

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

R.S., Appellant	)	
	)	
and	)	<b>Docket No. 15-150</b>
	)	<b>Issued: February 23, 2015</b>
<b>DEPARTMENT OF THE INTERIOR,</b>	)	
<b>NATIONAL PARK SERVICE, SEQUOIA</b>	)	
<b>NATIONAL PARK, Three Rivers, CA, Employer</b>	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 28, 2014 appellant, through his attorney, filed a timely appeal from a July 31, 2014 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 to review the merits of this case.

**ISSUE**

The issue is whether appellant established meningitis causally related to factors of his federal employment.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

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

## **FACTUAL HISTORY**

On June 26, 2013 appellant, then a 57-year-old motor vehicle operator, filed an occupational disease claim alleging that on June 8, 2013 he first became aware of the bacterial meningitis streptococcus equi in his blood which caused emergency hospitalization and intensive unit care and subsequent surgery. He further alleged that on June 14, 2013 he first realized that the condition was caused or aggravated by his employment. Appellant stated that work doctors tested bacteria found in his blood and discovered his claimed medical condition. He contended that his condition could only have been contracted by his work with horses and mules. Appellant noted that he cleaned corrals as part of his job.

Appellant submitted records dated June 4 and 8, 2013 which addressed an employment-related back injury he sustained on May 31, 2013 and his work capacity.<sup>2</sup>

By letter dated July 8, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and submit evidence regarding his work duties and any medical evidence, if appellant had been treated at its medical facility.

On July 13, 2013 appellant stated that he was exposed to the source of his infection in the fitwell mill maintenance area and horse corrals at work. The exposure occurred from May 20 to 31, 2013 when he lived and worked near the corrals. Appellant stated that his daily work duties included maintenance of campgrounds, trash pickup, road grading, and assisting maintenance personnel with cleaning corrals and feeding horses and mules. He submitted a description of his motor vehicle operator position.

In a June 11, 2013 medical report, Dr. Parley W. Madsen, III, a Board-certified neurosurgeon, provided a history of the May 31, 2013 employment injury and appellant's medical treatment, family and social background. He provided examination findings and diagnostic test results. An impression of, among other things, sepsis, improving meningitis, and resolved altered mental status secondary to the above, was provided. Dr. Madsen advised that appellant had experienced acute meningitis which explained his altered mental status, but not his left lower extremity discomfort and right-sided paresis.

In a June 25, 2013 report, Dr. Hany Nasr, a Board-certified physiatrist, noted that appellant was admitted to the hospital on June 8, 2013 with meningitis and cervical myelopathy. He underwent surgery on June 14 and 15, 2013 and continued to be on intravenous (IV) antibiotics due to his resolving meningitis. Dr. Nasr advised that appellant was presently in acute rehabilitation due to lower body paresis weakness of lower extremities and postoperative deconditioning. He would continue on IV antibiotics until July 22, 2013 and continue to receive physical and occupational therapy through approximately October 2013. Dr. Nasr could not say when appellant would return to work.

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<sup>2</sup> The Board notes that under File No. xxxxxx812 OWCP accepted that appellant sustained a lumbosacral sprain on May 31, 2013.

In a July 2, 2013 report, Dr. Mina Raju, a Board-certified internist, indicated that appellant was admitted to Kaweah Delta Medical Center on June 8, 2013. He had an epidural abscess identified as streptococcus equi, subspecies zooepidemicus. Dr. Raju stated that this was presumed an occupational exposure from working with horses at the employing establishment. Appellant was discharged on July 4, 2013 and he would continue with IV antibiotics through July 22, 2013.

On July 16, 2013 the employing establishment concurred with the information and claims provided by appellant, but noted that his claimed disease may have been contracted outside the park because none of its livestock previously or currently had this disease and no other individual had become ill because of exposure to livestock. It described his exposure to livestock and stated that he was provided with gloves and masks to perform custodial work in the corrals.

