United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 13-1919**
	)	**Issued: May 16, 2014**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Warwick, RI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2013 appellant filed a timely appeal from an April 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for compensation and an August 7, 2013 nonmerit decision denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that his hypertension condition was caused or contributed to by employment factors commencing October 7, 2012; and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 11, 2012 appellant, then a 55-year-old administrative officer, filed an occupational disease claim alleging an increase in his blood pressure over several days. Appellant described receiving an e-mail from a former employee on Sunday, October 7, 2012. The former employee had resigned on February 7, 2011 following an investigation into sensitive security information he posted on an internet site. The October 7, 2012 e-mail, received 20 months later, read:

> "The proceedings of the illegal meeting, bullying/lying that preceded firing were audial recorded (yes, really) and will be sent to Gov't agencies in the hope that your illicit career will end in an even more un-illustrious manner than all those others you bullied, lied and intimidated in the course of firing.
>
> "Lying is frowned upon in the Fed. Govt. particularly when its revealed by opposing govt agencies and particularly on on-line social internet site.
>
> "There is also a whistle-blower clause that will be pursued.
>
> "DIAF."

Appellant noted that the acronym DIAF meant "Die in a Fire." He contacted the employing establishment about the e-mail and submitted information from online sources concerning threats to government officials. Appellant stopped work on October 12, 2012, noting a constant headache and his blood pressure rose to dangerous levels despite medication. He stated that officials of the employing establishment did not adequately investigate the matter.

In an October 12, 2012 report, Dr. Kim J. Crawford, a family practitioner, noted that appellant has been her patient since 2001 and that his hypertension worsened over the years resulting in increases and modifications to his medication. Of particular concern has been appellant's diastolic pressure. Dr. Crawford stated that his blood pressure could be attributed to his "stressful work environment" and "scope of professional responsibilities." She opined that appellant should be out of work indefinitely and consider a less stressful position. In an October 25, 2012 report, Dr. Crawford diagnosed benign hypertensive heart disease without heart failure and a generalized anxiety disorder. She noted that appellant's blood pressure continued to spike and that his headaches continued. Dr. Crawford reiterated that he should be out of work indefinitely and consider a less stressful position.

In a November 29, 2012 letter, OWCP advised appellant of the deficiencies in his claim. It requested that he submit additional factual and medical evidence to support his claim.

On December 19, 2012 appellant responded that his claim pertained to an aggravation of his preexisting hypertension caused by work-related events and not to any psychological injury. He contended that the employing establishment did not make a required federal response to the threat he received, as it had not sent out any appropriate warnings or an official visit to the

perpetrator.[2] Appellant submitted a copy of the employing establishment workplace violence program and a copy of an American Heart Association article on hypertensive crises.

In a December 14, 2012 report, Pamela Lowell, a licensed social worker in the Employee Assistance Program noted seeing appellant commencing October 24, 2012 as he was out on sick leave. Appellant experienced workplace stress and post-traumatic stress disorder symptoms resulting from two threating e-mails from a former contact and no immediate or subsequent response from the employing establishment. After five sessions his blood pressure had returned to normal and he was back at work full time.

By decision dated February 21, 2013, OWCP denied appellant's claim. It accepted that he received an e-mail from the former employee but found that the medical evidence was insufficient to establish that his medical condition was causally related to factors of his federal employment.

On March 15, 2013 appellant requested reconsideration. He argued that the events of October 7 through 12, 2012 aggravated his preexisting hypertension and caused a hypertensive crisis, for which he sought treatment with Dr. Crawford. Appellant stated that the accepted work-related events drove him into a hypertensive crisis and were the sole cause of his medical and physical reactions. He stated that the American Heart Association article pertained to his specific condition as the base level of a hypertensive crisis was the level of severity he experienced.

In a March 13, 2013 report, Dr. Crawford reiterated the diagnoses of benign hypertensive heart disease without heart failure and generalized anxiety disorder. She indicated that appellant presented in September and October 2012 with an awareness of an increase in his blood pressure and a recently developed trouble with anxiety and trouble with sleeping. Appellant related that he was dealing with job stressors, including intimidation and threats resulting from his doing due diligence in the performance of his duties. Dr. Crawford stated that "[appellant's] duty-related events were likely the cause of his dangerously elevated blood pressure" and the reason she took him off work for three weeks to allow the supplementary medication to have effect.

