United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
	)	
and	)	**Docket No. 19-1181**
	)	**Issued: December 2, 2019**
U.S. POSTAL SERVICE, POST OFFICE, West Haven, CT, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 3, 2019 appellant filed a timely appeal from a February 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.[3]

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[1] The February 20, 2019 decision denied appellant's request to expand the acceptance of his claim to include myocardial infarction. The record also contains an April 23, 2019 schedule award decision, which at the time appellant filed the current claim was pending further review before OWCP's Branch of Hearings and Review. *See infra* note 4. As such, the Board will not exercise jurisdiction over the April 23, 2019 schedule award decision due to its interlocutory posture. 20 C.F.R. §§ 501.2(c)(2).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the February 20, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to expand acceptance of his claim to include myocardial infarctions as a consequence of his November 2, 2013 employment injury.

FACTUAL HISTORY

On November 2, 2013 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his elbow, back, and neck in a motor vehicle accident while in the performance of duty. OWCP accepted the claim for an aggravation of degenerative disc disease at L4-5 and L5-S1, lumbar strain, cervical strain, and right elbow sprain. Appellant stopped work on November 2, 2013 and returned to modified employment on December 16, 2013. He experienced recurrences of disability beginning June 20, 2016 and July 21, 2017. Appellant resumed his limited-duty employment on October 9, 2017.[4]

On September 28, 2016 appellant received a lumbar epidural steroid injection to treat his lumbar disc disorder with radiculopathy.[5]

In a report dated April 26, 2017, Dr. Robin M. Brammer, an osteopath and Board-certified internist, advised that she had treated appellant since 2006. She noted that he had experienced two myocardial infarctions in October 2016, two weeks after he had received an epidural steroid injection to treat chronic back pain, which she noted was part of his workers' compensation claim. Dr. Brammer opined that appellant's heart attacks were caused by "adverse reactions to the injection." She related, "He previously did not have heart disease. It is felt that the steroid injection caused or contributed to his heart attacks and would be part of his compensation claim."

On August 23, 2017 appellant filed a claim for compensation (Form CA-7) for the period October 24 to December 10, 2016.

On August 25, 2017 Dr. Brammer noted that appellant had experienced two cardiac arrests on October 23, 2016 which had necessitated emergency surgery. In an addendum report dated September 5, 2017, she specified that appellant's heart attacks had occurred on October 23, 2016.

On November 9, 2017 Dr. Brammer noted that appellant's second cardiopulmonary arrest on October 23, 2016 was "complicated by a prolonged resuscitation…." She discussed his history of a steroid epidural injection two weeks earlier for back pain and related, "It [is] beyond [a]

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[4] By decision dated August 5, 2016, OWCP granted appellant a schedule award for five percent permanent impairment of the right upper extremity. In a decision dated June 5, 2018, it denied his request for an additional schedule award. By decision dated November 28, 2018, an OWCP hearing representative vacated the June 5, 2018 decision and remanded the case for further development of the medical evidence. By decision dated April 23, 2019, OWCP denied appellant's claim for an increased schedule award. On April 29, 2019 he requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

[5] OWCP further accepted that appellant sustained lumbar and thoracic sprains as a result of a May 12, 2007 employment-related motor vehicle injury, assigned OWCP File No. xxxxxx833. The Board notes that this prior claim and the present claim have not been administratively combined.

medical degree of certainty that the cardiac arrests were contributed to by the epidural steroid injection. In addition, [appellant] was taking high doses of ibuprofen to try to control the back pain, which also pose[s] known risk for cardiac events." Dr. Brammer advised that he could no longer receive steroid injections or take nonsteroidal anti-inflammatory drugs (NSAIDs) that had controlled his pain and allowed him to work.

In a development letter dated April 16, 2018, OWCP informed appellant that the August 25 and September 5, 2017 reports from Dr. Brammer were insufficient to establish his claim. It advised him of the medical and factual evidence required, including a rationalized report from a physician explaining the cause of his heart condition. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted reports regarding his October 23, 2017 hospitalization for myocardial infarctions and subsequent placement of two coronary artery stents. He further submitted the operative report from a March 17, 2017 left cardiac catheterization.

In response to OWCP's development letter, appellant advised that he had not experienced symptoms of a cardiac condition or coronary artery disease prior to his myocardial infarctions. He asserted that he had received an epidural injection in his back a week earlier.

On May 15, 2018 Dr. Brammer again discussed appellant's history of cardiopulmonary arrests on October 23, 2016 two weeks after an epidural steroid injection to his back. She opined that the epidural steroid injection as well as his use of high doses of ibuprofen for back pain contributed to his cardiac events.