In an August 14, 2013 letter, appellant stated that following his back injury on May 31, 2013 he went to the emergency room by ambulance on June 1, 2013. He suffered from extreme pain and was unable to stand or sit. Appellant was sent home without a diagnosis and with pain medication. On June 4, 2013 his supervisor sent him to Valley Industrial Medical Clinic where an x-ray was performed and showed spinal injury at L5-S1. Appellant was diagnosed as having a back strain and disc slippage. On June 8, 2013 he became critically ill. Appellant was found on the floor by his wife in an unresponsive state. He was taken to the emergency room and was hospitalized for 26 days. Appellant was found to have bacterial spinal meningitis and an epidural spinal abscess at L5-S1. He stated that the abscess and meningitis caused bacteria streptococcus equi which was found in horses at his job site. Appellant's surgery on his abscess disc was delayed one week to allow IV antibiotics to clear up his meningitis and infection around the spine. He underwent surgery on June 17, 2013. Appellant claimed that both his back injury and meningitis were work related.

On August 15, 2013 the employing establishment informed OWCP that its thorough investigation revealed that livestock at appellant's worksite were not infected with his claimed disease.

In an August 20, 2013 letter, Dr. Lindsey Moneta, a veterinarian, stated that on August 7, 2013 she collected nasal swabs from 11 horses and mules from the employing establishment. Dr. Moneta stated that an accompanying test report showed that the collected swabs revealed no organisms matching streptococcus equi equi and, thus, all 11 animals tested negative for this condition.

In an August 28, 2013 memorandum, the employing establishment again challenged appellant's claim, contending that the August 7, 2013 test report showed that none of its animals tested positive for streptococcus equi. It also contended that further evaluation of the entire herd, including animals to which appellant was not exposed have not revealed any signs or symptoms of this highly contagious equine virus. The employing establishment concluded that he must have had additional exposure to this virus outside of his duties at work.

In a September 17, 2013 report, Dr. Madsen stated that a fall appellant suffered at work prior to his May 31, 2013 employment-related back injury caused a laceration and abrasions that resulted in infection with an equine pathogen. He related that although appellant and medical

examiners concluded that he had suffered a low back strain he was in fact suffering from discitis and an epidural abscess. There was objective evidence of an infection at appellant's initial evaluation in the emergency department and the correct diagnosis was not made. Appellant was given steroids that exacerbated his yet undiagnosed infection. Dr. Madsen noted that imaging studies performed three days later did not establish the diagnosis. Four days later it was determined that appellant was suffering from septicemia, meningitis and an epidural abscess of the lumbosacral spine. Dr. Madsen concluded that the delay in a proper diagnosis of the lumbar discitis and abscess as a low back strain was the proximate cause of the septicemia and meningitis that resulted in his critical condition at presentation to the emergency department on June 8, 2013.

In an October 18, 2013 decision, OWCP denied appellant's occupational disease claim. It found that he had not factually established the occurrence of the alleged event(s) as the employing establishment's statement that the horses and mules he worked with tested negative for streptococcus equi was supported by diagnostic test results.

By letter dated October 31, 2013, appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative. In an October 28, 2013 letter, appellant again contended that his streptococcus equi was work related.

In a November 18, 2013 e-mail to appellant, Dr. Moneta described subspecies of streptococcus equi and the transmission of this disease from horses to humans. She stated that appellant's strain, streptococcus equi zooepidemicus, was considered a commensal or normal flora for the upper respiratory tract of horses. Thus, any given horse at any given time may have this bacteria present without being sick or having any adverse signs. Dr. Moneta stated that the risk of spread to humans was generally very low. She attached an article from the Centers for Disease Control and Prevention regarding streptococcus equi in humans and transmission from horses.

A February 3, 2014 progress note from a physical therapist stated that appellant was status post low back pain. Appellant could return to work as needed beginning that date.

In a February 3, 2014 report, Dr. Madsen advised that appellant was temporarily totally disabled through that date and he could return to work with no restrictions.

