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<b>J.S., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 12-906</b>
	)	<b>Issued: February 15, 2013</b>
<b>DEPARTMENT OF DEFENSE, DEFENSE</b>	)	
<b>LOGISTICS AGENCY, El Toro, CA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

On March 14, 2012 appellant filed a timely appeal from the November 16, 2011 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 over the merits of this case.

The issue is whether appellant met his burden of proof to establish that he sustained heart attacks in 2003 and 2007 due to his accepted work conditions.

In July 1991, OWCP accepted that appellant, then a 37-year-old environmental protections specialist, sustained an anxiety disorder and an episode of Xanax dependency, resolved. He claimed that he sustained stress due to the duties of his job, including dealing with

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

the management of hazardous waste. Appellant stopped work on July 2, 1990 and later returned to light-duty work.

Appellant subsequently claimed that his angina was aggravated by his accepted anxiety disorder. On June 23, 1996 OWCP accepted the consequential condition of aggravation of angina decubitus. In mid-2003, appellant had a heart attack and in August 2003 he underwent triple bypass surgery. In late 2007, he sustained a second heart attack and in November 2007 and January 2008 he underwent additional procedures, including a left heart catheterization and stent of the saphenous vein graft. Appellant claimed that his 2003 and 2007 heart attacks were related to his accepted work conditions.<sup>2</sup>

In a February 6, 2009 decision, OWCP denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that his heart attacks in 2003 and 2007 were due to his accepted conditions. In a June 4, 2009 decision, it affirmed its February 6, 2009 decision.

In a decision dated May 7, 2010,<sup>3</sup> the Board affirmed OWCP's February 6 and June 4, 2009 decisions, finding that a March 10, 2008 report of Dr. David H.S. Iansmith, an attending Board-certified cardiologist, and a March 31, 2009 report of Dr. Frank A. McGrew, III, an attending Board-certified cardiologist, did not establish that appellant's heart attacks in 2003 and 2007 were due to his accepted conditions. Moreover, the Board noted that Dr. Matthew Smolin, a Board-certified cardiologist serving as an OWCP referral physician, determined in August 12 and December 3, 2008 reports that appellant's accepted work conditions did not contribute to his heart attacks.

In a March 21, 2011 letter, appellant's counsel at the time requested reconsideration on his behalf and indicated that he was submitting a February 2, 2011 report of Dr. McGrew, which he asserted established appellant's claim for work-related heart attacks in 2003 and 2007.<sup>4</sup>

In his February 2, 2011 report, Dr. McGrew indicated that appellant had been under his care since February 2009 and briefly described his 2003 and 2007 heart attacks. He stated: "Based on the affidavit included in [appellant's] chart describing his job description with the [employing establishment] at the time of the above mentioned cardiac events it is certainly possible that the responsibilities described were stress inducing in [his] case and a contributing factor to his health." Dr. McGrew noted that appellant currently complained of constant chest pressure and had dyspnea on exertion after walking approximately 50 yards with complaints of shortness of breath and confusion during the night. In addition to his current cardiac diagnosis of hypertension, hyperlipidemia and coronary artery disease, appellant also was under psychiatric care for a long history of anxiety disorder which frequently increased his episodes of angina. Dr. McGrew stated: "After reviewing [his] previous medical reports as well as my own observations since he has been in my care, it is my opinion that [appellant's] angina pectoris and

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<sup>2</sup> Appellant was not working for the employing establishment at the time of his 2003 and 2007 heart attacks.

<sup>3</sup> Docket No. 09-1864 (issued May 7, 2010).

<sup>4</sup> Appellant's counsel also asserted that the reports of Dr. Smolin supported his claim.

anxiety disorder are related and were contributing factors to the patient's 2003 and 2007 myocardial infarctions. His worsening anxiety continues to be a risk for future cardiac events."

