United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 19-1141**
	)	**Issued: January 2, 2020**
DEPARTMENT OF THE ARMY,	)	
Fort Riley, KS, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 22, 2019 appellant, through counsel, filed a timely appeal from an April 4, 2019 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.

[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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that his aneurysm rupture was causally related to an accepted February 21, 2016 employment incident.

FACTUAL HISTORY

On January 19, 2017 appellant, then a 53-year-old liaison equipment specialist, filed a traumatic injury claim (Form CA-1) alleging that, on December 21, 2016, he suffered two brain aneurysms due to factors of his federal employment while in the performance of duty. He underwent surgery on December 21, 2016 to coil both aneurysms. Appellant also suffered small strokes caused by bleeding in the brain. The employing establishment indicated that the alleged injury occurred in the performance of duty.

In a January 25, 2017 development letter, OWCP informed appellant that additional factual and medical evidence was required to establish his traumatic injury claim. It afforded him 30 days to submit the requested factual and medical evidence.

Appellant's wife provided a statement indicating that he had been in Afghanistan for work since June of the prior year. Appellant arrived home on December 20, 2016 after taking several flights.[3] Appellant's wife picked him up from the airport approximately 5:30 p.m. and, after having dinner, they arrived home at 8:50 p.m. At approximately 3:00 a.m. on December 21, 2016 appellant stopped breathing and 911 was called. Appellant's wife indicated that he was helicoptered from the first hospital to another hospital where a neurosurgeon treated his two aneurysms. She indicated that there was a short period of time between the high altitude of the flight, appellant's arrival home from deployment at 5:30 p.m., and the 3:00 a.m. incident. Appellant's wife additionally noted that he worked in a stressful warzone environment and he experienced last minute stress concerning a scheduling change prior to his December 20, 2016 arrival home.

In December 21, 2016 emergency department notes, Dr. Penelope A. Goode, a Board-certified emergency medicine physician, indicated that appellant presented intubated and unresponsive that night. She noted a history of appellant returning from Afghanistan 5:00 p.m., less than 12 hours prior. Appellant's wife reported that, at about 2:15 a.m., appellant woke and started gasping for breath and fell backwards. She initiated cardiopulmonary resuscitation (CPR) and 911 was called. Dr. Goode indicated that appellant's workup ultimately revealed extensive subarachnoid hemorrhage (SAH) with two large aneurysms. Appellant was transported to a hospital, which had a large neurosurgery service.

In a December 21, 2016 note, Dr. Johnny Delashaw, a Board-certified neurosurgeon, noted that appellant returned from Afghanistan the previous day. Testing revealed two aneurysms, one

[3] On December 15, 2016 appellant flew from Bagram, Afghanistan to Kuwait City, Kuwait. On December 16, 2016 he flew from Kuwait City, Kuwait to El Paso, Texas. On December 20, 2016 appellant flew from El Paso, Texas to Seattle, Washington where he landed at approximately 5:08 p.m.

of which had ruptured. Appellant was admitted for "HH4mF4 subarachnoid hemorrhage" and immediately went to interventional radiology for coiling of both of his aneurysms.

In a January 12, 2017 report and February 16, 2017 addendum, Dr. Akshal Sudhir Patel, a neurological surgeon specialist, indicated that appellant suffered from acute aneurysm rupture. He indicated that "intracranial pressures are susceptible to changes in altitude. Large variations can precipitate aneurysm rupture. In light of his recent travel it is likely that his flight contributed to his stroke and bleeding." On the same report, in a January 12, 2017 entry, Dr. Naser Jaleel, a neurosurgeon specialist, indicated that "Per Dr. Patel, patient's subarachnoid hemorrhage (SAH) likely resulted from aneurysm susceptibility to pressure changes at high altitude during his earlier flight."

On March 1, 2017 OWCP referred appellant's case record, along with a statement of accepted facts (SOAF), to a district medical adviser (DMA) to determine whether it was medically feasible that appellant's employment-related flights caused or contributed to his acute aneurysm rupture on December 21, 2016. The DMA was instructed that, if any information was missing and necessary to respond to the question posed, then he or she was to indicate the specific evidence that was needed to respond. The SOAF noted that appellant arrived in Afghanistan on July 7, 2016. It also noted his flight path home from Bagram, Afghanistan on December 15, 2016 to his arrival in Seattle, Washington on December 20, 2016. The SOAF indicated that appellant suffered an acute aneurysm rupture at approximately 3:00 a.m. on December 21, 2016.

