

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

M.W., Appellant)

and)

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF PRISONS, Beaumont, TX,
Employer**)

**Docket No. 07-849
Issued: July 26, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2007 appellant filed a timely appeal of the November 13, 2006 decision of the Office of Workers' Compensation Programs which affirmed the denial of her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on September 30, 2005.

FACTUAL HISTORY

On September 30, 2005 appellant, then a 39-year-old correctional officer, filed a traumatic injury claim for "puss-filled bumps and large red bite marks with flu[-]like symptoms." Her injuries allegedly occurred that same day as a result of working in substandard conditions during Hurricane Rita.

In a separate statement, appellant indicated that she had been working in the Federal Correctional Complex (FCC) at Beaumont, TX, during Hurricane Rita. On September 30, 2005 there were no available physicians in the Beaumont area. Appellant was seen by the correctional facility medical staff on September 30, 2005 and was advised to seek outside medical treatment. The employing establishment authorized the additional treatment (Form CA-16) and on October 1, 2005, appellant was seen in the emergency room at River Oaks Hospital in Jackson, MS. That following Monday, October 3, 2005, appellant followed up with another physician in Columbus, MS.

Appellant reportedly experienced respiratory distress with severe itching, swelling, redness and running puss from more than 20 insect bite marks on her arms, hands, legs, neck and face. Because of the approaching storm, she was confined to the Beaumont FCC beginning September 22, 2005. Appellant and approximately 700 other staff and inmates were crammed into the upper floor of an open bay-type inmate housing unit. She stated that the facility lost electrical power, communications capabilities and parts of the roof blew away which caused water to pour into the housing unit. Appellant characterized the living conditions following the storm as deplorable. There was no clean water, no plumbing, no air conditioning or ventilation and raw sewage was present. The trash and debris attracted mosquitoes, flies, ants, gnats, roaches and rodents. Appellant also described the interior walls as covered with mildew, mold and fungi. She explained that, while confined at FCC Beaumont during Hurricane Rita and the aftermath, she continued to discharge her duties as a correctional officer under traumatic and stressful conditions. Appellant indicated that the temperature was in excess of 100 degrees. This lasted for more than a week's time, during which she slept less than two hours per day on a concrete floor. Appellant claimed that lack of sleep, severe dehydration, respiratory infection, numerous insect bites and the emotional and physical stress associated with prolonged confinement all greatly contributed to her elevated blood pressure and hyperglycemia. She departed FCC Beaumont on October 1, 2005.

Records from the employing establishment's medical facility confirmed that appellant received treatment there on September 30, 2005. A Dr. David Dow diagnosed cellulitis, right lower extremity/insect bite and diabetes mellitus ("NIDDM"). He excused appellant from work for three days because of her cellulitis and increased blood sugar and advised her to follow-up with her local physician.

Emergency room treatment records from River Oaks Hospital, Jackson, MS, indicate that appellant arrived there by ambulance on October 1, 2005. The reported history was that she was a prison guard in Beaumont, TX, during the storm. Appellant was returning home that day when she experienced a possible syncopal episode while getting off the plane. She complained of shortness of breath, dyspnea and insect bites to several areas of her body. Appellant was hyperventilating upon arrival in the emergency room. She was discharged within a few hours with a diagnosis of insect bites, right lower extremity, diabetes mellitus and hyperglycemia.

On October 3, 2005 appellant saw Dr. Jesse C. Williams, a Board-certified internist. The history reported was that of a 39-year-old female who presented for follow-up from River Oaks Hospital complaining of puss-filled bumps and large red bite marks. The treatment records further noted that appellant was a Hurricane Rita victim from Beaumont, TX, who had been "stuck in prison system, law enforcement, developed insect bites all over." Dr. Williams also

noted a prior medical history of hypertension and diabetes mellitus. Physical examination revealed a “blister on the lower portion of the calf.” Appellant had also complained of palpitations. Dr. Williams’ cardiovascular examination revealed an irregular rhythm which he identified as a Grade 1/6 murmur. Appellant’s blood pressure was 162/100. According to Dr. Williams, her primary problem that day was heat exhaustion. He also diagnosed insect bites, diabetes and hypertension. Dr. Williams recommended obtaining a chest x-ray and advised appellant to follow-up with him in a couple of days.