In an April 12, 2013 letter, Steven M. Stone, a human resource specialist, stated that he had reviewed appellant's reconsideration statement and concurred with the facts describing the events of October 7 through 11, 2012. He noted working with appellant on a daily basis, who complained of headaches.

In an April 19, 2013 statement, appellant noted that his supervisor and Mr. Stone had personally witnessed the effects of the hypertensive crisis on his ability to perform his job and the facts following the threat from the former employee. He contended that Dr. Crawford's reports supported causal relationship.

[2] The record indicates that, after review, the employing establishment advised appellant that since the matter involved a former employee, it should be considered as a state or local issue. Appellant was advised to make a report to the Rhode Island State Police.

By decision dated April 25, 2013, OWCP denied modification of its February 21, 2013 decision. It determined that the reports of Dr. Crawford were not sufficiently rationalized to establish causal relation.

On May 7, 2013 appellant requested reconsideration. In a May 7, 2013 letter, he noted that his request was based on newly discovered legal information. He cited to Board case law in support of the proposition that "where a person has a preexisting condition which is not disabling but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable. If the medical evidence reveals that an employment factor contributes in any way to the employee's condition, the condition is considered to be employment related." Appellant contended that Dr. Crawford clearly opined that his work events were the likely cause of his dangerously elevated blood pressure and the reason why he stopped work.

By decision dated August 7, 2013, OWCP denied appellant's request for reconsideration without further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 establish that a condition was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence of occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that

[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] *See Gary M. DeLeo*, 56 ECAB 656 (2005); *Michael R. Shaffer*, 55 ECAB 386 (2004).

[6] *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7]

Causal relationship is a medical issue. The medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[8] Rationalized medical opinion includes a physician's opinion addressing the 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 -- ISSUE 1

OWCP accepted that appellant received an e-mail from a former employee of the employing establishment on October 7, 2012 and that he stopped work on October 12, 2012. It denied his claim, finding that the medical evidence was insufficient to establish that his diagnosed condition resulted from or was contributed to by the accepted work factors. Appellant alleged that the receipt of the e-mail constituted a threat against a government official and was not adequately investigated or responded to by the employing establishment. He claimed an aggravation of his preexisting hypertension and a hypertensive crisis.

The Board finds that appellant did not submit sufficient medical evidence to establish that his hypertension or hypertensive crisis was causally related to the accepted work events.

Appellant submitted several brief treatment records from Dr. Crawford, a family practitioner. On October 12, 2012 Dr. Crawford advised that he had been a patient since 2001 and noted generally his work as an administrator in Homeland Security. As to the history, she noted that appellant had kept her abreast of handling intimidation and threats from employees and managers during the past 10 years. Dr. Crawford stated that his hypertension had been worsening over the years, resulting in modifications to his medication. As to causal relation, she stated that appellant's hypertension "can be attributed to his stressful work environment and scope of professional responsibilities." An October 25, 2012 treatment note listed several diagnoses without any further narrative from Dr. Crawford; who noted only that he should be out of work for two more weeks. On October 26, 2012 she stated that appellant's diastolic blood pressure continued to spike with headaches. Dr. Crawford noted that Ms. Lowell recommended that he remain off work for another week, through November 2, 2012. She stated that, after seeing appellant for 10 years, her opinion remained that he be off work and consider a less stressful position. Dr. Crawford recommended that he find less stressful employment. The

[7] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[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, 352 (1989).

Board finds that the records of her are summary in nature and do not provide any extensive history of her hypertension condition, medical treatment nor specifically address the events at work commencing on October 7, 2012. Rather, Dr. Crawford listed a 10 years history of handling intimidation and threats from employees and managers which does not pertain to the specifics of appellant's claim regarding an e-mail from a former employee of October 7, 2012 or subsequent work events.

