United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 16-1386**
	)	**Issued: March 21, 2017**
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, Boston, MA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 21, 2016 appellant filed a timely appeal from a May 13, 2016 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested oral argument pursuant to section 501.5(b) of Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated January 17, 2017, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 16-1386 (issued January 17, 2017). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 501.5(b).

ISSUE

The issue is whether appellant has met his burden of proof to establish whether he sustained Meniere's disease and/or chronic vertigo, dizziness, migraines, and headaches causally related to factors of his federal employment.

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 Meniere's disease with chronic vertigo, dizziness, migraines, and headaches due to factors of his federal employment. He stopped work on April 15, 2015 and returned to work on April 17, 2015.

In a report dated March 23, 2012, Dr. Namita Murthy, an otolaryngologist, evaluated appellant for episodes of vertigo occurring twice daily. She diagnosed chronic vertigo likely from Meniere's disease and referred him for audiological and vestibular testing. Dr. John E. Gooey, a Board-certified otolaryngologist, reviewed the report and concurred with Dr. Murthy's findings.

On July 5, 2012 Dr. Kenneth Grundfast, also a Board-certified otolaryngologist, noted that appellant related a history of dizziness, loss of balance, and hearing loss on the right side that began in the 1990s while he was in the military. He complained of increased symptoms with dizziness two to three times a week. Dr. Grundfast related, "On exam[ination] nystagmus was noted and [appellant] seemed to have difficulty tracking with his eyes and seemed to have difficulty maintaining conjugate gaze." He further opined, "I do not have the impression that he has Meniere's disease or a specific audi-vestibular system disorder. I will request consultation with a neuroophthalmologist."[3]

Dr. Gooey, in a progress report dated September 6, 2012, noted appellant's history of chronic vertigo beginning in 1990 while he was in the military, with episodes occurring two to three times a week since 2005. He indicated that he had not received a definite diagnosis but was "variously told that he has had problems with viral infection, high blood pressure, stress, Meniere's disease and TIA [transient ischemic attack] in the past." Dr. Gooey advised that the diagnosis was uncertain but noted that appellant had normal neuroimaging which showed a lack of central pathology.

Appellant received treatment on December 18, 2012 at the emergency department from Dr. Seth N. Schonwald, a Board-certified internist, for complaints of lightheadedness and dizziness for the past three weeks. Dr. Schonwald noted that he had hypertension and got dizzy after taking his medication.

On April 10, 2013 Dr. Nicolas Y. Bu-Saba, a Board-certified otolaryngologist, discussed appellant's history of chronic vertigo and noted that he had not received a specific diagnosis. He determined that appellant's symptoms suggested migraines and recommended a migraine diet.

[3] An otoneurologic examination found transient nystagmus. An audiologist advised that testing showed abnormal phase leads at certain frequencies and recommended further evaluation and a follow up "regarding positive vertebral artery screening and positive cervical vertigo screening."

Dr. Christopher Hansen, an osteopath, on October 25, 2013 related:

> "[Appellant] has been seen for the symptoms of vertigo and headaches by numerous physicians throughout the VA [Veterans Affairs] system and undergone multiple testing modalities to find the etiology of these symptoms; however, heretofore we have not been able to reach a diagnosis. Certainly this issue causes large problems in [his] day-to-day life and he is going through the correct steps to help his situation."

In a progress report dated March 31, 2014, Dr. Raymond Finn, an internist, evaluated appellant for complaints of dizziness.[4]

OWCP, on May 21, 2015, requested that appellant submit additional factual and medical information, including a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and the implicated work factors.[5]

By decision dated June 25, 2015, OWCP denied appellant's claim as he had not submitted sufficient factual information to adequately identify the employment factors to which he attributed his condition. It further found that the medical evidence of record failed to offer a rationalized opinion on causation.

Appellant, on July 6, 2015, requested a telephone hearing.

In a narrative statement dated July 6, 2015, appellant indicated that he was a physician and advised that his Meniere's disease was "aggravated at work due to previous history and present sign and symptoms with the said condition. The disease is associated with other medical conditions and factors contributed to the onset and worsening of my symptoms." Appellant related that his chronic Meniere's disease caused difficulty working and had comorbidities. He advised that his Meniere's disease was associated with viral infection, migraines, TIA, ear infections, and hypertension, and that he had received diagnoses of Meniere's disease, benign paroxysmal positional vertigo, generalized anxiety disorder, and orthostatic hypotension. Appellant maintained that he had continued symptoms of dizziness, headaches, migraines, and vertigo.