In a July 31, 2014 decision, an OWCP hearing representative affirmed the October 18, 2013 decision. She found that, among other things, appellant was exposed to horses and mules in the course of his federal employment between May 20 and 31, 2013. The hearing representative, however, found that the medical evidence failed to establish that his medical condition was causally related to the established work exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing 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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.<sup>6</sup> Neither the fact that appellant's condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.<sup>7</sup>

### ANALYSIS

OWCP accepted that appellant was exposed to horses and mules from May 20 to 31, 2013 while working as a motor vehicle operator at the employing establishment. The Board finds that the medical evidence of record is insufficient to establish that he sustained meningitis caused or aggravated by the accepted work exposure.

Dr. Madsen's June 11, 2013 report found that appellant had sepsis, improving acute meningitis and resolved altered mental status secondary to the stated conditions. He did not provide any discussion of appellant's accepted work exposure or provide a medical opinion on how such exposure caused or aggravated the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>8</sup> Dr. Madsen's September 17, 2013 report found that the delay in a proper diagnosis of appellant's lumbar discitis and abscess caused his septicemia and meningitis. The Board notes that OWCP has not accepted the conditions of lumbar discitis and abscess as work related. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden

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<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>8</sup> See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

to disprove such relationship.<sup>9</sup> Dr. Madsen provided no rationale explaining how appellant's lumbar discitis and abscess and resultant septicemia and meningitis were caused or aggravated by the accepted work exposure. The Board has held that a medical opinion not fortified by rationale is of diminished probative value.<sup>10</sup> In a February 3, 2014 report, Dr. Madsen found that appellant was no longer temporarily totally disabled as of that date and he could return to work with no restrictions. Dr. Madsen did not provide a specific diagnosis and failed to provide a medical opinion on whether the diagnosed condition and resultant disability were caused or aggravated by the accepted work exposure. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>11</sup>

Dr. Nasr's June 25, 2013 report found that appellant had meningitis and cervical myelopathy and that his return to work could not be determined at that time. Dr. Nasr failed to provide any opinion stating that the diagnosed conditions and resultant disability were caused or aggravated by the accepted work exposure.<sup>12</sup>

Dr. Raju's July 2, 2013 report found that appellant had an epidural abscess identified as streptococcus equi, subspecies zooepidemicus. She presumed that the diagnosed condition was caused by occupational exposure to working with horses at the employing establishment. While Dr. Raju opined that the diagnosed condition was caused by appellant's exposure to horses, she failed to adequately explain how the accepted work exposure caused or contributed to this condition other than offering a generalized opinion that such exposure caused streptococcus equi. As she failed to provide a sufficient explanation as to the mechanism of injury, her general statement that appellant sustained a work-related injury is of limited probative value.<sup>13</sup>

The employing establishment submitted the August 20, 2013 veterinarian's report of Dr. Moneta which found that testing of nasal swabs from 11 employing establishment horses revealed no organisms matching streptococcus equi equi. Dr. Moneta generally discussed the transmission of this condition from horses without explaining how the accepted exposure caused or aggravated appellant's medical condition.<sup>14</sup> The Board finds that Dr. Moneta's report and e-mail tend to support a lack of causal connection.

The February 3, 2014 progress note from a physical therapist has no probative medical value in establishing appellant's claim as a physical therapist is not a physician as defined under FECA.<sup>15</sup>

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<sup>9</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo, id.*; *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>10</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

<sup>11</sup> *B.T.*, Docket No. 13-138 (issued March 20, 2013); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>12</sup> See cases cited *supra* note 8.

<sup>13</sup> *S.W.*, Docket 08-2538 (issued May 21, 2009).

<sup>14</sup> *Id.*

<sup>15</sup> See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained meningitis causally related to the accepted work exposure. Appellant did not meet his burden of proof.

On appeal, appellant's attorney contended that OWCP's decision was contrary to fact and law. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant sustained meningitis causally related to the accepted work exposure.

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 establish that he sustained meningitis causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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