veterinary medicine division for the employing establishment, who indicated that the safety office evaluated the circumstances of appellant's possible exposure in regards to his claim. Dr. Rico noted that appellant was wearing the appropriate personal protective equipment as required for all personnel working with animals. He reported: "under these circumstances there was no way for [appellant] to ingest a cyst while working in the animal rooms." Dr. Rico also indicated that they tested fecal samples of monkeys in the colony and door knobs for the presence of cysts on any possible fecal contamination and the results were negative. He noted that their final safety investigation was unable to determine whether the incident was work related.

By decision dated November 29, 2018, OWCP denied appellant's occupational disease claim, finding that there was insufficient evidence to establish causal relationship between his *entamoeba polecki* infection and the accepted employment exposure.

On December 4, 2018 appellant, through counsel, requested a telephonic hearing, which was held on April 10, 2019.

OWCP received a medical journal article entitled “Molecular Identification of *Entamoeba* spp. in Captive Nonhuman Primates” dated January 2010.

By decision dated June 20, 2019, an OWCP hearing representative affirmed the November 29, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 claimant.<sup>8</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> 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 specific employment factors identified by the employee.<sup>10</sup>

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>9</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Chapter 2.805.6 of OWCP's procedures provides:

“High-Risk Employment. Certain kinds of employment routinely present situations which may lead to infection by contact with animals, human blood, bodily secretions, and other substances. Conditions such as HIV [human immunodeficiency virus] infection and hepatitis B more commonly represent a work hazard in health care facilities, correctional institutions, and drug treatment centers, among others, than in Federal workplaces as a whole. Likewise, claims for brucellosis, anthrax, and similar diseases will most often arise among veterinarians and others who regularly work with livestock.

“Establishing causal relationship in these types of complex cases usually requires an in-depth discussion of causal relationship by an appropriate specialist (whether it is the claimant's physician or a second opinion specialist). When writing to a specialist, the [claims examiner] should include a [statement of accepted facts] (SOAF) to provide a complete and accurate factual background for a specialist to render his/her opinion.”<sup>11</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

In its previous August 23, 2013 decision, the Board remanded the case for further factual development of the record in order to determine whether appellant was actually exposed to *entamoeba polecki* from NHP infections at work. On remand, OWCP subsequently accepted that appellant was exposed to NHP feces while working as an animal caretaker at the employing establishment and that he was diagnosed with an *entamoeba polecki* infection, but denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment exposure.

The Board initially finds that as appellant's work as an animal caretaker placed him in contact with animals and other potentially hazardous substances, his position constitutes high-risk employment.<sup>12</sup> As noted above, OWCP's procedures contain specific provisions pertaining to high-risk employment. Chapter 2.805.6 of the procedure manual provides that establishing causal relationship in these types of complex cases usually requires in-depth discussion by an appropriate medical specialist (whether it is the claimant's physician or a second opinion specialist).<sup>13</sup>

To properly adjudicate this claim premised on an employee engaged in high-risk employment, OWCP's procedures require that the record include an in-depth discussion of any

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.6 (January 2013).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

causal relationship by an appropriate specialist.<sup>14</sup> As none of the medical evidence in the record offered an in-depth discussion on causal relationship by an appropriate specialist, the Board finds that OWCP should have referred the record to an appropriate infectious disease specialist.<sup>15</sup>

On remand OWCP shall prepare a complete and accurate SOAF and refer the claim to an appropriate medical specialist for a reasoned opinion as to whether the employee's work as an animal caretaker for the employing establishment caused or contributed to his diagnosed *entamoeba polecki* infection. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.<sup>16</sup>

Issued: March 9, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> See *P.P.*, Docket No. 19-1359 (issued April 30, 2020) (the Board found that a claimant's physician's opinion regarding the timeline of the development of positive diagnostic testing and his high-risk occupation as a nurse was sufficient to establish causal relationship for his HIV and Hepatitis C and his employment).

<sup>15</sup> See *D.M.*, Docket No. 14-0460 (issued February 11, 2016); *N.S.*, Docket No. 07-1652 (issued March 19, 2008).

<sup>16</sup> Christopher J. Godfrey, Deputy Chief Judge, was no longer a member of the Board effective January 20, 2021.