

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

D.B., Appellant)
)
and) **Docket No. 10-154**
) **Issued: July 8, 2010**
)
DEPARTMENT OF LABOR, EMPLOYMENT)
STANDARDS ADMINISTRATION, Tulsa, OK,)
Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2009 appellant filed a timely appeal from the April 20, 2009 decision of the Office of Workers' Compensation Programs denying his claim for a right eye condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained a right eye condition in the performance of duty.

FACTUAL HISTORY

On October 20, 2009 appellant, then a 63-year-old compliance officer, filed an occupational disease claim alleging that he sustained a central retinal artery occlusion of his right eye caused by job stress, extensive reading of documents and use of a computer. He first became aware of his condition on March 13, 2002. Appellant experienced right eye strain, pain and impaired vision and severe headaches.

On July 17, 2003 Dr. Randall M. Webb, an attending neurologist, provided findings on physical examination and made a tentative diagnosis of central retinal artery occlusion.

On July 31, 2003 Dr. Bradley K. Farris, an attending ophthalmologist and neurologist to whom appellant was referred by Dr. Webb, provided findings on physical examination and diagnosed a central retinal artery occlusion of the right eye. On June 14, 2006 he noted appellant's history of transient loss of vision in the right eye prior to June 2003. Dr. Farris opined that the right eye condition was due either to atherosclerosis or vasospasm but it was possible that job-related stress and eye strain could be a contributing factor.

On July 17, 2006 the Office asked appellant to provide additional evidence, including a comprehensive medical report containing a rationalized opinion as to whether his right eye condition was caused or aggravated by his employment.

On October 12, 2006 Dr. Michael L. Soper, a Board-certified ophthalmologist and an Office referral physician, reviewed the medical history and provided findings on physical examination. He diagnosed right eye status post central retinal artery occlusion, macular degeneration, cataracts, optic atrophy and sensory exotropia. Dr. Soper stated that he had never encountered a central retinal artery occlusion attributable to job stress. The majority of cases of this condition were caused by a vascular abnormality. Another possible diagnosis was nonarteric ischemic optic neuropathy that was caused by compromised blood flow (hardening of the arteries) to the optic disc.

Due to the conflict in medical opinion, the Office referred appellant to Dr. Paul D. Weishaar, a Board-certified ophthalmologist, for an independent medical examination and opinion as to the cause of his right eye condition.

On May 11, 2007 Dr. Weishaar reviewed the medical history and provided findings on physical examination. He found that the most consistent diagnosis for appellant's right eye condition was nonarteric anterior ischemic optic neuropathy. Dr. Weishaar opined that, based on his review of the medical literature, there was no direct or indirect evidence that job-related stress was a contributing factor of this condition.

By decision dated May 16, 2007, the Office denied appellant's claim, finding that the weight of the medical opinion evidence was represented by the opinion of Dr. Weishaar. It established that his right eye condition was not causally related to factors of his federal employment.

Appellant requested a review of the written record. In a June 26, 2007 report, Dr. Farris explained his reasons for disagreeing with Dr. Weishaar's report based on his 21 years of experience as a practitioner and professor of ophthalmology, neurology and neurosurgery.

By decision dated November 13, 2007, an Office hearing representative set aside the May 16, 2007 decision, finding that a conflict in medical opinion did not initially exist between Dr. Farris and Dr. Soper. However, the additional report from Dr. Farris with further medical rationale created a conflict with Dr. Soper and Dr. Weishaar who was now a referral physician rather than an impartial medical examiner. The case was remanded for referral to an impartial medical specialist for an evaluation to resolve the conflict in medical opinion.

In a February 27, 2008 report, Dr. James D. Sharp, a Board-certified ophthalmologist specializing in diseases of the retina, macula and vitreous, was provided with an updated statement of accepted facts and the medical evidence. He conducted an impartial evaluation of appellant's right eye condition. Dr. Sharp noted a consensus among the physicians that he had an adverse vascular event in his right eye that occurred as a result of a central retinal artery occlusion or ischemic event in the optic nerve. He noted that appellant's laboratory hypercoagulable profile revealed elevated lipoprotein which gave him a genetic predisposition for an increased incidence of hypercoagulable problems such as vascular occlusions, including a central retinal artery occlusion. Dr. Sharp's history of hypertension and atherosclerotic heart disease were strong risk factors for a central retinal artery occlusion. He opined that the medical evidence did not establish that appellant's work factors were the cause of his right eye condition.