At the hearing, held on March 9, 2016, appellant described Meniere's disease. He related that activities at work contributed to his condition. Appellant indicated that working on cases, including performing research from 2005 to 2015, aggravated his condition. The hearing representative advised him that he needed to submit medical evidence explaining how such duties caused or contributed to his condition.

In a March 15, 2016 statement, appellant provided a history of his medical conditions from 1991 onward. He asserted that work aggravated his Meniere's disease and that his symptoms increased at work "due to activities and other unknown etiologies."

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[4] The record also contains a page from an undated report noting hospital admission for hypertension, anxiety, chronic vertigo, and TIA.

[5] Audiological testing performed June 8, 2015 indicated that appellant might have hearing loss. A letter dated June 8, 2015 from a psychology intern indicated that appellant participated in pain management meetings.

By decision dated May 13, 2016, OWCP's hearing representative affirmed the June 25, 2015 decision. She found that appellant had established the occurrence of the work factors to which he attributed his condition, but did not submit medical evidence supporting that employment caused or contributed to his condition.

On appeal appellant argues that the medical evidence shows that he had multiple diagnoses and that his condition had comorbidities.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof 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 FECA, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[8] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[9] and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[10]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty[12] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

[6] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *See Ellen L. Noble*, 55 ECAB 530 (2004).

[8] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[9] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[10] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[11] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[12] *John W. Montoya*, 54 ECAB 306 (2003).

[13] *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS

Appellant alleged that employment activities, including research and case work, caused or contributed to his Meniere's disease with associated headaches, migraines, vertigo, and dizziness. OWCP accepted the occurrence of the claimed work factors. The issue, therefore, is whether the medical evidence of record establishes causal relationship between the claimed work factors and the medical conditions.

The Board finds that appellant has not established that his diagnosed conditions are causally related to the accepted factors of employment. Appellant failed to submit any medical evidence containing an opinion on causal relationship.

On March 23, 2012 Dr. Murthy discussed appellant's history of vertigo since the 1980s. She diagnosed chronic vertigo likely due to Meniere's disease. Dr. Gooey concurred with Dr. Murthy's findings. Appellant received treatment from Dr. Grundfast on July 5, 2012 for dizziness. Dr. Grundfast did not believe that appellant had Meniere's disease and referred him for an ocular examination. On September 6, 2012 Dr. Gooey evaluated appellant for chronic vertigo beginning in 1990 while he was in the military, noting that he had received a variety of diagnoses including a TIA, high blood pressure, stress, Meniere's disease, and a viral infection. He opined that the diagnosis was uncertain and indicated that neuroimaging was normal. Dr. Schonwald treated appellant in the emergency room on December 18, 2012 for dizziness. None of these physicians addressed the cause of his condition or its relationship to his federal employment. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[14]

On April 10, 2013 Dr. Bu-Saba noted that appellant had a history of chronic vertigo with no definite diagnosis. He opined that his symptoms suggested a migraine. On October 25, 2013 Dr. Hansen advised that physicians had not specifically found the cause of appellant's headaches and vertigo. He noted that the condition resulted in difficulty for appellant in performing his daily activities. On March 31, 2014 Dr. Finn treated appellant for dizziness. None of the physicians addressed whether a causal relationship existed between a diagnosed condition and the identified work factors. Appellant has the burden of proof to submit medical evidence from his physician reviewing the factors of employment identified as causing his condition and explaining how, with medical rationale, employment factors caused or aggravated any diagnosed condition.[15] He has not submitted such evidence and thus failed to meet his burden of proof.

On appeal appellant contends that the medical evidence supports that he has numerous diagnoses and that his disease has comorbidities. Again, however, he failed to submit medical evidence addressing whether particular employment activities caused or aggravated a diagnosed condition.

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.

[14] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[15] *See D.W.*, Docket No. 14-0662 (issued June 23, 2014); *Robert Broome*, 55 ECAB 339 (2004).

CONCLUSION

The Board finds that appellant has not established Meniere's disease and/or chronic vertigo, dizziness, migraines, and headaches as causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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