United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 15-350**
	)	**Issued: April 15, 2015**
U.S. SENATE, OFFICE OF THE SERGEANT AT ARMS, Washington, DC, Employer	)	

Appearances:
Stephen Domenic Scavuzzo, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 2, 2014 appellant, through counsel, filed a timely appeal from a June 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On August 31, 2012 appellant, then a 56-year-old printing reprographics specialist, filed an occupational disease claim alleging that he sustained dilated nonischemic cardiomyopathy as a result of strong chemical odors and occasional spills at the employing establishment. He

[1] 5 U.S.C. § 8101 *et seq.*

alleged that his work environment was poorly ventilated and that it worsened with the installation of a new press machine in August 2006. Appellant first became aware of his condition on August 31, 2006 and its relation to his federal employment on October 30, 2009. He stopped work permanently on December 11, 2009.

In an undated narrative statement that accompanied the claim, appellant advised that he worked at the employing establishment from 2002 until 2010. He noted that he worked in the press room where he was in daily contact with chemicals and that there were numerous incidents of chemical spills in the work area. Appellant further noted that the press room was in a basement and that there were no windows or doors that could be opened to allow for proper ventilation. He provided a list of the products that he came in contact with at work. Appellant advised that he was very health conscious and had a complete work up of his heart in 1993 which found that it was in good condition with no signs of heart disease. He advised that around August 24, 2006 a nurse notified him that his blood pressure was normal, but his heart sounded strange and that he should see a cardiologist. Appellant noted that on August 30, 2006 the chemical odors were particularly strong because new equipment had recently been installed. He advised that he became sick and vomited at work and later went to the emergency room. Appellant's emergency room nurse told him that he should have his heart evaluated. He then underwent multiple tests which revealed nonischemic cardiomyopathy. Appellant's children and siblings were tested for the disease in order to find a hereditary link, but no one else had the disease. While hospitalized the doctors found an arrhythmia and determined that appellant needed an implantable cardiac defibrillator (ICD). Appellant advised that he never had a medical condition of this sort before and was first diagnosed with cardiomyopathy in 2006.

In another undated statement, an unidentified supervisor confirmed that appellant worked for the employing establishment from 2002 to 2010 and advised that, before working for the employing establishment, appellant had over 30 years' experience working in the printing industry. The supervisor acknowledged that there were several spills, leaks, and broken pipes during the last few years, that the employing establishment was located at the Postal Square Building, and that appellant was present for "some of the significant water events and resulting repairs. The supervisor noted that the work environment was ventilated to exceed Government Services Administration (GSA) standards and that the work area always passed inspections by the Office of Compliance. Standard printing industry chemicals were used and a list of the products used was provided. The supervisor advised that protective gear was made available to employees, but was not mandatory. Appellant's job description was also submitted, which stated that the hazards of the position included moving machinery, excessive noise, and exposure to chemicals from inks, solvents, and paper dust. Also submitted were material safety data sheets (MSDS) for several substances.

A variety of medical reports accompanied the claim. This included a September 8, 2006 report from Dr. Zayd Eldadah, Board-certified in internal medicine and cardiovascular disease, who advised that appellant had noncongestive cardiomyopathy and ventricular tachycardia. He noted that appellant was implanted with an ICD that day without incident. In an August 11, 2009 report, Dr. Manish Shah, Board-certified in internal medicine and cardiovascular disease, advised that appellant underwent a radiofrequency ablation of an outflow tract tachycardia emanating from his left coronary artery. In a December 15, 2009 report, Dr. Bruce Zinsmeister, Board-certified in internal medicine and cardiovascular disease, advised that appellant was

diagnosed with cardiomyopathy with recurrent episodes of ventricular tachycardia. He stated that he advised appellant to take a leave of absence from work in order to better maintain his condition. Dr. Zinsmeister further advised that appellant could possibly be a candidate for a cardiac transplant. In a November 18, 2009 report, Dr. Peter Boolukos advised that appellant had an onset of shortness of breath with disorientation while sleeping. He noted that appellant was diagnosed with cardiomyopathy in 2006 and had an ICD placement at that time. Dr. Boolukos noted that appellant also had a prior history of mild hypertension. Appellant submitted several status reports concerning his arrhythmias and defibrillator.