An October 3, 2005 chest x-ray showed borderline cardiomegaly. Appellant returned to see Dr. Williams on October 5, 2005 for complaints of shortness of breath, but by then her skin lesions had healed and Dr. Williams noted normal skin turgor. Her blood pressure was 170/100. Dr. Williams diagnosed hypertension, diabetes mellitus, hyperlipidemia, cardiomegaly. He adjusted appellant’s diabetes and hypertension medications and advised her to see her local internist soon. Dr. Williams also completed the Form CA-16 appellant obtained from the employing establishment. He diagnosed borderline cardiomegaly noted that appellant’s diabetes was out of control and she required adjustments to her prescribed medications.

In a March 2, 2006 letter, Dr. Williams stated that appellant had been under his care from October 3 to 5, 2005. He noted that she had arrived from Beaumont, TX due to Hurricane Rita and presented with several insect bites and also had heat exhaustion due to conditions from Hurricane Rita.

By decision dated March 15, 2006, the Office denied appellant’s claim because she failed to establish a causal relationship between her claimed medical condition and her employment exposure.

Appellant requested an oral hearing which was held on July 27, 2006. Following the hearing she submitted another letter from Dr. Williams dated March 23, 2006. Dr. Williams stated that she came to his office on October 3, 2005 after having visited the emergency room. Appellant complained of severe insect bites, hypertension, palpitations and heat exhaustion due to the conditions of Hurricane Rita. Dr. Williams also stated that appellant had been living under unusual circumstances at the time he treated her. When appellant returned to his office on October 5, 2005 her glucose and blood pressure were elevated and she had shortness of breath. Dr. Williams also indicated that appellant returned for a follow-up visit on March 1, 2006 and at that time her insect bites were healed and her vital signs were stable.

A Dr. David Dean, from the River Oaks Hospital Emergency Department, submitted an April 6, 2006 letter describing the treatment appellant received in the emergency room on October 1, 2005. Appellant had arrived by ambulance with a complaint of dyspnea, possible syncope and insect bites to the right leg. Multiple tests were administered, including a computerized tomography (CT) scan of the chest to rule out pulmonary embolus. The CT scan did not show evidence of pulmonary embolus and the other tests were all within normal limits. Dr. Dean also stated that appellant’s medical problems included a history of diabetes and her glucose was found to be elevated. Appellant was discharged later that same day with a diagnosis of insect bites to the right lower extremity, diabetes mellitus and hyperglycemia. Dr. Dean indicated that appellant was placed on prophylactic antibiotics and pain medicine and advised to follow-up with a local physician if her condition did not improve.

In a November 13, 2006 decision, the Office hearing representative affirmed the March 15, 2006 decision denying appellant's claim.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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.²

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury.⁴

ANALYSIS

Between September 30 and October 3, 2005, appellant was diagnosed with no less than seven separate medical conditions. These included cellulitis and insect bites to her right leg, heat exhaustion, diabetes mellitus, hyperglycemia, hyperlipidemia, cardiomegaly and hypertension. Appellant's claim was not denied due to insufficient evidence of a particular medical diagnosis. Her claim was denied because the medical evidence failed to establish any of the diagnosed conditions was either caused or aggravated by her federal employment.

Appellant claimed to have been exposed to numerous insects during her 10-day confinement at FCC Beaumont, which the hearing representative accepted as having been factually established. Her claim was properly denied because the medical evidence does not demonstrate a causal relationship between any of the diagnosed conditions and her employment. While the medical records mention appellant's employment in law enforcement and her having taken shelter at the prison in Beaumont, TX, during Hurricane Rita, there is no clear statement

¹ 5 U.S.C. § 8101 *et seq* (2000).

² 20 C.F.R. § 10.115(e), (f) (2006); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the 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.*

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

attributing any of her medical conditions to her alleged occupational exposure at FCC Beaumont between September 22 and October 1, 2005.

Dr. Dow, who first examined appellant at the facility on September 30, 2005, did not offer an opinion on causal relationship. Dr. Dean commented on the treatment appellant received in the emergency room at River Oaks Hospital, on October 1, 2005. Dr. Williams is the only physician to have offered an opinion on causal relationship and he did not attribute appellant's heat exhaustion and insect bites to her occupational exposure. He said that she complained of "severe insect bites ... and heat exhaustion due to the conditions of Hurricane Rita." While Dr. Williams also noted in his March 23, 2006 letter that appellant was "living under unusual circumstances at the time" he treated her, Dr. Williams did not describe any particular living conditions. His earlier treatment records also do not include any specific details of the conditions that appellant was exposed to at FCC Beaumont during Hurricane Rita. The fact that some of the diagnosed conditions arose during the course of appellant's employment, does not alone demonstrate that the condition is employment related. Consequently, the medical evidence is insufficient to establish a causal relationship between appellant's claimed condition and her employment.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on September 30, 2005.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board