

FACTUAL HISTORY

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. Appellant claimed that he sustained stress due to the duties of his job, including dealing with the management of hazardous waste. He 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 surgical 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.³

In a February 6, 2009 decision, OWCP denied appellant's claim finding 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 denied modification of the February 6, 2009 decision.

In a decision dated May 7, 2010,⁴ the Board affirmed OWCP's February 6 and June 4, 2009 decisions, finding that the March 10, 2008 report of Dr. David H.S. Iansmith, an attending Board-certified cardiologist, and the March 17, 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.⁵ 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 February 2, 2011 letter, Dr. McGrew noted that appellant had been under his care since February 2009. He briefly described appellant's 2003 and 2007 heart attacks and 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.”

³ Appellant was not working for the employing establishment at the time of his 2003 and 2007 heart attacks.

⁴ Docket No. 09-1864 (issued May 7, 2010).

⁵ In his March 17, 2009 report, Dr. McGrew mentioned appellant's 2003 and 2007 heart procedures and noted that he was a new patient under his care for coronary arterial disease. He stated, “In my opinion [appellant's] anxiety disorder has a major impact on his heart. Also, his heart attacks are related to his anxiety disorder which was documented by his previous cardiologist, Dr. Iansmith as well.”

Dr. McGrew noted that, 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. He stated:

“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 [his] angina pectoris and anxiety disorder are related and were contributing factors to [his] 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. In a January 28, 2011 letter, Dr. Buchalter stated: “In my opinion, [appellant’s] anxiety disorder contributed to his heart attack.”

In a May 23, 2011 decision, OWCP denied appellant’s claim. It found 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. OWCP found that the medical evidence from Dr. McGrew and Dr. Buchalter did not provide a rationalized medical opinion on how appellant’s 2003 and 2007 heart attacks were work related.

In a June 21, 2011 report, Dr. McGrew 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. He noted that appellant attempted to return to work for a short time in 2002 and 2003 in the private car sales industry and despite coronary high risk, this employment increased his high blood pressure. Dr. McGrew 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.” At that time, appellant’s accepted conditions were stress reaction disorder, drug dependency and aggravation of angina. Dr. McGrew indicated that appellant wanted to return to work, but that these conditions prevented him from doing so. He referenced his February 2, 2011 report and stated:

“[B]ased on the affidavit of [appellant’s] job description with the [employing establishment], that aspect of his job responsibilities described were [sic] stress inducing in [his] case [and] are still contributing factors to his health....”

* * *

“[Appellant] will suffer from this at work or no work[-]related factors or stressors.”

In a decision dated November 16, 2011, OWCP affirmed its May 23, 2011 decision finding that appellant did not submit rationalized medical evidence to support his claim. It found that the June 21, 2011 report of Dr. McGrew did not establish that the heart attacks in 2003 and 2007 were work related.

In a decision dated February 15, 2013,⁶ the Board affirmed OWCP's November 16, 2011 decision, finding that appellant did not submit sufficient medical evidence to establish that he sustained heart attacks in 2003 and 2007 due to his accepted conditions. It found that the medical evidence from Dr. McGrew did not provide adequate medical rationale on the issue of causal relationship.

In a November 5, 2013 letter received on November 11, 2013, appellant, through counsel, requested reconsideration of his claim. Counsel submitted a new report from Dr. McGrew dated October 30, 2013. Dr. McGrew stated that he hoped that his report would assist appellant in showing that his heart attacks in 2003 and 2007 were related to his accepted work-related condition of aggravation of angina decubitus. He understood that, in federal workers' compensation cases, an accident or condition must contribute to the development of an additional condition in order to be related. Dr. McGrew noted that an additional condition can be related as an accepted condition even if the accident or the accepted condition is not the sole cause or primary cause of the secondary condition, which in this case was appellant's heart attacks. By that standard, appellant's accepted condition of aggravation of angina was a contributing factor in the development and occurrence of his heart attacks. Dr. McGrew stated that, to clarify his previous opinions, the fact that an aggravation of angina had been accepted meant that it had been accepted that appellant would have increased angina attacks in the future, whether he was employed or not. He indicated that the high stress level of appellant's job (including handling drug interdiction, monitoring large shipments of gold and working on the case of the siege at Waco, TX) would involve increased blood pressure as well as other physiological symptoms which eventually formed the basis for the accepted aggravation. Dr. McGrew stated that, once this type of aggravation began, there was no basis for asserting that the aggravation would simply go away. He stated:

“[Appellant] also suffers a continuing anxiety reaction which necessarily continue[s] to aggravate and compromise his cardiovascular condition, thus the aggravation of angina continued indefinitely. Although I have previously mentioned catastrophic events in [appellant's] life such as his house burning down, which may have played a part in increasing anxiety even further, thus putting additional stressors on his cardiovascular system; such an event in and of itself would only be one factor in a myriad of many, along with his continuing aggravation of angina, in causing the perfect storm necessary to initiate a heart attack. [Appellant's] increased blood pressure due to stress, a restriction in his coronary vessels unable to manage the pressure of the blood, ultimately lead to an infarction.

