United States Department of Labor
Employees' Compensation Appeals Board

B.R., claiming as representative of the estate of R.R., Appellant	)	
and	)	**Docket No. 17-0294**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	**Issued: May 11, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 1, 2016 appellant filed a timely appeal from a June 9, 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 the claim.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee sustained a cerebral vascular accident (CVA)/stroke on January 13, 1997 causally related to the performance of his federal employment duties.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record reflects that the employee died on January 9, 2016.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts of the case as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 19, 1997 the employee, then a 49-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that the CVA/stroke he sustained at work on January 13, 1997 was caused or aggravated by factors of his federal employment. The work factors he identified were "excessive work habits." The employing establishment did not dispute that the employee was in the performance of his regularly assigned work duties when he suffered the stroke. The employee returned to work on January 2, 1998 and subsequently retired.

The employee contended that on January 13, 1997 he was pulling all-purpose containers with his mechanized mule to make room for incoming business mail when his stroke occurred. He testified that when he arrived at work, the worksite was messy from the previous tour. Two trucks loaded with mail were expected and there was no room on the east dock. The employee testified that he became angry, which caused stress and contributed to his stroke. Prior to his stroke, he had worked 10- to 12-hour days, six to seven times a week. The employee contended that he was not paid for all of the time he worked, which he claimed was an additional stressor contributing to his stroke.

In its July 5, 2013 decision, the Board specifically found that the employee had not established that his allegations of a messy work environment and that he was overworked and forced to work overtime were compensable employment factors. The Board also found that the employee had established a compensable factor of employment in that he was performing his regular employment duties on January 13, 1997 when he suffered his stroke. However, the Board affirmed OWCP's finding that he had not established causal relationship between his regular work duties and his CVA/stroke.

Following the Board's July 5, 2013 decision, the employee, through his representative, requested reconsideration in a letter dated April 30, 2014 which OWCP received on May 7, 2014. His representative reargued that the medical evidence and the records established that the worksite

[3] This is the ninth appeal of this case. On May 11, 2000 the Board found that OWCP properly denied the employee's request for a hearing under section 8124 of FECA in its September 22, 1998 decision. Docket No. 99-0602 (issued May 11, 2000). On June 18, 2003 the Board found that OWCP properly determined that the employee's June 11, 2000 request for reconsideration was untimely filed and did not establish clear evidence of error. Docket No. 02-0695 (issued June 18, 2003). On September 11, 2006 the Board found that OWCP's November 25, 2005 decision properly denied the employee's February 18, 2005 request for reconsideration decision as untimely filed. Docket No. 06-0767 (issued September 11, 2006). However, OWCP did not address his argument that he had timely filed a hearing request on August 21, 1997 and the Board remanded the case to OWCP for further review. On June 18, 2007 the Board affirmed OWCP's November 20, 2006 decision, which denied the employee's request for a hearing. However, the Board set aside a September 29, 2006 merit decision as OWCP did not address the employee's contention that he timely filed a request for a hearing on August 21, 1997. The case was remanded to OWCP to address his evidence and argument. Docket No. 07-405 (issued June 18, 2007). On July 5, 2013 the Board affirmed an October 15, 2012 OWCP decision that found that the employee had established that he was performing his regularly assigned employment duties on January 13, 1997 when he suffered his stroke; however, he had not submitted sufficient medical evidence to establish that his stroke was causally related to this accepted factor of his federal employment. Docket No. 13-0613 (issued July 5, 2013).

was messy and that the employee was overworked on January 13, 1997. The representative further argued that there were additional stressors contributing to his stroke. Evidence previously of record was resubmitted.[4]

In a September 23, 2013 report, Dr. Robert Martin, a cardiologist, noted that the employee had a history of stroke in 1997 and presented with an altered speech pattern. He noted the employee's past medical history and medical course and presented examination findings. Dr. Martin provided an assessment of shortness of breath, nonspecific abnormal electrocardiogram, late effects of cerebrovascular disease, chronic airway obstruction, tobacco use disorder, depressive disorder and unspecified alcohol dependence, continuous.

By decision dated July 17, 2014, OWCP denied modification.[5] It found that the medical evidence was insufficient to support that the diagnosed conditions were causally related to factors of the employee's employment. With respect to the claimed work factors that the worksite was messy and that the employee was overworked on January 13, 1997, OWCP noted that additional documentation was needed. It advised that the documentation had to show the long hours the employee worked, how heavy the containers were that the employee had pulled, and a medical explanation of how long hours and pulling containers would have caused or contributed to the employee's stroke.

