United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 16-0760**
	)	**Issued: October 19, 2016**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Cleveland, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 7, 2016 appellant filed a timely appeal of a January 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has established an employment-related injury causally related to an accepted June 9, 2015 employment incident.

FACTUAL HISTORY

On July 1, 2015 appellant, then a 38-year-old immigration enforcement agent, filed a traumatic injury claim (Form CA-1) alleging that on June 9, 2015 he sustained a methicillin-resistant staphylococcus aureus (MRSA) right upper leg area infection during a health

[1] 5 U.S.C. § 8101 *et seq.*

improvement program (HIP) workout. He explained that the alleged injury occurred at 12:00 p.m. in the fitness center, which was located on the third floor of the employing establishment. Appellant noted his tour of duty hours were 7:00 a.m. to 3:00 p.m. He stopped work on June 12, 2015. Appellant's supervisor noted on the claim form that the alleged injury was not sustained in the performance of duty.

By correspondence dated July 13, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and was afforded 30 days to provide this information. OWCP also requested that the employing establishment respond to questions regarding appellant's physical fitness activities.

In response to OWCP's request, appellant submitted photos of the gym facility inside the employing establishment, employing establishment memorandum regarding HIP, and responses to the questionnaire. He stated that he had been performing an hour to an hour and a half of general physical exercise. Appellant noted that he began to experience discomfort in his right upper leg after noticing small pustules. It was not until he sought medical treatment for his cellulitis that he was diagnosed with MRSA.

A June 11, 2015 report from Dr. Lara E. Marsh, a specialist in sports medicine, noted that appellant was seen for a right thigh abscess which was diagnosed as right thigh cellulitis. She reported that appellant presented with six pustules on his right thigh, cellulitis, and he noted that appellant was limping. Appellant related that the symptoms had begun approximately three days previously. She noted that it was unknown what caused the symptoms, but that she suspected ingrown hairs.

In a July 17, 2015 letter, the employing establishment responded to OWCP's July 13, 2015 request for additional information. It denied that MRSA was present in the fitness center. The employing establishment also related that participation in the HIP program was voluntary.

By decision dated August 19, 2015, OWCP found that the alleged employment event had occurred in the performance of duty, but denied appellant's claim as it found the record contained no medical evidence of record establishing that the alleged MRSA condition was causally related to the June 9, 2015 employment incident.

In a form dated September 18, 2015, appellant requested reconsideration. In support of his request he submitted a September 16, 2015 report from Dr. Marsh in which she related that appellant was seen for his June 2015 right upper thigh skin infection. Dr. Marsh opined that there was a great probability that appellant contracted MRSA from the employing establishment's gym facility, which appellant described as unsanitary. She further noted that appellant denied any contact with anyone with MRSA and that it could not be ruled out that appellant was exposed to the MRSA bacteria due to touching contaminated equipment with his hands. Dr. Marsh reiterated that she could not rule out that MRSA was contracted by appellant's use of the gym equipment as transmission can occur when skin is in contact with an infected surface.

By decision dated January 8, 2016, OWCP denied modification. It found the report from Dr. Marsh was speculative and insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.[5] First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[8] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[9] 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 the specific employment factors identified by the employee.[10]

ANALYSIS

Appellant filed a traumatic injury claim alleging that he sustained a right upper leg area MRSA infection while performing a HIP workout routine while in the performance of duty. OWCP accepted that appellant's June 9, 2015 work out in the employing establishment's fitness center occurred in the performance of duty. The issue is whether appellant met his burden of

[2] 5 U.S.C. § 8101 *et seq.*

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

[6] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[7] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

[8] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[9] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

proof to establish that his MRSA infection was caused or aggravated by the accepted June 9, 2015 incident. The Board finds, however, that appellant failed to establish that his MRSA infection had been caused or aggravated by his exercise activities in the employing establishment's fitness center on June 9, 2015.

The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician.[11] In the June 11, 2015 emergency room report, Dr. Marsh did not specifically address how the alleged MRSA condition was related to the accepted June 9, 2015 employment incident. She did not discuss appellant's fitness center activities as the cause of the MRSA in the June 11, 2015 emergency note. Rather, Dr. Marsh merely opined the cause was ingrown hairs. Lacking a rationalized medical opinion causally relating the diagnosed condition to appellant's exercise activities, this report is of limited probative value.[12]

In the September 16, 2015 report from Dr. Marsh, she opined that it could not be ruled out that appellant was exposed to MRSA at the gym and that the gym was probably where he contracted the condition. The report also noted that MRSA can be contracted by exposure to an infected area and not just by skin to skin contact. This opinion by Dr. Marsh is speculative and equivocal regarding causal relationship and is therefore of diminished probative value.[13]

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[14] An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.[15] To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report that addresses how exercising at work caused or aggravated his MRSA.[16]

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, regarding the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no

[11] *I.A.*, Docket No. 13-1701 (issued January 17, 2014); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

[12] *See supra* note 10.

[13] *C.C.*, Docket No. 14-1667 (issued December 3, 2014); *Ricky S. Storms*, 52 ECAB 349 (2001) (While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[14] *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[15] *See D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, *id*.; *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

[16] *Michael S. Mina*, *supra* note 9; *Michael E. Smith*, 50 ECAB 313 (1999).

probative, rationalized medical evidence addressing how his claimed MRSA was caused or aggravated by the identified employment incident, he has not met his burden of proof.[17]

On appeal appellant contends that the medical literature and Dr. Marsh's report is sufficient to establish his claim. He argues that claims examiner is unqualified to adjudicate claims with proven medical diagnoses. As discussed above, it is appellant's burden to provide a rationalized medical opinion explaining how the diagnosed MRSA had been caused or aggravated by the June 9, 2015 incident. Appellant failed to provide the requisite medical opinion and thus, has failed to meet his burden of proof.

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 failed to establish that he sustained an employment-related injury in the performance of duty on June 9, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 8, 2016 is affirmed.

Issued: October 19, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[17] *Supra* note 7.