

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

D.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Bronx, NY, Employer**

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**Docket No. 18-0324
Issued: August 14, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 4, 2017 appellant filed a timely appeal from a November 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her Hepatitis C condition was causally related to her July 11, 2001 accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 24, 2004 appellant, then a 49-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) noting that on July 11, 2001 she stuck her right hand with a needle after drawing a patient's blood. A July 11, 2001 medical incident report by a nurse practitioner for the employing establishment noted that appellant experienced a needle stick injury, that risk was minimal, and that appellant refused testing for Human Immunodeficiency Virus (HIV) and Hepatitis B and C. On November 12, 2004 OWCP accepted appellant's claim for "accident caused by hypodermic needle to right hand."

On July 31, 2014 appellant filed a claim for compensation (Form CA-7) for the period July 11, 2001 to date. However, the employing establishment noted that there was no lost time on this case.

On August 1, 2014 appellant filed a claim alleging a recurrence (Form CA-2a) of the July 11, 2001 work injury, noting that from 2003 to present she had suffered from chronic Hepatitis C.

In an August 21, 2014 supplemental statement, appellant indicated that she had blood work done on November 3, 2003, that it came back positive for Hepatitis C, but that her preemployment physical showed no diseases or abnormalities. She noted that she was required to undergo a liver biopsy.

In a December 19, 2006 note, the infection control coordinator at the employing establishment noted that appellant stuck herself with a needle while drawing blood on July 11, 2001, that on July 13, 2001 appellant was counseled for testing because of needle stick, and that the blood drawn from the patient from whom appellant drew blood on July 19, 2001 showed that he was HIV negative and negative for Hepatitis C and B.³

By development letter dated August 21, 2014, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It noted that factual evidence had not been received to establish that appellant was actually exposed to a patient with Hepatitis C. Appellant was also advised that there was no medical evidence of record establishing that she had Hepatitis C or that she had contracted the disease as alleged. OWCP afforded appellant 30 days to submit additional evidence in support of her claim.

In a September 11, 2014 letter, appellant stated that, after the needle stick on July 11, 2001, the emergency room doctor ordered her off tour for 48 hours. She noted that on November 3, 2003

² Docket No. 15-1099 (issued September 20, 2016).

³ This report indicated that the blood was drawn from the patient on "July 19 2006." This appears to be a typographical error.

she was injured while caring for a resident, she sustained injuries to her back, shoulder, and arm, and remained on disability until December 26, 2007. Appellant noted that she had bloodwork done when she sustained the 2001 injury and at that time it was determined that she had the Hepatitis C virus. She noted in her letter that her Hepatitis C was now presenting symptoms and that she needed a liver biopsy.

By decision dated September 23, 2014, OWCP denied appellant's claim as it found that the evidence of record did not establish that she had a recurrence or increased disability due to a change or worsening of the accepted work conditions because there was no factual proof that appellant was exposed to a patient positive for Hepatitis C and; therefore, the evidence was insufficient to establish that she contracted Hepatitis C due to the July 11, 2001 work injury.

On October 9, 2014 appellant requested an oral hearing before an OWCP hearing representative. OWCP held a hearing on February 9, 2015. Within the time allotted by the hearing representative, appellant submitted further medical evidence. The results of a February 17, 2005 blood test given at Harlem Hospital Center indicated that appellant was treated by Dr. Sabo Bukar Tanimu, a Board-certified internist, and that her blood test was positive for Hepatitis C. A November 12, 2008 report by a nurse practitioner also noted Hepatitis C. A December 26, 2014 report by Dr. Beningo Varela, a Board-certified internist, listed appellant's diagnosis as chronic Hepatitis C.

By decision dated April 1, 2015, OWCP's hearing representative affirmed OWCP's September 23, 2014 decision. He noted that appellant had not met her burden of establishing recurrent disability referable to the July 11, 2001 work injury. The hearing representative noted that no physician reached an opinion with regard to the cause of appellant's Hepatitis C. He concluded that the medical record was insufficient to establish that appellant's Hepatitis C was causally related to the July 11, 2001 work injury. Therefore, the hearing representative determined that there was no basis for a finding of recurrent disability in 2014 related to the 2001 work injury.

