

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

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**J.S., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
CITIZENSHIP & IMMIGRATION SERVICES,  
Boston, MA, Employer**

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**Docket No. 16-1244  
Issued: March 15, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 25, 2016 appellant filed a timely appeal from an April 22, 2016 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant sustained a stress-related aggravation of gastrointestinal (GI) disorders in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant timely requested oral argument before the Board. By order dated November 23, 2016, the Board exercised its discretion and denied the request, finding that the issue could be adequately adjudicated based on a review of the case record. *Order Denying Oral Argument*, Docket No. 16-1244 (issued November 23, 2016).

## **FACTUAL HISTORY**

On May 1, 2015 appellant, then a 51-year-old immigration service officer, filed an occupational disease claim (Form CA-2) alleging that he sustained GI disorders causally related to factors of his federal employment. He stopped work on April 14, 2015 and returned to work on April 17, 2015.

In a statement accompanying his claim, appellant related that he experienced dizziness beginning in 1992. He attributed his dizziness to a viral infection, migraines, a transient ischemic attack, an ear infection, and hypertension to hypotension. Appellant advised that the listed conditions were secondary to Meniere's disease, benign paroxysmal positional vertigo, generalized anxiety disorder, and orthostatic hypotension, and resulted in nausea, headache, blurry eyes, pain in the ears and neck, and temporomandibular joint disorders. He provided a history of his treatment for his conditions. Appellant related that he experienced "spontaneous episodes of vertigo" caused by Meniere's disease. Beginning in 2004 he sustained "dizziness, vertigo, headache[s], [and] hearing problem[s] at work associated with bad postural position..." Due to his vertigo, appellant often had to lie down and miss time from work, which caused "emotional stress." He attributed his Meniere's disease to a viral infection in 1992 while he was in the military.

Appellant submitted medical evidence regarding his treatment from 2012 to 2015 for various conditions including dizziness and chronic vertigo. He also submitted reports from his colonoscopy and endoscopy.

By letter dated May 14, 2015, OWCP requested that appellant submit additional factual and medical information, including a statement describing in detail the employment duties he believed caused or contributed to his condition and a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and work factors.

Appellant, in a June 12, 2015 statement, described his treatment in 2002 for fatty liver and gallstones and in 2005 for external hemorrhoids, gastritis, and irritable bowel syndrome. In 2002 he underwent a cholecystectomy. Appellant experienced anxiety and stress in 2008 and 2009 that did not subside and prevented work. He also had a hiatal hernia, gastroesophageal reflux disease (GERD), and internal hemorrhoids. Appellant described his symptoms of abdominal pain, constipation, and diarrhea. He related:

"Every time I am at work I experience those events of pain, nausea, belching, flatulence, bloating, diarrhea and constipation, associated with other GI signs and symptoms. I have discomfort at work and unable to concentrate most of the time I have stress and anxiety while performing my duties at work and this causes my GI disorders to flare up."

Appellant attempted to work volunteer overtime, but often experienced GI difficulty and had to seek treatment in the emergency room. He described his physical conditions and asserted that his numerous ailments caused limitations in his activities of daily living and significant disability.

In another statement dated June 12, 2015, appellant indicated that he would provide his opinion as a physician and patient. He asserted that his condition "flared up" during work hours.

Appellant's supervisor, in a June 16, 2015 statement, advised that he disagreed with the allegations. The supervisor related that appellant did not request "any accommodation with respect to claimed disability" prior to filing his claim and performed his duties "in accordance with all expectations."

By decision dated June 25, 2015, OWCP denied appellant's claim as he had not submitted a factual statement describing in detail the work factors to which he attributed his condition. It further noted that the medical evidence of record failed to diagnose a condition causally related to employment.