In a January 2, 2011 report, Dr. Lynese Lawson, an osteopath and family practitioner, advised that she had treated appellant since November 7, 2009 for dilated cardiomyopathy, which was diagnosed in 2006. She noted that appellant did not have a history of heart disease or any significant past medical history. Dr. Lawson advised that cardiomyopathy can be either acquired or inherited. She stated that appellant did not have any known family history of cardiomyopathy. Dr. Lawson noted that appellant's employment as a press operator exposed him to a number of different chemicals including heavy metals which can become toxic and worsen heart function. She advised that urine toxic metals tests and hair elements tests revealed elevated levels of mercury, lead, aluminum, antimony, arsenic, cadmium, mercury, potassium, vanadium, boron, and iodine. Dr. Lawson opined that appellant's condition was the result of exposure to chemicals or metals in his work environment. She advised that appellant should not return to the work environment because it could possibly exacerbate and worsen his heart disease.

In an August 17, 2012 report, Dr. Erika Feller, Board-certified in cardiovascular disease and advanced heart failure and transplant cardiology, advised that she began treating appellant nearly two years earlier. She stated that appellant was first diagnosed with dilated cardiomyopathy in 2006, which was complicated by his frequent deleterious episodes of ventricular tachycardia (VT). Dr. Feller noted that a defibrillator was implanted to treat his VT with electric shock therapy. She also advised that appellant was given a number of tests which revealed no evidence to suggest that his cardiomyopathy was secondary to ischemia, coronary artery disease, tachycardia, thyroid disease, alcohol, substance abuse, noncompaction, infiltrative diseases, right ventricular dysplasia, genetics, or myocarditis. Dr. Feller opined that after researching the chemicals involved in the operation of a print press she found that many of the chemicals were cardiotoxic. She stated that testing had not identified an etiology for appellant's cardiomyopathy, but it was entirely likely that his exposure to print press chemicals for many years caused his cardiomyopathy. Dr. Feller stated that there was no definitive way to make that diagnosis, but noted that she currently diagnosed cardiomyopathy due to toxic exposure.

By letter dated December 14, 2012, OWCP notified appellant that evidence was insufficient to establish that notification of his injury was timely and advised him to submit a questionnaire substantiating the factual element of his claim. In a letter of the same date, OWCP asked the employing establishment to provide comments from a knowledgeable supervisor and to provide all information relevant to appellant's claim.

In a January 14, 2013 response, appellant advised of his work history and exposure to chemicals. He reiterated that, although he was diagnosed in 2006, he did not become aware of its relation to its employment until 2009. Appellant also advised that his primary care physician,

prior to being diagnosed with heart problems in 2006, had treated him for 15 years for conditions such as mild hypertension, walking pneumonia, the flu, and colds. He stated that the medical records from this physician were in storage and not readily available.

On June 14, 2013 OWCP forwarded the medical record and a statement of accepted facts, to an OWCP medical adviser, Dr. Cynthia Crawford-Green, Board-certified in cardiovascular disease and internal medicine.[2] The statement of accepted facts advised that appellant's job responsibilities as a printing reprographics specialist included plate-making, press room, electric printing, photocopying, book assembly, bindery, floor chart printer management, floor chart mounting work, and mailing operations. It advised that appellant had a preexisting history of noncongestive cardiomyopathy and ventricular tachycardia and a family history of sudden death, congestive heart failure and coronary artery disease. In an August 1, 2013 report, Dr. Crawford-Green opined that appellant's cardiomyopathy was not caused or exacerbated by the fumes, strong chemical odors and occasional spills in the pressroom. She noted that appellant had preexisting hypertension which could have contributed to his condition and states that there were no corroborating statements from any source that appellant was exposed to strong fumes on August 30, 2006 or exposed to chronic fumes in his work environment. Dr. Crawford-Green questioned the extent of appellant's chemical exposure and also whether his condition only began in 2006. She opined that he had cardiomyopathy for some time prior.