On April 17, 2015 appellant appealed to the Board. By order dated September 20, 2016, the Board remanded this case.⁴ The Board determined that OWCP evaluated appellant's claim as a claim for a recurrence of injury, but that the case did not involve a recurrence of disability due to a spontaneous change in appellant's medical condition. Rather, the Board found that appellant was actually alleging that at the time she stuck herself with the needle on July 11, 2001, she contracted Hepatitis C. The Board noted that OWCP had already accepted appellant's claim for an incident caused by a hypodermic needle stick to appellant's right hand, and that appellant now alleged that she developed Hepatitis C consequentially related to the accepted injury.⁵

By another development letter to appellant dated November 4, 2016, OWCP asked appellant to submit further medical evidence and afforded her 30 days to do so. It informed appellant that she should submit a rationalized medical report, based on an accurate history of injury, explaining the diagnosis resulting from the injury and a physician's rationalized opinion on

⁴ Docket No. 15-1099 (issued September 20, 2016).

⁵ *Id.*

causal relationship. OWCP also asked that appellant submit any laboratory results for testing between July 20, 2001 and February 16, 2005. Appellant did not respond to OWCP's queries.

By decision dated January 23, 2017, OWCP denied expansion of the acceptance of appellant's claim to include a consequential injury of Hepatitis C as the evidence of record did not demonstrate that weakness or impairment caused by appellant's accepted work-related injury or illness led to an aggravation of the original injury or to a new injury.

On February 8, 2017 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on May 23, 2017, she was represented by counsel. Appellant described the circumstances of the needle stick. She noted that she was taken off work by the physician for 48 hours. Appellant alleged that the patient whom she was treating when she sustained the needle strike had Hepatitis C, noting that it was in his records. She also explained that she sustained a different injury in 2003 which caused her to remain out of work for four years. Appellant argued that she contracted Hepatitis C from the needle stick of a Hepatitis C positive patient. She stated that nobody would refuse a blood test, and asked that the employing establishment provide proof that she refused the blood test. Appellant contended that the employing establishment never asked to take a blood sample from her. She noted her opinion that her Hepatitis C was related to the needle stick, explaining that she was healthy before the needle stick, and now she had this devastating disease.

By decision dated July 17, 2017, the hearing representative vacated the January 23, 2017 decision. He instructed OWCP to obtain further information from the employing establishment. Specifically, the hearing representative asked OWCP to find out if the patient from whom appellant drew blood had Hepatitis C. He further instructed the employing establishment to state whether appellant would have to sign anything if she refused the Hepatitis C test. Following this development of the case, the hearing representative instructed OWCP to issue a *de novo* decision.

By letter dated July 19, 2017, OWCP asked the employing establishment to submit further information. It asked the employing establishment to provide a signed statement explaining whether knowledge existed as to whether that the patient from whom appellant drew blood had Hepatitis C. OWCP also asked the employing establishment to provide written confirmation as to whether appellant had to sign a document if she refused to take the test for Hepatitis C. If appellant refused this test, it asked the employing establishment to provide written supporting documentation indicating this fact. OWCP indicated that the record would be held open for 30 days to provide the employing establishment an opportunity to submit the requested information.

In a letter dated August 17, 2017, the employing establishment noted that it was awaiting a response from the National Personnel Records Center (NPRC) concerning appellant's records. However, it informed OWCP that the patient was tested on July 19, 2001, and that the patient tested negative for the Hepatitis C (HCV) antibody. The employing establishment noted that this report was already in the file, that it was headed "Bronx VAMC Station #526," that the patient's name was redacted, but that the first initial was M. Since no evidence of HCV antibodies was detected, no further monitoring or treatment was required. The employing establishment also attached pages from its procedures on informed consent for clinical treatment and procedures. It noted the procedures for written or oral consent to procedures, and indicated that both must be documented in appellant's record. The employing establishment noted that for the instance of

HCV antibodies testing for appellant on July 11, 2001, a signature was not required, and the practitioner noted that appellant refused testing.