On March 13, 2013 Dr. Crawford submitted another note, listing the diagnosis from prior records. She stated:

> "[Appellant] has been known to me for over five years and he impresses me with his depth of [commitment] and sensitivity to his health and work situations. He presented to me in September [2012] and then again in October [2012] relating that he was aware of an increase in his blood pressure and a recently developed trouble with anxiety and trouble with sleep. [Appellant] related to me that he was dealing with stressors of the job including intimidation and threats resulting from doing due diligence in the performance of his duties. I believe that his duty[-]related events were likely the cause of his dangerously elevated blood pressure and that they were the reason to put him out of work for three weeks to allow time for the supplementary medication to have effect."

The Board finds that Dr. Crawford's opinion on causal relation is vague and couched in speculative terms. Dr. Crawford did not address specifics of the October 7, 2012 e-mail that appellant stated constituted a threat by a former employee. She noted that he was seen in September 2012, prior to the October 7, 2012 e-mail, for complaint of elevated blood pressure. Further, Dr. Crawford's opinion on causal relation is not stated to a reasonable degree of medical certainty but that duty-related events "were likely" the cause of his elevated blood pressure.[11]

Dr. Crawford did not attribute his condition or the worsening thereof or the inability to work to the events of October 7 through 12, 2012, which diminishes the probative value of her opinion.[12] Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.[13] In the absence of a rationale opinion by Dr. Crawford on the issue of causal relationship to the specific employment factors accepted, the Board finds that her opinion fails to support appellant's claim.

Appellant also submitted a December 14, 2012 report from Ms. Lowell, a licensed clinical social worker. It is well established, however, that medical evidence must be from a

[11] *See James R. Taylor*, 56 ECAB 537 (2005).

[12] *See M.D.*, 59 ECAB 211 (2007); *Vitaliy Y. Matviiv*, 57 ECAB 193 (2005).

[13] *See T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, *supra* note 6; *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

qualified physician.[14] A licensed clinical social worker is not a physician as defined under FECA. An opinion from a social worker is of no probative medical value.[15]

Appellant submitted an article from the American Health Association regarding hypertension. The Board has held that newspaper clippings, medical texts and similar excerpts from publications are of no evidentiary value in establishing causal relationship, as they are of general application and are not determinative of whether the specific condition claimed was caused by the particular employment events of activities raised in a claim.[16] The article on hypertensive crises is, therefore, insufficient to establish causal relationship. Neither the fact that his condition became apparent during a period of employment nor the belief that his condition was caused or contributed to by his employment is sufficient to establish causal relationship.[17] Causal relationship must be established by rationalized medical opinion evidence from a physician.

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[18] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[19] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[20]

[14] *See Vickey C. Randall*, 51 ECAB 357 (2000); *Arnold A. Alley*, 44 ECAB 912 (1993).

[15] *See Sedi L. Graham*, 57 ECAB 494 (2006); *see also* 5 U.S.C. § 8101(2), which provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

[16] *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

[17] *Id.*

[18] 20 C.F.R. § 10.606(b)(3). *See J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

[19] *Id.* at § 10.607(a). *See S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

[20] *Id*. at § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[21]

ANALYSIS -- ISSUE 2

Appellant's May 7, 2013 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. He cited to Board case law in support of the general proposition that a preexisting condition which becomes disabling because of an aggravation causally related to the employment is compensable. Appellant's contention was not sufficient to require OWCP to reopen his case for further merit review. The underlying basis for the denial of his claim was that causal relationship had not been established due to deficiency in the medical reports submitted to the record. Causal relationship is a medical issue and only evidence from a physician addressing the claim can establish causal relationship.[22] Appellant did not submit any new medical evidence; rather, he argued that Dr. Crawford's medical reports were sufficient to establish his claim. As noted, they were found deficient by OWCP. Additionally, appellant did not advance a relevant legal argument not previously considered. The Board finds that he is not entitled to a review of the merits of his claim based on the first and second requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. Thus, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(3). As appellant did not satisfy any of the regulatory criteria, OWCP did not abuse its discretion by denying merit review.

CONCLUSION

The Board finds that appellant did not establish that his hypertension was caused or contributed to by employment factors, as alleged. The Board further finds that OWCP properly denied his request for reconsideration under 5 U.S.C. § 8128(a).

[21] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

[22] *Mary J. Briggs*, 37 ECAB 578 (1986).

ORDER

IT IS HEREBY ORDERED THAT the August 7 and April 25, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 16, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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