“The important consideration, which I understand is not mirrored by Dr. Smolin, is that [appellant's] cardiovascular system has been compromised significantly by his aggravation of angina, that his aggravation continues unabated and this condition, by itself, is a competent producing cause of further deterioration of his cardiac condition. If [appellant's] cardiac condition continues to decline,

⁶ Docket No. 12-906 (issued February 15, 2013).

certainly within a reasonable medical probability, his angina will be a significant cause of the deterioration and/or further a cardiac incident.”

In a November 18, 2013 decision, OWCP denied appellant’s request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that Dr. McGrew’s October 30, 2013 report was similar to his previously submitted reports of record.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ OWCP’s regulations provide that the evidence or argument submitted by 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.⁸ 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.⁹ 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.¹⁰ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹¹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

ANALYSIS

OWCP issued a merit decision on November 16, 2011 which denied appellant’s claim that his heart attacks in 2003 and 2007 were related to his accepted work conditions.¹³ Appellant requested reconsideration of this decision on November 11, 2013.

As noted above, the Board does not have jurisdiction over an OWCP merit decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument.

⁷ Under section 8128 of FECA, “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.” 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹² *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹³ OWCP accepted that appellant sustained an anxiety disorder, an episode of Xanax dependency and the consequential condition of aggravation of angina decubitus.

In support of his reconsideration request, appellant submitted an October 30, 2013 report of Dr. McGrew, an attending Board-certified cardiologist. The Board finds that this constitutes new and relevant evidence which requires OWCP to reopen appellant's claim for a merit review.¹⁴

In his October 30, 2013 report, Dr. McGrew indicated that a given work-related condition needed only to partially contribute to an additional condition for that additional condition to be considered work related. He stated that, by this standard, appellant's accepted condition of aggravation of angina was a contributing factor in the development and occurrence of his heart attacks in 2003 and 2007. Dr. McGrew noted that, to clarify his previous opinions, the fact that aggravation of angina had been accepted meant that it had been accepted that appellant would have increased angina attacks in the future, whether he was employed or not. He indicated that the high stress level of appellant's job (including handling drug interdiction, monitoring large shipments of gold and working on the case of the siege at Waco, TX) would involve increased blood pressure as well as other physiological symptoms that eventually formed the basis for the accepted aggravation. Dr. McGrew stated that, once this type of aggravation began, there was no basis for asserting that the aggravation would simply go away. He noted that he had previously mentioned other stressors such as appellant's house burning down, but indicated that "such an event in and of itself would only be one factor in a myriad of many, along with his continuing aggravation of angina, in causing the perfect storm necessary to initiate a heart attack."

In its November 18, 2013 decision, OWCP denied appellant's reconsideration request indicating that Dr. McGrew's October 30, 2013 report was similar to his previously submitted reports which were reviewed by OWCP and deemed insufficient to meet appellant's burden of proof. The Board notes, however, that the October 30, 2013 report of Dr. McGrew contains significantly greater relevant medical discussion than his previously submitted reports with respect to the relevant issue of this case, *i.e.*, whether appellant's heart attacks in 2003 and 2007 were related to his accepted work conditions. For example, in his March 17, 2009 report, Dr. McGrew made a conclusory statement on causal relationship, without further elaboration, when he stated, "In my opinion [appellant's] anxiety disorder has a major impact on his heart. Also, his heart attacks are related to his anxiety disorder which was documented by his previous cardiologist...." In his February 2, 2011 report, he indicated that it was "certainly possible" that appellant's work stress was "a contributing factor to his health." Dr. McGrew again made a conclusory statement on causal relationship when he stated, "[I]t is my opinion that [appellant's] angina pectoris and anxiety disorder are related and were contributing factors to [his] 2003 and 2007 myocardial infarctions." In a portion of his June 21, 2011 report, he indicated that appellant's 2003 heart attack was induced by the nonwork factor of his house burning down. In another portion of the report, Dr. McGrew posited that appellant's work duties contributed to his health without clearly indicating whether a work-related condition contributed to his heart attacks in 2003 and 2007.¹⁵

¹⁴ See *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

¹⁵ The Board also notes that the October 30, 2013 report of Dr. McGrew also contains greater relevant medical discussion than the previously submitted reports of appellant's other attending physicians.

Therefore, the case is remanded to OWCP in order to conduct a proper merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a). In conjunction with conducting this merit review, OWCP shall issue an appropriate merit decision regarding his claim that his heart attacks in 2003 and 2007 were related to his accepted work conditions.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a). The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 11, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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