By decision dated November 13, 2017, OWCP denied expansion of the acceptance of the claim to include a consequential injury of Hepatitis C as the record did not demonstrate that impairment or weakness caused by appellant's accepted work-related injury or illness led to an aggravation of the original injury or to a new injury, as required for compensation under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury and an occupational disease.⁸

An employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁹

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.¹⁰ Thus, a subsequent injury be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of the compensable primary injury.¹¹

OWCP's procedures provide at Chapter 2.805.6 of the Federal (FECA) Procedure Manual as follows:

“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) infection and

⁶ *Supra* note 1.

⁷ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *N.S.*, 59 ECAB 422 (2008).

¹⁰ *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Mary Poller*, 55 ECAB 483 (2004).

¹¹ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

[H]epatitis B more commonly represent a work hazard in health care facilities, correctional institutions and drug treatment centers, among others, than in [f]ederal workplaces as a whole....

“The [claims examiner] CE can accept the claim for a physical injury where one exists while developing the claim for a more serious condition (*e.g.*, a puncture wound may be accepted while any claimed hepatitis is developed).

‘a. Physical Injury and Prophylactic Treatment. For claims based on transmission of a communicable disease where the means of transmission and the incubation period are medically feasible, the CE should do the following:

(1) If the source of infection is a known or probable carrier of the disease, the CE should accept the case for the physical injury involved and authorize prophylactic treatment....

(2) If the source of infection is unidentified or the source’s status is unknown, the CE should accept the claim for the physical injury involved. Prophylactic treatment for the underlying disease will not be an issue, since a known carrier is not involved.”¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed Hepatitis C was causally related to the accepted needle stick injury that occurred on July 11, 2001.

On July 11, 2001 appellant stuck her right hand with a needle after taking a patient’s blood. On November 12, 2004 OWCP accepted her claim for “accident caused by hypodermic needle to right hand.”

On August 1, 2014 appellant filed a claim alleging that she developed Hepatitis C as a result of this needle stick injury. In a factually similar case, *N.S.*,¹³ the Board found that the evidence of record established that the employee was stuck by a needle which punctured her skin. The Board noted OWCP’s procedures regarding high risk employment and thereafter required that the evidence be developed to determine whether the source of the allegedly contaminated needle was actually positive for the Hepatitis C virus.

Following the Board’s prior remand of this case to determine whether appellant sustained a consequential injury, on July 17, 2017, OWCP’s hearing representative remanded the case and instructed OWCP to obtain further information from the employing establishment as to whether the patient from whom appellant drew blood prior to sticking herself with the needle had

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.6 (January 2013).

¹³ 59 ECAB 422 (2008).

Hepatitis C. The employing establishment was also asked to determine whether documentation existed that appellant refused the Hepatitis C blood test.

Appellant's allegation that the patient from whom she drew blood had Hepatitis C is not supported by the evidence of record. The employing establishment submitted the results of a blood test on this patient that was conducted on July 19, 2001, and this test indicated that the patient did not carry the HCV antibody. Furthermore, the Board notes that appellant's allegation that she was not offered a blood test by the employing establishment at the time of the needle stick is contradicted by the contemporaneous records of the employing establishment which indicated that appellant refused the blood test offered to her pursuant to set policy. OWCP therefore properly denied expansion of the acceptance of the claim to include the alleged condition of Hepatitis C, after further development of the evidence. The evidence of record does not establish appellant's alleged history that she was exposed to contaminated Hepatitis C blood when she struck herself with the needle on July 11, 2001.¹⁴

Appellant has also not met her burden of proof to establish a consequential injury as the evidence of record does not establish that the needle stick puncture alone, absent contaminated blood, caused Hepatitis C as a natural consequence of that injury.¹⁵

Appellant's honest belief that an employment incident caused a medical injury, however, sincerely held, does not constitute medical evidence sufficient to establish causal relationship.¹⁶

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 not met her burden of proof to establish that her Hepatitis C was causally related to her July 11, 2001 accepted employment injury.

¹⁴ *Id.*

¹⁵ *Supra* note 11.

¹⁶ *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 13, 2017 is affirmed.

Issued: August 14, 2018
Washington, DC

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

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

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