

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

_____)	
M.D., Appellant)	
)	
and)	Docket No. 19-0229
)	Issued: November 5, 2019
DEPARTMENT OF THE ARMY, NATO)	
SPECIAL OPERATIONS HEADQUARTERS,)	
Shape, Belgium, Employer)	
_____)	

Appearances:
Stephanie N. Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On November 8, 2018 appellant, through counsel, filed a timely appeal from an October 15, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0229.²

On April 21, 2016 appellant, then a 42-year-old comptroller, filed an occupational disease claim (Form CA-2) alleging that he developed high blood pressure and end-stage renal failure due

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 The Board notes that appellant submitted additional evidence on appeal. 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.*

factors of his federal employment including the requirement of intensive work hours. He had stopped work on June 20, 2014.

In a May 16, 2016 statement, appellant indicated that, from the beginning, his employing establishment was understaffed and he routinely worked 12 to 14 hours daily and had to travel frequently. He noted that he was the only person in charge of finances, he did not have a qualified backup, and handled two budgets, one with North Atlantic Treaty Organization and one with the employing establishment which entailed duties involving installations stateside, in Europe, and forward bases. Appellant maintained that his diagnosed kidney failure due to hypertension was work related.

Appellant submitted a position description for the comptroller position in addition to medical evidence including reports dated June 21, 2014 to September 28, 2015 diagnosing acute renal failure requiring long-term hemodialysis from malignant hypertension.

In a letter dated July 15, 2015, the Office of Personnel Management notified appellant that he was found to be disabled from his position as comptroller due to acute renal failure and malignant hypertension.

In a development letter dated June 27, 2016, OWCP requested that the employing establishment provide information regarding appellant's claim and forwarded his statements for its response.

By decision dated July 13, 2016, OWCP denied appellant's claim finding that appellant had established compensable factors of employment, but had not established causal relationship between those employment factors and his diagnosed medical condition. It further found that the employing establishment had not responded to its requests for information and found that the claimed work events had occurred as alleged.

On July 3, 2017 appellant, through counsel, requested reconsideration and submitted a May 6, 2017 report from Dr. Fabienne Mestrez, an attending nephrologist.

By decision dated October 3, 2017, OWCP denied modification of the July 13, 2016 decision finding that the evidence submitted was insufficient for appellant to meet his burden of proof to establish causal relationship.

On May 1, 2018 appellant, through counsel, requested reconsideration and submitted a February 16, 2018 report from Dr. Mestrez.

By decision dated July 24, 2018, OWCP denied appellant's request for reconsideration of the claim.

On September 19, 2018 appellant, through counsel, again requested reconsideration and submitted additional medical evidence.

By decision dated October 15, 2018, OWCP denied modification of its prior decisions finding that the evidence submitted was insufficient to establish causal relationship.

OWCP procedures provide that a statement of accepted facts (SOAF) is required before adjudication of a stress-related claim, indicating that, due to the complex nature of this type of claim, it is necessary that the facts be established and documented in a SOAF.³ It did not properly develop appellant's claim as stress related consistent with its own procedures. As such, the Board finds that this case is not in posture for decision as further development of the claim is required.

On remand OWCP shall prepare a SOAF establishing and documenting the facts of the emotional stress claim. After this and any such further development as may be deemed necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the October 15, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 5, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.2d(3) (June 2011).