By decision dated September 25, 2013, OWCP denied appellant's claim because evidence was insufficient to establish that the diagnosed condition was causally related to the established work-related events.

On April 11, 2014 appellant through his attorney requested reconsideration. Counsel noted submitting additional documentation and asserted that the evidence supported that appellant's condition was work related.[3]

By decision dated June 5, 2014, OWCP denied modification of a September 25, 2013 decision as the medical evidence was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden 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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

[2] OWCP advised that it was unable to send appellant for a second opinion examination because he was in the hospital awaiting a heart transplant.

[3] Counsel stated that a 32-page document accompanied the request. The record before the Board does not contain this document. A two-page document regarding workplace solvent exposure did accompany the request.

the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (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.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[7] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant submitted a January 2, 2011 report from Dr. Lawson and an August 17, 2012 report from Dr. Feller, which provide some support that his cardiac condition was caused or aggravated by workplace chemical exposure. To further develop the matter, on June 14, 2013 OWCP forwarded the medical record and a statement of accepted facts, to an OWCP medical adviser. The statement of accepted facts advised that appellant's job responsibilities as a printing reprographics specialist included plate-making, press room, electric printing, photocopying, book assembly, bindery, floor chart printer management, floor chart mounting work, and mailing operations. It advised that he had a preexisting history of noncongestive cardiomyopathy and ventricular tachycardia and a family history of sudden death, congestive heart failure and coronary artery disease. OWCP's procedures state that "wherever possible, exposure data, job descriptions or duties, and other records should be condensed to essential information and incorporated into the body of the statement of accepted facts."[9] The statement of accepted facts

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

[8] *James Mack*, 43 ECAB 321 (1991).

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.4 (September 2009).

did not fully detail appellant's exposure to particular chemicals. In fact, no mention of any chemicals are listed.

In her August 1, 2013 report, Dr. Crawford-Green opined that appellant's cardiomyopathy was not caused or exacerbated by the fumes, strong chemical odors and occasional spills in the pressroom. She noted that appellant had preexisting hypertension which could have contributed to his condition and states that there were no corroborating statements from any source that appellant was exposed to strong fumes on August 30, 2006 or exposed to chronic fumes in his work environment. Dr. Crawford-Green's report, however, is not sufficiently rationalized. She stated that there was no evidence that appellant had exposure to chronic fumes during his employment, when the employing establishment and his job description stated that there was some degree of chemical exposure at work. Dr. Crawford-Green also did not address Dr. Lawson's report which stated that appellant had elevated levels of certain toxins in his urine and hair samples. She concluded that appellant had cardiomyopathy for some time prior to 2006, but did not explain how this would rule out his condition being caused or aggravated by his work environment, given the fact that he began working for the employing establishment in 2002.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[10] Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[11] As OWCP began development of the medical evidence, regarding whether appellant's condition was work related, it had the obligation to assure that a proper evaluation was done.[12]

The case will be remanded to OWCP for further development of the factual and medical evidence. It should obtain from the employing establishment the results of any industrial hygiene tests taken during appellant's period of employment, and obtain past and present listings of all chemicals, irritants, and pathogenic agents in appellant's work area and all available information on concentration levels for such agents. Thereafter, OWCP shall prepare a new statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a second opinion examination. The specialist shall provide a rationalized medical opinion regarding whether appellant's cardiac condition was caused or aggravated by factors of his federal employment.[13] Following this and any other further development deemed necessary, it shall issue a *de novo* decision on appellant's claim.

[10] *Richard Kendall*, 43 ECAB 790 (1992).

[11] *Phillip L. Barnes*, 55 ECAB 426, 441 (2004).

[12] *See Robert Kirby*, 51 ECAB 474 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

[13] If appellant is medically unable to attend an examination, OWCP shall provide the referral specialist with the statement of accepted facts, relevant exposure data, and the medical record.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant developed a heart condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: April 15, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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