In a January 28, 2011 report, Dr. Robert Buchalter, an attending Board-certified psychiatrist, stated that appellant had generalized anxiety disorder with panic episodes and obsessive-compulsive traits. He noted that appellant's injury-related condition was still medically present and disabling. Dr. Buchalter indicated that appellant had not returned to the preinjury status and noted that his work injury was permanent. Appellant was disabled for all work and his current treatment plan was medication management. In a January 28, 2011 letter, Dr. Buchalter stated: "In my opinion, [appellant's] anxiety disorder contributed to his heart attack."

Appellant also resubmitted a number of previously considered reports, including a March 20, 1996 report in which Dr. Iansmith diagnosed hypertension, reactive tachycardia, anxiety neurosis, stress reaction disorder, hyperlipidemia, chronic obstructive pulmonary disease and angina.

In a May 23, 2011 decision, OWCP denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained heart attacks in 2003 and 2007 due to his accepted work conditions. It found that the medical evidence submitted by appellant did not contain a rationalized medical opinion showing that his 2003 and 2007 heart attacks were work related.

In an August 11, 2011 letter, appellant's counsel at the time requested reconsideration on his behalf and indicated that he was submitting a June 21, 2011 report of Dr. McGrew which established his claim.

In a June 21, 2011 report, Dr. McGrew indicated that he had treated appellant since 2009. He stated that appellant had myocardial infarctions in 2003 and 2007 and noted that he had a stress anxiety disorder which aggravated and increased his episodes of angina. Dr. McGrew indicated that appellant attempted to return to work for a short time in 2002 and 2003 in the private car sales industry and noted that, despite coronary high risk, this employment increased his high blood pressure. He stated: "In June 2003, [appellant's] house burned down. This would certainly aggravate angina and induce a heart attack and it did so in his case of 2003." Dr. McGrew noted that, at that time, appellant's accepted conditions were stress reaction disorder, drug dependency and aggravation of angina. He indicated that appellant wanted to return to work, but that these conditions prevented him from doing so. Dr. McGrew referenced his February 2, 2011 report and stated that "based on the affidavit of [appellant's] job description with the [employing establishment] that aspect of his job responsibilities described, were stress inducing in [his] case are still contributing factors to his health." He indicated that he felt that the opinions contained in Dr. Smolin's August 12 and December 3, 2008 reports were speculative. Dr. McGrew stated, "[Appellant] will suffer from this at work or no work[-]related factors or stressors" and noted that he currently had hypertension, hyperlipidemia, stress reaction disorder and angina pectoris.

In a decision dated November 16, 2011, OWCP affirmed its May 23, 2011 decision noting that appellant did not submit rationalized medical evidence supporting his claim. It found

that the June 21, 2011 report did not establish that the heart attacks in 2003 and 2007 were work related.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>6</sup> The Board has found that medical reports that are equivocal or speculative are of limited probative value on the issue of causal relationship.<sup>7</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained several work-related conditions, including anxiety disorder, episode of Xanax dependency (resolved) and aggravation of angina due to the accepted anxiety disorder. Appellant sustained heart attacks in 2003 and 2007 and later claimed that the heart attacks were related to his accepted work conditions.

In a decision dated May 7, 2010, the Board affirmed OWCP's denial of appellant's claim that his 2003 and 2007 heart attacks were work related. The Board found that a March 10, 2008 report of Dr. Iansmith, an attending Board-certified cardiologist, and a March 31, 2009 report of Dr. McGrew, an attending Board-certified cardiologist, did not establish appellant's claim. Moreover, the Board noted that Dr. Smolin, a Board-certified cardiologist serving as an OWCP referral physician, determined in August 12 and December 3, 2008 reports that appellant's accepted work conditions did not contribute to his heart attacks.<sup>8</sup>

After the Board's May 7, 2010 decision, appellant submitted additional medical evidence. However, the Board finds that he did not submit sufficient medical to establish that he sustained heart attacks in 2003 and 2007 due to his accepted work conditions.

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<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>7</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

<sup>8</sup> On appeal, appellant asserted that OWCP "suppressed" Dr. Smolin's December 3, 2008 report and suggested that this report showed that his 2003 and 2007 heart attacks were work related. The Board has already determined that Dr. Smolin's reports do not support appellant's claim in this regard.