On July 6, 2015 appellant requested a telephone hearing before an OWCP hearing representative. In an accompanying statement, he related that in 2005, 2008, 2011-2012, and 2014 he experienced difficulty post cholecystectomy due to fatty liver and abdominal clips, irritable bowel syndrome, chronic diarrhea, chronic constipation with internal and external hemorrhoids, a sliding-type hiatal hernia, severe GERD with sleep apnea, dyspepsia, and gastritis. Appellant asserted these conditions aggravated his GI problems.

At the telephone hearing, held on March 7, 2016, appellant related that he received military disability for his GERD, irritable bowel syndrome, and hiatal hernia. He described his GI problems after he began working for the employment establishment. Appellant asserted that work aggravated his condition. In response to the question of what parts of the job he found stressful, appellant related that it was the "bulk of work" and that any stress caused abdominal pain, increased anxiety, and adversely affected his health. Appellant defined the "bulk of work" as the cases he did most of the time, noting that he was "very meticulous." He had requested a workstation near the restroom, which the employing establishment granted.

On March 15, 2016 appellant related his GI disorder "developed at work due to anxiety and stress associated with other medical condition[s] [that] contributed to the onset and worsening" of his symptoms. He noted that antacids and pain relievers did not help his condition and that his condition had comorbidities.

By decision dated April 22, 2016, OWCP's hearing representative affirmed the June 8, 2015 decision. He found that appellant had not submitted evidence supporting his allegation of a heavy workload.

On appeal appellant contends that multiple factors including stress and anxiety caused his GI disorder. He maintains that the medical evidence supports that work aggravated his condition.

### **LEGAL PRECEDENT**

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>3</sup> On the other hand, the

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

disability is not covered where it results from such factors as an employee's fear of a reduction-in-force, or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>6</sup>

A claimant must specifically identify the employment factors or incidents alleged to have caused his condition and establish a factual basis for his allegations with probative and reliable evidence.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not established that he sustained an emotional or stress-related condition in the performance of duty. Appellant has not submitted sufficient factual evidence to establish a compensable factor of employment.

Appellant alleged that stress at work aggravated his multiple GI conditions. He also noted that he had a variety of other disorders, including Meniere's disease, orthostatic hypotension, vertigo, and a generalized anxiety disorder. OWCP, by letter dated May 14, 2015, requested that appellant describe in detail the work factors to which he attributed his stress-related condition. In response, he related that he experienced increased symptoms and pain at work that made concentration challenging. While appellant generally asserted that he sustained stress in the performance of his duties, he did not describe any specific duties to which he attributed his stress-related aggravation of his GI condition. As discussed, he has the burden of proof to adequately identify the work factors he believed caused or contributed to his condition.<sup>8</sup>

At the hearing, appellant related that the "bulk of work" caused his symptoms. Overwork, when substantiated by sufficient factual information, may be a compensable work factor.<sup>9</sup> Appellant did not, however, describe in any specificity how or why he believed that he

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<sup>4</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> *Id.*

<sup>7</sup> *See I.D.*, Docket No. 16-0581 (issued December 12, 2016); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>8</sup> *See C.G.*, Docket No. 07-1375 (issued November 5, 2007).

<sup>9</sup> *See L.D.*, Docket No. 15-1831 (issued September 21, 2016); *Richard H. Ruth*, 49 ECAB 503 (1998).

was overworked or submit any evidence corroborating his allegation. Consequently, he has not established a compensable work factor.<sup>10</sup>

On appeal appellant argues that stress and anxiety were part of the many factors causing his GI disorder. He also contends that the medical evidence supports that work aggravated his condition. As noted, however, appellant must establish a compensable employment factor under FECA to support a claim for a stress-related condition. As he has not established a compensable work factor, the Board is not required to analyze the medical evidence of record.<sup>11</sup>

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a stress-related aggravation of GI disorders in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> See *M.H.*, Docket No. 16-0695 (issued September 16, 2016); *Kathryn I. Thompson*, Docket No. 93-1826 (issued March 21, 1995).

<sup>11</sup> See *M.M.*, Docket No. 15-1221 (issued September 14, 2015).