United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 16-1582**
	)	**Issued: May 1, 2017**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, El Toro, CA, Employer	)	

Appearances:
Ronald S. Webster, Esq., for the appellant[1]
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 August 1, 2016 appellant, through counsel, filed a timely appeal from a June 13, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 heart attacks in 2003 and 2007 causally related to his accepted work conditions.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In July 1991, OWCP accepted that appellant, then a 37-year-old environmental protection specialist, sustained an anxiety disorder and an episode of Xanax dependency, resolved. In accepting this condition, it acknowledged that appellant had experienced stress due to his job duties which included establishing required record keeping procedures, reconciling on-hand quantities of hazardous substances with inventory records, and receiving, storing, and processing hazardous substances on a daily basis.[3] Appellant stopped work on July 2, 1990 and later returned to light-duty work.

Appellant subsequently claimed that his angina had been aggravated by his accepted anxiety disorder. He stopped work on June 3, 1996 when his claim was accepted for a consequential injury, the temporary aggravation of angina. 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 a stent of the saphenous vein graft. Appellant claimed that his 2003 and 2007 heart attacks were causally related to his accepted work conditions.[4]

In a February 6, 2009 decision, OWCP denied appellant's claim, finding that he had failed to submit sufficient medical evidence to establish that his heart attacks in 2003 and 2007 were due to his accepted conditions. Appellant requested reconsideration. In a June 4, 2009 decision, OWCP denied modification of the February 6, 2009 decision. Appellant appealed to the Board.

In a decision dated May 7, 2010,[5] 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, failed to establish that appellant's heart attacks in 2003 and 2007 were due to his previously accepted conditions. 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 factors had not contributed 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 indicated that based on the description of appellant's job with the employing establishment "it is certainly possible that the responsibilities described were stress inducing in [his] case and a contributing factor to his health." Dr. McGrew noted that, in addition to his current cardiac diagnosis of hypertension, hyperlipidemia, and coronary artery disease, appellant also was under psychiatric

[3] Prior to starting work for the employing establishment in 1985 as an environmental protection specialist, appellant had worked as a security policeman for another division of the employing establishment.

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

[5] Docket No. 09-1864 (issued May 7, 2010).

care for a long history of anxiety disorder which frequently increased his episodes of angina. He indicated:

> "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, indicated 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 noted: "In my opinion, [appellant's] anxiety disorder contributed to his heart attack." Appellant requested reconsideration.

In a May 23, 2011 decision, OWCP denied modification of its prior decision. It found that appellant had not submitted sufficient medical evidence to establish that the 2003 and 2007 heart attacks were due to his accepted work conditions. OWCP found that the medical evidence submitted failed to provide a rationalized medical opinion supporting causation.

Appellant again requested reconsideration. In a June 21, 2011 report, Dr. McGrew indicated 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 indicated 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 blood pressure. Dr. McGrew noted: "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." He indicated that, at that time, appellant's accepted conditions were stress reaction disorder, drug dependency, and aggravation of angina. Dr. McGrew explained that appellant wanted to return to work, but those conditions prevented him from doing so. He referenced his February 2, 2011 report and noted:

> "[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…."
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> * * *
>
> "[Appellant] will suffer from this at work or no work[-]related factors or stressors."

In a decision dated November 16, 2011, OWCP again denied modification, finding that appellant had not established 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. Appellant appealed to the Board.

In a decision dated February 15, 2013,[6] the Board affirmed OWCP's November 16, 2011 decision, finding that appellant had failed to establish heart attacks in 2003 and 2007 due to his accepted conditions.

On November 11, 2013 appellant, through counsel, requested reconsideration of his claim.

In a new report dated October 30, 2013, Dr. McGrew indicated 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 noted that 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 explained 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. He opined that, 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 indicated 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 noted that the high stress level of appellant's job (including working on drug interdiction and monitoring large shipments of gold)[7] would involve increased blood pressure as well as other physiological symptoms which eventually formed the basis for the accepted aggravation. Dr. McGrew asserted that, once this type of aggravation began, there was no basis for asserting that the aggravation would simply go away. He noted:

> "[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.
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> "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. 12-0906 (issued February 15, 2013).

[7] Dr. McGrew also noted that appellant referenced the "Waco incident" but he did not indicate that appellant provided any further explanation of this reference.

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 reconsideration 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 duplicative of his previously submitted reports of record. Appellant appealed to the Board.

In a decision dated September 11, 2014, the Board set aside OWCP's November 18, 2013 decision noting that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. 8128(a). The Board remanded the case to OWCP and directed it to conduct a proper merit review of his claim pursuant to 5 U.S.C. § 8128(a) to be followed by a merit decision regarding his claim that his heart attacks in 2003 and 2007 were related to his accepted work conditions.