On June 16, 2015 OWCP received the employee's representative's June 12, 2015 request for reconsideration. The representative requested that OWCP consider that the employee was a Vietnam War Veteran and was medically retired by Office of Personnel Management (OPM) due to dementia. She also requested that OWCP consider a study made by the National Institutes of Health (NIH) and other medical literature in conjunction with an ECAB decision *Elizabeth H. Kramm, (Leonard O. Kramm)*, 57 ECAB 117 (2005) to establish the causal relationship in this case. Evidence previously of record, which included medical evidence and diagnostic testing, was submitted along with new evidence.

The new evidence included a chronological listing of the employee's military service, for the period February 15, 1968 to January 22, 2011; earning records from the Social Security Administration (SSA) covering the period of 1967 to 2006; an USPS Employee Detail Report, which summarized the employee's federal service; an August 3, 1999 USPS record of military deposit payments; a December 29, 2003 State of Science Report from NIH, which discussed the effects of moderate drinking; a September 28, 2010 memorandum from the Department of Veterans Affairs regarding the processing of claims for ischemic heart disease, Parkinson's disease, hairy cell leukemia and other chronic B-cell leukemias as related to Agent Orange exposure in Vietnam Veterans; a partial copy of the Board's decision in *Elizabeth H. Kramm, (Leonard O. Kramm)*, 57 ECAB 117 (2005); an April 24, 2008 annuity estimate statement from National Retirement Counseling System; a November 20, 2088 Personnel Action Form, which

[4] This included: an undated statement, Bargaining Unit Qualifications dated March 2, 2000, Powered Industrial Truck 20 C.F.R. § 1910.178, clock rings, a March 10, 1997 statement, and diagnostic and medical reports.

[5] OWCP's decision notes that it denied modification of the Board's July 5, 2013 decision. OWCP is not authorized to review Board decisions. Although the July 5, 2013 decision was the last merit decision, the October 15, 2012 decision is the appropriate subject of possible modification by OWCP. *See* 20 C.F.R. § 501.6(d).

indicated the employee had retired on November 19, 2008 and was accepted for disability retirement under OPM; a November 17, 2008 letter to the employee from OPM which indicated that he was found medically disabled due to dementia; a December 18, 2010 letter to the employee from OPM, which noted the employee's annuity had been recalculated upon his turning 62 years old; a September 3, 2014 Memorandum from the Secretary of Defense, which pertained to upgrading the discharges of Vietnam veterans due to post-traumatic stress disorder; 32 pages of Chapter 12 in a medical text or literature titled Cardiovacular and Metabolic Outcomes.

Subsequently OWCP received the employee's January 12, 2016 certificate of death; a February 25, 2016 Order of Possession from the First Judicial District Court of Louisiana, pertaining to the employee's estate, and a March 16, 2016 letter from appellant, the employee's widow, which requested that OWCP consider her as the substitute claimant.

By decision dated June 9, 2016, OWCP denied modification of its July 17, 2014 decision. It found that the employee had not established causal relationship between the accepted factor of employment and his CVA/stroke on January 13, 1997.

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 employment, but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[6]

When working conditions are alleged as factors in causing disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.[7] When an employee fails to implicate a compensable factor of employment, OWCP should make a specific finding in that regard. If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.[8] As a rule, allegations alone are insufficient to establish a factual basis for a claim, but rather must be corroborated by the evidence.[9] Where an employee alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[10] When the matter asserted is a compensable factor of employment and the

[6] *Supra* note 1.

[7] *M.D.*, 59 ECAB 211 (2007); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[8] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[9] *See Charles E. McAndrews*, 55 ECAB 711 (2004).

[10] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

evidence of record establishes the truth of the matter asserted, then OWCP must base its decision on an analysis of the medical evidence.[11]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[12] Rationalized medical opinion evidence is medical evidence which includes a physician's opinion as to whether there is a causal relationship between the diagnosed condition and the implicated employment factors.[13] 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 compensable employment factors.[14]

ANALYSIS

The Board finds that appellant has not established that the employee's CVA/stroke on January 13, 1997 was causally related to the performance of his assigned federal employment duties.

The Board previously accepted that the employee's regularly assigned duties on the day of his stroke were compensable factors of employment. In the last appeal, the Board found that neither the employee's allegation of a messy work environment, nor his allegation that he was overworked and forced to work overtime were substantiated and, thus, were not compensable factors of employment. The Board also found that the medical evidence was insufficient to establish that his January 13, 1997 stroke was causally related to the performance of his regularly assigned duties that day.

Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.[15] The Board will, therefore, not review the evidence addressed in the prior appeals.

Appellant requested reconsideration on April 30, 2014 and June 12, 2015. The only new medical evidence submitted with the reconsideration requests was Dr. Martin's September 23, 2013 report. While Dr. Martin noted that the employee had a history of stroke in 1997 and diagnosed several conditions, he provided no opinion on the cause of the employee's condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of

[11] *See Charles D. Edwards*, 55 ECAB 258 (2004).

