

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

W.L., Appellant)	
)	
and)	Docket No. 19-0774
)	Issued: November 26, 2019
DEPARTMENT OF THE NAVY, MARINE)	
CORPS INSTALLATION FACILITIES &)	
ENVIRONMENT DIVISION, Quantico, VA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 25, 2019 appellant filed a timely appeal from a September 4, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a cardiac condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On March 6 and 13, 2018 appellant, then a 58-year-old high voltage electrician, filed traumatic injury claims (Form CA-1) alleging that on March 4, 2018 he experienced chest pains and a heart attack at approximately 9:30 a.m. while in the performance of duty.³ He stopped work that day. Appellant was admitted to the hospital for a ST-elevation myocardial infarction (STEMI) with stent and catheterization to left anterior descending (LAD) coronary artery.

On March 8, 2018 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) for “heart attack.”

In a development letter dated March 13, 2018, OWCP requested that appellant provide additional factual and medical information to support his claim. A factual questionnaire was provided for his completion. OWCP afforded appellant 30 days in which to submit the necessary evidence.

OWCP received multiple hospital records, including diagnostic testing, from March 4 through 6, 2018. In a March 4, 2018 report, Dr. Khalid A. Abousy, a Board-certified cardiologist, diagnosed an acute myocardial infarction. In a March 7, 2018 attending physician’s report (Form CA-20), he indicated that appellant would be totally disabled for approximately one to two months as a result of stent placement.

OWCP received progress notes dated March 13 and April 11, 2018, and an April 12, 2018 attending physician’s report (Form CA-20) from Dr. Abousy regarding appellant’s atherosclerotic coronary artery disease, post March 4, 2018 STEMI anterior with stent and catheterization to LAD coronary artery.

By decision dated April 17, 2018, OWCP denied appellant’s traumatic injury claim as he had not established fact of injury. It found that the evidence submitted was insufficient to establish that the event occurred as described because appellant had not submitted a response to its questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 26, 2018 appellant requested a review of the written record before an OWCP hearing representative. In an undated statement, he indicated that he had no prior history of cardiac illness and that he was an essential and key employee during inclement weather and emergency situations. On the day of the incident, appellant indicated that he was working under cold and inclement weather, which included extremely high winds, to restore power to Quantico Marine

³ The initial Form CA-1 signed by D.P., Maintenance Mechanic Supervisor, indicated that appellant’s heart attack did not occur while in the performance of duty. The subsequent Form CA-1 signed by N.F., Agency Reviewer, indicated that appellant was injured while in the performance of duty.

Core Base. The Base was under Code Red weather alert conditions and this was his third straight day of working 16-hour shifts. Appellant advised that his job required him to lift heavy equipment or materials averaging 50 pounds and above. He noted that the stress of working 16 hours per day, inappropriate equipment and gear, and the weight of the equipment and materials caused the stress and physical strain on his body which he believed caused or contributed to his symptoms of chest discomfort and body weakness and led to his cardiac condition. Appellant also described his work activities the week leading up to his heart attack.

Additional medical reports from Dr. Abousy were received. In an April 30, 2018 report, Dr. Abousy diagnosed coronary artery disease involving native coronary artery without angina pectoris; presence of drug-coated stent in LAD coronary artery; essential hypertension; and STEMI involving LAD coronary artery. In an April 30, 2018 a work capacity evaluation (Form OWCP-5c), Dr. Abousy indicated that appellant was totally disabled from March 4 through May 15, 2018. He advised that he could return to work with no restrictions on May 15, 2018. In May 21, June 27 and August 8, 2018 work capacity evaluations (Form OWCP-5c), Dr. Abousy provided appellant's work-related restrictions. It also received a copy of Dr. Abousy's Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act), which noted appellant's medical course following his myocardial infarction. An April 26, 2018 echocardiogram report was also received.

In a July 26, 2018 statement, D.P, Maintenance Mechanic Supervisor, indicated that on March 4, 2018 appellant was asked to work overtime to repair some of the damaged electrical lines that were knocked down by a wind storm that had occurred earlier in the week. He advised that appellant had worked volunteer overtime prior to March 4, 2018 for 16 hours, but not on March 4, 2018. D.P. included a copy of appellant's time cards, noting that, on March 4, 2018, appellant had only worked 2.75 hours before falling ill and being taken to the hospital. He indicated all of the duties appellant mentioned were his normal every day duties as a high voltage electrician. D.P. disputed appellant's claim that the weather on March 4, 2018 was cold and inclement with extremely high winds and attached a copy of a weather report for March 4, 2018. He also disputed appellant's claim that he had not been issued appropriate clothing and gear.

By decision dated September 4, 2018, an OWCP hearing representative converted appellant's traumatic injury claim into an occupational disease claim and affirmed OWCP's April 17, 2018 decision. The hearing representative found that appellant had established that his position had "physical requirements" and that "he was working when emergency treatment was obtained and he was treated for a myocardial infarction." The hearing representative also found that the medical evidence of record failed to establish that appellant's myocardial infarction was caused by his employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable

⁴ *Supra* note 1.

time limitation period of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is 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 upon 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) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is 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 of the claimant, 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a cardiac condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted several reports from Dr. Abousy which noted the March 4, 2018 myocardial infraction and placement of a stent in the LAD coronary artery. Dr. Abousy also diagnosed coronary artery disease, essential hypertension, and orthostasis. He, however, has not provided an opinion as to the cause of appellant's cardiac conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's

⁵ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *S.C.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *S.C.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁹ *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

¹⁰ *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

condition is of no probative value on the issue of causal relationship.¹¹ Therefore, Dr. Abousy's reports are insufficient to establish appellant's claim.

OWCP also received multiple diagnostic reports taken during appellant's hospital stay along with an April 26, 2018 echocardiogram report. However, the Board has held that diagnostic test reports lack probative value as they do not provide an opinion on causal relationship between his employment incident and a diagnosed condition.¹²

Appellant's honest belief that the factors of his federal employment caused his medical condition, however sincerely held, does not constitute medical evidence sufficient to establish causal relationship. As the record lacks rationalized medical evidence establishing causal relationship between the accepted employment duties and appellant's cardiac conditions, the Board finds that appellant has not met his burden of proof.¹³

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 10.607.¹⁴

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a cardiac condition causally related to the accepted factors of his federal employment.

¹¹ *M.D.*, Docket No. 19-0338 (issued July 9, 2019); *S.F.*, Docket No. 18-1030 (issued April 5, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

¹³ See *B.K.*, Docket No. 19-0829 (issued September 25, 2019).

¹⁴ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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