On remand OWCP further developed the medical evidence of record. In December 2015, it referred appellant to Dr. Aftab Shaik, a Board-certified cardiologist, for a examination and an opinion regarding whether his heart attacks in 2003 and 2007 were causally related to his accepted work conditions.[8]

In a December 31, 2015 report, Dr. Shaikh discussed appellant's medical history including coronary artery disease with heart attacks in 2003 and 2007, history of tobacco abuse, overweight status, angina episodes, and difficult-to-control hypertension with a strong element of reactivity to anxiety/panic episodes due to his anxiety disorder. He reported the findings of his physical examination on that date and noted that appellant needed to better control his blood pressure and anxiety disorder. Dr. Shaikh found that appellant was totally disabled.

OWCP requested that Dr. Shaikh clarify his December 31, 2015 report with respect to whether appellant's heart attacks in 2003 and 2007 were related to his accepted work conditions. In a March 17, 2016 report, Dr. Shaikh indicated that it was difficult to determine whether appellant's current cardiac condition was related to stress from his former work. OWCP again requested that Dr. Shaikh clarify his March 17, 2016 report. In a June 3, 2016 report, Dr. Shaikh opined that employment factors did not cause appellant's cardiac problems, including his hearts attacks, but rather indicated that hypertension, past tobacco abuse, and being overweight were the main risk factors for his cardiac condition.

In March 2016, OWCP referred appellant to Dr. Melvin Goldin, a Board-certified psychiatrist, for examination and opinion regarding whether he continued to have a work-related emotional condition.

In an April 29, 2016 report, Dr. Goldin discussed appellant's factual and medical history and reported findings from the psychiatric evaluation. He diagnosed generalized anxiety disorder complicated by obsessional traits that did not rise to the level of a diagnosable

[8] Appellant submitted a February 3, 2015 report, in which Dr. Buchalter diagnosed generalized anxiety disorder with panic episodes and obsessive-compulsive traits, cardiac problems, and severe stress. Dr. Buchalter noted that appellant's "work injury aggravation is permanent" and that he was currently disabled from all work.

personality disorder. Dr. Goldin indicated that appellant's "current condition is still related to the [statement of accepted facts]."

In a merit decision dated June 13, 2016, OWCP determined that appellant failed to meet his burden of proof to establish that his heart attacks were due to his accepted work conditions. It determined that the October 31, 2013 report was not sufficiently well rationalized to establish that appellant sustained heart attacks in 2003 and 2007 due to his accepted work conditions. In addition, it noted that the reports of OWCP referral physicians did not show that appellant sustained heart attacks in 2003 and 2007 due to his accepted work conditions.

LEGAL PRECEDENT

When an employee clams that a condition not accepted or approved by OWCP was due to an employment injury he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[9]

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of employment, unless it is the result of an independent intervening cause, which is attributable to the employees own intentional conduct.[10] A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, she must present rationalized medical opinion evidence.[11]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medial evidence. Rationalized medical evidence includes a 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, 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.[12]

ANALYSIS

OWCP accepted that appellant sustained several work-related conditions, including anxiety disorder, episode of Xanax dependency (resolved), and temporary aggravation of angina due to the accepted anxiety disorder. Appellant stopped work for the employing establishment

[9] *Jaja K. Asaroma*, 44 ECAB 200 (2004); *see also M.R.*, Docket No.15-1181 (issued January 29, 2016).

[10] *S.S.*, 59 ECAB 315 (2008).

[11] *Charles W. Downey*, 54 ECAB 421 (2003).

[12] *I.J.*, 59 ECAB 408 *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

on June 3, 1996.[13] He sustained heart attacks in 2003 and 2007 and later claimed that the heart attacks were related to his accepted work conditions. In decisions dated May 7, 2010 and February 15, 2013, the Board affirmed OWCP's denial of appellant's claim that his 2003 and 2007 heart attacks were work related. The Board explained in these decisions why the medical evidence he submitted through late 2011 had not correlated his 2003 and 2007 heart attacks to his accepted work conditions. In a decision dated September 11, 2014, the Board remanded the case to conduct a merit review of appellant's claim to include consideration of an October 31, 2013 report of Dr. McGrew, an attending physician. After conducting further development of the medical evidence, OWCP issued a June 13, 2016 decision in which it again determined that appellant had not met his burden of proof.

The Board finds that appellant failed to meet his burden of proof to establish heart attacks in 2003 and 2007 due to his accepted work conditions.