On June 8, 2018 Dr. David I. Krohn, a Board-certified internist serving as a district medical adviser (DMA), opined that appellant's risk factors of diabetes, hypertension, dyslipidemia, and metabolic syndrome predisposed him to coronary artery disease and caused his myocardial infarction. He advised that research indicated that the chronic use of oral steroids might contribute to coronary artery disease, but that there was "no information in the current medical knowledge base that a single steroid injection received two weeks before could act as a causal factor for an acute coronary event such as this claimant had." Dr. Krohn noted that appellant had received numerous steroid injections over the years, but advised that "generally accepted medical practice does not consider this to be a significant risk factor for acute myocardial infarction." He further indicated that studies showed a non-significant increased risk of heart events with high-dose ibuprofen. Dr. Krohn concluded that the epidural steroid injection and his use of ibuprofen did not, to a degree of medical certainty, result in his myocardial infarction. He related, "Most significantly, well-established medical practice supports that the risks posed by the claimant's diabetes, elevated lipids, and hypertension were the overwhelming causal factors in his acute myocardial infarction."

On August 15, 2018 OWCP referred appellant to Dr. Richard Cantor, Board-certified in internal medicine and cardiovascular disease, for a second opinion examination. It requested that he address whether appellant's October 23, 2016 cardiopulmonary arrests occurred as a consequence of the accepted November 2, 2013 employment injury and review and discuss Dr. Brammer's May 15, 2018 report.

In a report dated September 5, 2018, Dr. Cantor reviewed appellant's history of injury and noted that he had undergone an epidural injection approximately two weeks before his hospital admission on October 23, 2016 for chest pain. He noted that appellant had experienced ventricular tachycardiac arrest in the emergency room which was treated with angioplasty and a stent. Appellant underwent a repeat cardiac catheterization after a March 2017 nuclear stress test, which had revealed "no significant coronary artery disease." Dr. Cantor diagnosed status post myocardial infarction and coronary stenting. He disagreed with Dr. Brammer's opinion that his myocardial infarction was causally related to his epidural injection. Dr. Cantor related, "It is my impression that it is related to his history of diabetes and hypertension. Therefore, his two cardiopulmonary arrest on October 23rd were related to his acute [myocardial infarction] which was not related to his prior epidural injection two weeks before."

By decision dated February 20, 2019, OWCP denied appellant's request to expand the acceptance of his claim to include a consequential myocardial infarction.

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arising out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.[6] The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[7] With respect to consequential injuries, the Board has held that, where an injury is sustained as a consequence of an impairment residuals to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment, and is compensable.[8]

The claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[9]

ANALYSIS

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

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[6] *R.M.*, Docket No. 18-1621 (issued August 23, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

[7] *K.S.,* Docket No. 17-1583 (issued May 10, 2018); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014).

[8] *R.V.*, Docket No. 18-0552 (issued November 5, 2018).

[9] *C.D.*, Docket No. 18-1652 (issued June 26, 2019); *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

Appellant alleged that he sustained myocardial infarctions on October 23, 2016 as a consequence of receiving an epidural steroid injection two weeks earlier for his accepted back condition. In an April 26, 2017 report, Dr. Brammer attributed his two heart attacks to an adverse reaction from the steroid injection. On November 9, 2017 and May 15, 2018 she opined that appellant's epidural steroid injection and his high use of ibuprofen for his back pain contributed to his cardiac events.

OWCP referred appellant to Dr. Cantor for a second opinion examination regarding whether he experienced cardiopulmonary arrests on October 3, 2016 as a consequence of his accepted employment injury. It requested that he review and discuss Dr. Brammer's findings in her May 15, 2018 report.

On September 5, 2018 Dr. Cantor noted appellant's history of an epidural steroid injection around two weeks before his hospitalization on October 23, 2016 for chest pain treated with angioplasty and a stent. He diagnosed status post myocardial infarction and coronary stenting. Dr. Cantor attributed appellant's myocardial infarction to his hypertension and diabetes. He opined that his October 23, 2016 cardiopulmonary arrest was unrelated to his epidural injection. However, Dr. Cantor did not address whether appellant's use of high dose ibuprofen for his back condition contributed to his myocardial infarction, as found by Dr. Brammer in her May 15, 2018 report.

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 of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.[10] Once it 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] Accordingly, the Board finds that the case must be remanded to OWCP.[12]

On remand OWCP should request a supplemental report from Dr. Cantor addressing whether appellant's use of high dose ibuprofen caused or contributed to his myocardial infarction. It should further specifically identify in its statement of accepted facts the amount of ibuprofen taken, whether it was diagnosed as a result of his accepted employment injury, and include the date of his last epidural injection prior to October 23, 2016. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

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[10] *S.S.,* Docket No. 18-0397 (issued January 15, 2019).

[11] *Id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

[12] *J.T.*, Docket No. 18-1300 (issued March 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 2, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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