By decision dated March 14, 2008, an Office hearing representative found that the weight of the medical evidence was represented by the opinion of Dr. Sharp and established that appellant's right eye condition was not causally related to his employment.

On March 11, 2009 appellant requested reconsideration. In a June 23, 2008 report, Dr. Farris stated that it was possible for a migraine event and secondary job stress factor to have caused appellant's visual loss in his right eye. In reports dated July 22, 2008 and March 13, 2009, Dr. Webb provided findings on physical examination and diagnosed migraines and an ischemic optic neuropathy on the right. He agreed with Dr. Farris that the cause of appellant's right eye visual loss could not be definitively established but that job stress was a possibility.

By decision dated April 20, 2009, the Office denied modification of the March 14, 2008 decision.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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. 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.²

¹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

² *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Section 8123(a) of the Federal Employees' Compensation Act provides that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."³ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴

ANALYSIS

Due to the conflict in medical opinion as to the cause of appellant's right eye condition, the Office properly referred the case to Dr. Sharp for an impartial medical evaluation.

Dr. Sharp, a Board-certified ophthalmologist specializing in diseases of the retina, macula and vitreous, was provided with an updated statement of accepted facts and the medical records, conducted an independent review of appellant's right eye condition. He noted a consensus among the physicians that he had an adverse vascular event in his right eye that occurred as a result of either a central retinal artery occlusion or ischemic event in the optic nerve. Dr. Sharp noted that appellant's laboratory hypercoagulable profile revealed elevated lipoprotein which gave him a genetic predisposition for an increased incidence of hypercoagulable problems such as vascular occlusions, including a central retinal artery occlusion. His history of hypertension and atherosclerotic heart disease were strong risk factors for a central retinal artery occlusion. Dr. Sharp opined that the medical evidence did not establish that appellant's work factors were the cause of his right eye condition. The report of Dr. Sharp is based upon a complete and accurate factual and medical background. The Board finds that Dr. Sharp's thorough and well-rationalized report established that appellant's right eye condition was not causally related to his employment. Accordingly, appellant did not establish his claim for a right eye condition related to his federal employment.

On June 23, 2008 Dr. Farris stated that it was possible for a migraine event and secondary job stress factor to have caused appellant's right eye visual loss. In reports dated July 22, 2008 and March 13, 2009, Dr. Webb noted his agreement with Dr. Farris that the cause of appellant's right eye visual loss could not be definitively established but that job stress was a possibility. An additional report from a claimant's physician, which essentially repeats earlier findings and conclusions, is generally insufficient to overcome the weight accorded to an impartial medical specialist's report where appellant's physician had been on one side of the conflict in the medical opinion that the impartial medical examiner resolved.⁵ Dr. Farris and Dr. Webb were on one side of the conflict which Dr. Sharp's opinion was found to resolve. In their 2008 and 2009 reports, they merely reiterated their opinions that appellant's right eye condition could have been caused by job stress. Moreover, their opinions regarding causal relationship are speculative.

³ 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁴ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁵ *See Roger G. Payne*, 55 ECAB 535 (2004).

They are not sufficient to overcome the special weight accorded Dr. Sharp's medical opinion as the impartial medical specialist.

On appeal appellant explained his disagreement with the medical opinion of Dr. Sharp and critiqued the Office's review of the medical evidence. As noted, it is appellant's burden to provide rationalized medical evidence from a physician establishing that his right eye condition was causally related to his employment. Appellant's belief of a causal relationship is of no probative value.⁶

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his right eye condition was causally related to factors of his employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 20, 2009 is affirmed.

Issued: July 8, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁶ See *Patricia J. Glenn*, 53 ECAB 159 (2001).