In a February 2, 2011 report, Dr. McGrew indicated that appellant had been under his care since February 2009 and briefly described his 2003 and 2007 heart attacks. He stated: “Based on the affidavit included in [appellant’s] chart describing his job description with the [employing establishment] at the time of the above mentioned cardiac events it is certainly possible that the responsibilities described were stress inducing in [his] case and a contributing factor to his health.” Dr. McGrew described appellant’s current cardiac and psychiatric complaints<sup>9</sup> and noted: “After reviewing [appellant’s] previous medical reports as well as my own observations since he has been in my care, it is my opinion that [appellant’s] angina pectoris and anxiety disorder are related and were contributing factors to [his] 2003 and 2007 myocardial infarctions.”

The Board finds that Dr. McGrew’s February 2, 2011 report is of limited probative value because he did not provide medical rationale in support of his opinion that work factors contributed to appellant’s 2003 and 2007 heart attacks. Dr. McGrew did not describe appellant’s accepted work conditions in any detail or explain how they could have contributed to the occurrence of his 2003 and 2007 heart attacks. He noted that his review of the medical records led him to this conclusion, but he did not provide any description of the medical records or explain how they supported his conclusion. Dr. McGrew did not explain why appellant’s notable nonwork risk factors were not the sole cause of his 2003 and 2007 heart attacks. His report is of limited probative value for the further reason that is equivocal and speculative in nature. Dr. McGrew noted that it was “certainly possible” that work factors contributed to appellant’s health.<sup>10</sup>

In a June 21, 2011 report, Dr. McGrew indicated that appellant had myocardial infarctions in 2003 and 2007 as well as a stress anxiety disorder which aggravated and increased his episodes of angina. In this report, however, he did not provide a clear opinion that appellant’s heart attacks in 2003 and 2007 were related to his accepted work conditions. In fact, Dr. McGrew suggested that appellant’s heart attack in 2003 was due to nonwork factors. He indicated that appellant attempted to return to work in for a short time in 2002 and 2003 in the private car sales industry and noted that, despite coronary high risk, this employment increased his high blood pressure. Dr. McGrew also stated, “In June 2003, [appellant’s] house burned down. This would certainly aggravate angina and induce a heart attack and it did so in his case of 2003.” Dr. McGrew discussed appellant’s current condition but did not provide any further discussion on the cause of his 2003 and 2007 hearts attacks.<sup>11</sup>

In a January 28, 2011 report, Dr. Buchalter, an attending Board-certified psychiatrist, stated that appellant was suffering from generalized anxiety disorder with panic episodes and

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<sup>9</sup> Dr. McGrew stated that appellant had anxiety disorder which frequently increased his episodes of angina.

<sup>10</sup> See *supra* note 7.

<sup>11</sup> Dr. McGrew also stated: “[Appellant] will suffer from this at work or no work[-]related factors or stressors” but did not clearly indicate what he meant by the word “this” in the comment. However, it appears that he was stating that appellant’s health condition would have deteriorated regardless of the existence of work factors. On appeal, appellant alleged that OWCP ignored Dr. McGrew’s June 21, 2011 report, but OWCP fully considered this report in its November 16, 2011 decision denying appellant’s claim. He also claimed that reports from the 1990s of Dr. Iansmith supported his claim. However, reports dated prior to appellant’s 2003 and 2007 heart attacks would not be directly relevant to the question of whether these heart attacks were work related.

obsessive-compulsive traits. He noted that appellant's injury-related condition was still medically present and disabling. In a January 28, 2011 letter, Dr. Buchalter stated, "In my opinion, [appellant's] anxiety disorder contributed to his heart attack." However, his opinion on causal relationship is of little probative value because he did not identify which heart attack he felt was related to the accepted anxiety disorder, nor did Dr. McGrew provide any explanation of why he felt that appellant's anxiety disorder contributed to his cardiac condition.

For these reasons, appellant did not show that he sustained heart attacks in 2003 and 2007 due to his accepted work conditions.

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 did not meet his burden of proof to establish that he sustained heart attacks in 2003 and 2007 due to his accepted work conditions.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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