

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

D.M., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
U.S. MERCHANT MARINE ACADEMY,
Kings Point, NY, Employer**

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**Docket No. 11-417
Issued: September 12, 2011**

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 11, 2010 appellant filed a timely appeal from an August 27, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury on April 29, 2009 while in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 6, 2009 appellant, then a 70-year-old mason, filed a traumatic injury claim alleging that he sustained injury on April 29, 2009 as a result of his employment. He explained that he felt pain in his chest and left arm area while working on the main door ramp.

By letter dated May 21, 2009, OWCP requested that appellant submit medical evidence that included dates of examination and treatment, history of injury given by him to the physician, detailed descriptions of the findings, results of all testing, diagnosis and clinical course of treatment followed, and the physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

Appellant subsequently submitted an attending physician's report dated June 3, 2009, and an OWCP-5c, work capacity evaluation completed by Dr. Martin H. Handler, a Board-certified cardiologist on June 11, 2009. These form reports noted diagnoses of preexisting coronary artery disease, progressive angina and stent placement; however, they did not provide a history of injury or any opinion regarding the cause of the diagnoses.

By decision dated June 22, 2009, OWCP denied appellant's claim finding that appellant had not established that he sustained a work-related injury on April 29, 2009.

On June 23, 2009 OWCP received a May 6, 2009 report from Dr. Handler in which he noted that appellant was admitted to North Shore Hospital on April 29, 2009 with chest pain. Dr. Handler also related that appellant had a history of unstable angina, status post coronary artery bypass surgery in 2000 and coronary stent in 2006. He concluded that appellant should not return to work in the foreseeable future.

Appellant requested reconsideration on June 11, 2010. In support of the reconsideration request, he submitted physicians' notes concerning cardiac evaluation and care in 2000. Appellant also submitted a March 1, 2010 report from Dr. Handler. Dr. Handler provided a history of treatment, noting that appellant had initially had a heart catheterization in December 1999 due to angina symptomology; appellant was then found to have coronary artery disease. Because of progressive symptoms, in April 2000 appellant again underwent heart catheterization, following which on May 4, 2000 he had a four-vessel coronary artery bypass surgery. Dr. Handler indicated that because of recurrent angina symptomology appellant had a repeat heart catheterization on March 15, 2006 which revealed progressive coronary artery disease. Appellant then underwent coronary angioplasty with a stent to the left circumflex coronary artery. Dr. Handler also noted that appellant had a repeat heart catheterization with angioplasty and a stent to the right coronary artery on March 16, 2006.

Dr. Handler stated that appellant had an episode of chest pain on April 29, 2009 while at work, and appellant was taken to North Shore University Hospital, and was hospitalized with a diagnosis of "chest pain and hypertension difficult to control. His report subsequently noted that appellant underwent a repeat heart catheterization on June 12, 2009, and appellant was found to have severe coronary artery disease. Angioplasty was performed and stents were again placed in the right coronary artery. The report further noted that appellant had documented progressive

coronary artery disease since his hospitalization on April 29, 2009, that he continued to have exertional anginal symptomology despite medical therapy.

Dr. Handler went on to opine:

“[A]ppellant was found to have a closed bypass graft as well as progressive disease of the right coronary artery which required coronary stenting after his chest pain episode of April 29, 2009. The causal relationship can be inferred as well as aggravation and exacerbation of his coronary artery disease ... as [appellant] has documented progressive coronary artery disease since his hospitalization of April 29, 2009 as well as the need for repeat coronary stenting of the right coronary artery as he continues to have exertional anginal symptomology despite medical therapy.”

The report concluded that appellant was unable to be employed due to the exacerbation symptomology since the incident on April 29, 2009.

On August 27, 2010 OWCP denied modification of the previous decision, after merit review.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a

² 5 U.S.C. §§ 8101-8193.

³ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁵ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

physician's 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.⁶

ANALYSIS

The Board finds that appellant has submitted insufficient medical evidence to establish that his cardiac condition after April 29, 2009 was caused or aggravated by his federal employment.

Following the April 29, 2009 incident when appellant felt chest pain at work while performing masonry work on a door ramp, he has been treated by Dr. Handler who, in his progress notes and narrative report of March 1, 2010, provided extensive detail regarding appellant's cardiac history. The record is clear that appellant has been diagnosed with coronary artery disease since December 1999, for which he underwent four-vessel bypass surgery on May 4, 2000 and for which he underwent two coronary angioplasty procedures, with stenting in March 2006. Dr. Handler's reports however do not provide any history of injury indicating an awareness of the work activities appellant performed on April 29, 2009. While he did note appellant's episode of chest pain on April 29, 2009 and thereafter stated that "the causal relationship can be inferred as well as aggravation and exacerbation of his coronary artery disease," his opinion provides no rationalized explanation of causal relationship between any activities appellant performed at work on April 29, 2009 and his current condition. The Board notes that Dr. Handler's report clearly outlines progressive coronary heart disease since the initial diagnosis in 1999, and findings of stenosis of the previous stents, as well as severe obstruction of five arteries on repeat catheterization of June 12, 2009. Dr. Handler provided no explanation as to how this progression and deterioration of appellant's coronary status was in any way caused or aggravated by any work activity on April 29, 2009. The Board cannot infer causal relationship. Neither the fact that a condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

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 the incident on April 29, 2009 caused a personal injury.

⁶ Gary J. Watling, 52 ECAB 278 (2001); Shirley A. Temple, 48 ECAB 404 (1997).

⁷ Roy L. Humphrey, 57 ECAB 238 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 27, 2010 is affirmed.

Issued: September 12, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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