[12] *D.E.*, 58 ECAB 448 (2007).

[13] *D.D.*, 57 ECAB 734 (2006).

[14] *Gary J. Watling*, 52 ECAB 278 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[15] *See H.G.*, Docket No. 16-1191 (issued November 25, 2016).

an employee's condition is of limited probative value on the issue of causal relationship.[16] Thus, Dr. Martin's report is insufficient to establish the claim.

Appellant also presented several arguments. She submitted evidence that the employee was a Vietnam veteran and that he was medically retired by OPM due to dementia. The evidence submitted, however, does not contain any factual or medical evidence material to the issue in this case.[17] While the employee was approved for OPM and SSA disability benefits, the Board has long held that entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under FECA.[18] Thus, this evidence is insufficient to establish appellant's claim.

Appellant also argued that the evidence submitted should be considered to establish causal relationship in this case. In that regard, she submitted medical studies and literature as well as memorandums from the Department of Defense and the Department of Veterans Affairs which pertained to the effects of moderate drinking; the Department of Veterans Affairs processing of claims for conditions related to Agent Orange exposure in Vietnam veterans; an incomplete copy of the Board's decision in *Kramm* pertaining to exposure to Agent Orange in federal service; a memorandum from the Secretary of Defense, which pertained to unrecognized post-traumatic stress disorder; and a chapter from a medical textbook or medical literature titled Cardiovascular and Metabolic Outcomes. This evidence, however, is either immaterial or irrelevant to the issue in this case. The medical studies or literature, articles and memorandum pertain to conditions not relevant to the employee or his case. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[19] These medical journal reports and memorandums from other agencies, therefore, are insufficient to advance the claim that the employee's CVA/stroke on January 13, 1997 was causally related to the accepted employment factor.

While the evidence establishes that the employee had prior and concurrent active and/or reserve military service between February 15, 1968 and January 22, 2011, the medical conditions discussed in newly submitted evidence have no probative value to establish causal relationship between the employee's performance of his federal employment duties and his CVA/stroke on

[16] *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[17] The included a chronological listing of the employee's military service, earning records from the Social Security Administration, a summary of his federal service, a record of military deposit payments, an annuity estimate statement, a personnel action form, and letters from Office of Personnel Management regarding the employee's disability due to dementia and his annuity.

[18] *Joseph R. Santos*, 57 ECAB 554, 558 (2006).

[19] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

January 13, 1997.[20] Therefore, this evidence is insufficient to advance that his CVA on January 13, 1997 was causally related to the accepted employment factor.

Similarly, the Board's decision in *Kramm* is not relevant to the issue in this case. In *Kramm*, the Board found that appellant established that his bladder cancer was causally related to his exposure to Agent Orange and pesticides while in the performance of his federal duties. The merits of that claim are immaterial to the issues in this case. *Kramm* stands for the proposition that in cases involving chemical exposure and cancer, an epidemiologic study can provide sufficient rationale for a physician's opinion on the cause of a condition. However, this case does not involve chemical exposure and cancer.

As there is no rationalized medical evidence explaining how the employee's CVA/stroke on January 13, 1997 was causally related to the accepted employment factor, appellant has not met her burden of proof in establishing that his medical condition was causally related to the accepted factor of his federal employment.

On appeal appellant contends that the medical studies submitted are probative materials relevant to the issues of a CVA/ stroke and the undisputed employment factors in this case. She contends that the employee had a positive Agent Orange exposure examination which affected his extreme stress and anger over the messy work environment on January 13, 1997 and which triggered an undiagnosed post-traumatic stress disorder stressor. Appellant also argues that the medical evidence showed that the employee's declining health after his January 13, 1997 CVA/stroke could be related to his Agent Orange exposure. The Board notes that there is no requirement that the federal employment be the only cause of injury. An employee is not required to prove that occupational factors are the sole cause of his or her claimed condition. If work-related exposures caused, aggravated, or accelerated an employee's condition, he or she is entitled to compensation.[21] However, an award of compensation may not be based on surmise, conjecture, speculation.[22]

As previously noted the record in the instant case lacks rationalized medical evidence establishing a causal relationship between the employee's federal employment duties as a mail handler equipment operator and his stroke on January 13, 1997.

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.

CONCLUSION

The Board finds that appellant has not established that the employee's CVA/stroke on January 13, 1997 was causally related to the performance of his employment duties.

---

[20] *Id.*

[21] *See Beth P. Chaput,* 37 ECAB 158, 161 (1985); *S.S.,* Docket No. 08-2386 (issued June 5, 2008).

[22] *D.D., supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2018
Washington, DC

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

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

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