In his October 30, 2013 report, Dr. McGrew opined that appellant's accepted condition of aggravation of angina was a contributing factor in the development and occurrence of his heart attacks. He indicated 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. Dr. McGrew noted that the high stress level of appellant's job (including working on drug interdiction and monitoring large shipments of gold) would involve increased blood pressure as well as other physiological symptoms which eventually formed the basis for the accepted aggravation. He asserted that, once this type of aggravation began, there was no basis for asserting that the aggravation would simply go away. Dr. McGrew noted that appellant also suffered a continuing anxiety reaction which necessarily continued to aggravate and compromise his cardiovascular condition, and indicated that therefore the aggravation of angina continued indefinitely. He noted that catastrophic events in appellant's life, such as his house burning down, placed additional stressors on his cardiovascular system, but noted 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." Dr. McGrew indicated, "[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 Board finds that Dr. McGrew's October 31, 2013 report is of limited probative value because he had not provided sufficient medical rationale in support of his opinion that work factors contributed to appellant's 2003 and 2007 heart attacks.[14] Dr. McGrew did not describe appellant's accepted work conditions in any detail or explain how they could have contributed to the occurrence of his 2003 and 2007 heart attacks. He posited that 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. However, this assertion is not

[13] OWCP acknowledged that, while working as an environmental protections specialist between 1985 and 1996, appellant experienced stress from establishing required record keeping procedures, reconciling on-hand quantities of hazardous substances with inventory records, and receiving, storing, and processing hazardous substances on a daily basis.

[14] *See E.J.*, Docket 09-1481 (issued February 19, 2010).

supported by the record. Dr. McGrew noted that his review of the medical records led him to his conclusion that work conditions contributed to the occurrence of appellant's 2003 and 2007 heart attacks, but he did not provide any notable description of the medical records or explain how they supported his conclusion on causal relationship. The provision of medical rationale is especially necessary in the present case as appellant had not been exposed to stress in the workplace since he stopped work in June 1996. In addition, the only job duties that Dr. McGrew mentioned as causing stress appear to relate to appellant's work from 1985 and prior when he was employed as a security policeman by the employing establishment and his description of these duties was brief and vague in nature. He further failed to explain why appellant's notable nonwork risk factors, such as hypertension, overweight status, and past tobacco abuse, were not the sole cause of his 2003 and 2007 heart attacks.[15]

The Board notes that, after the remand of the case to OWCP per the Board's November 18, 2013 decision, the case record was further developed and OWCP received evidence suggesting that appellant's heart attacks in 2003 and 2007 were not related to his accepted work conditions. In a June 3, 2016 report, Dr. Shaikh, an OWCP referral physician, opined that employment factors did not cause appellant's cardiac problems, including his hearts attacks, but rather indicated that hypertension, past tobacco abuse, and being overweight were the main risk factors for his cardiac condition.[16]

On appeal, counsel contends that the October 31, 2013 report of Dr. McGrew establishes that appellant's heart attacks in 2003 and 2007 were related to his accepted work conditions, however, the Board has explained why the report is not sufficiently rationalized to establish such a work-related contribution to these heart attacks. He suggests that appellant was referred to Dr. Shaikh for a purpose other than to evaluate the cause of appellant's heart attacks in 2003 and 2007. Despite such an assertion, a review of the referral documents reveals that he was, in fact, asked to evaluate whether appellant's heart attacks in 2003 and 2007 were related to his accepted work conditions.

For these reasons, appellant did not meet did not meet his burden of proof to establish that he sustained heart attacks in 2003 and 2007 due to his accepted work conditions.

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.

[15] Appellant submitted a February 3, 2015 report in which Dr. Buchalter, an attending psychiatrist, diagnosed generalized anxiety disorder with panic episodes and obsessive-compulsive traits, cardiac problems, and severe stress. Dr. Buchalter noted that appellant's "work injury aggravation is permanent" and that he was currently disabled for all work, but he did not provide an opinion regarding whether appellant's heart attacks in 2003 and 2007 were due to his accepted work conditions.

[16] In an April 29, 2016 report, Dr. Goldin, an OWCP referral physician, diagnosed generalized anxiety disorder complicated by obsessional traits that did not rise to the level of a diagnosable personality disorder. He indicated that appellant's "current condition is still related to the [statement of accepted facts]." Dr. Goldin did not provide an opinion regarding whether appellant's heart attacks in 2003 and 2007 were due to his accepted work conditions.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained heart attacks in 2003 and 2007 due to his accepted work conditions.

ORDER

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

Issued: May 1, 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