In a May 15, 2017 report, Dr. Franklin M. Epstein, a Board-certified neurologist and Board-certified neurosurgeon serving as a DMA, reviewed the medical record along with the SOAF. He opined that there was no correlation between an increased risk of brain aneurysmal rupture associated with jet travel. The DMA noted that the two national surgical societies and the Aerospace Medical Association had not published any warnings regarding air travel in aneurysmal patients. He indicated that his research of the neurosurgical literature had not uncovered any publications listing air travel as a risk for aneurysms. The DMA noted that the few papers published which looked for associations between ambient pressure changes associated with the weather and admissions to the hospital with aneurysmal rupture either showed no correlation or were of inferior quality and thus unreliable. He indicated that unruptured aneurysms have been found in two and five percent of the population. The DMA noted that those patients who were treated either with surgery or coiling generally met the accepted criteria for increased risk of rupture. However, anticipated air travel was not one of the generally accepted criteria for prophylactic treatment of unruptured brain aneurysms. The DMA concluded that Dr. Patel's opinion was not supported by common practice or published research and identified other potential causes.

By decision dated May 16, 2017, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish causal relationship between appellant's aneurysmal rupture and his work-related air travel. It accorded determinative weight to the DMA's opinion that air travel that preceded the aneurysmal rupture was not an additional predisposing or exacerbating condition.

Intermittent reports from Dr. Vince Loh, a Board-certified neurologist, from April 24 to June 1, 2017 were received. In a June 1, 2017 report, Dr. Loh indicated that appellant was under

his care for ruptured cerebral aneurysm and subarachnoid hemorrhage in December 2016. He noted that appellant indicated that he was in a state of perpetual stress prior to his return to the United States after being deployed to Afghanistan as a contractor. Dr. Loh had also flown shortly before his rupture. He opined that both a stressed emotional state and altitudinal changes following flight have been associated with aneurysm rupture. Dr. Loh opined that these two trigger factors were established in the literature and could not be reasonably excluded.

On June 2, 2017 appellant requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held on November 9, 2017. Appellant described alleged stressful events and work conditions at the Bagram Airfield Afghanistan which transpired on November 11, 2016. He indicated that on November 11, 2016, there was a scheduled 5K Veterans Day run, however, a suicide bomber blew up a vehicle in front of the dining facility. Appellant indicated that he was thereafter required to wear a 60-pound interceptor body armor vest everywhere he went. He testified that this created a stressful work environment and that, during that time, he was taking medication for high blood pressure. Appellant also indicated that the weight of the vest bothered his shoulders, lower back, and left knee, which he advised were "bad." He indicated that he flew home from Afghanistan on December 20, 2016 and that he was expected to report back to work on December 21, 2016. Appellant described the December 21, 2016 incident, his medical care, and the injuries sustained as a result of the December 21, 2016 incident. He stated that Dr. Loh told him that his emotional state, affected by stress, and the altitude change from his flight home could have caused the aneurismatic rupture.

By decision dated January 26, 2018, an OWCP hearing representative affirmed the denial of appellant's traumatic injury claim. She found that the medical reports from Drs. Patel and Loh were insufficient to establish causal relationship.

On January 18, 2019 appellant, through counsel, requested reconsideration. He argued that the DMA considered facts not included in the SOAF. Counsel also argued that, OWCP had not included a summary of all potentially compensable factors of employment in the SOAF, such as the stress appellant suffered 12 days prior to leaving Bagram Air Base and his extensive flight home. He also argued that the hearing representative usurped the role of the DMA, that appellant should have been referred for a referee examination, and that working conditions need not be a significant factor in establishing causal relationship.

In a December 5, 2018 report, Dr. Loh indicated that prior to appellant's return to the United States after serving in a combat zone for many months, appellant was in a state of perpetual stress while working at Bagram Air Field in Afghanistan. He noted that on November 11, 2016, 12 days before appellant left Bagram Air Field, a suicide bomber detonated a vehicle on Bagram Air Field. Dr. Loh described the conditions appellant endured from November 11 until 23, 2016. He opined that appellant experienced heightened and significant stress from November 11 through 23, 2016 and that, prior to the bombing incident, he had been taking medicine to address his high blood pressure. Dr. Loh indicated that he had previously provided studies supporting the association between a stressed emotional state and altitudinal changes and aneurysmal rupture. He noted that those two trigger factors were established in the literature as contributing factors to appellant's ruptured aneurysm and cannot be reasonably excluded. Dr. Loh thus opined that more likely than not that those environmental exposures, including stress from working in a warzone and the recent suicide bomber event contributed to the rupture of appellant's aneurysm.

By decision dated April 4, 2019, OWCP denied modification of its January 26, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 time limitation period of FECA,[4] 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.[5] 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.[6]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is required to establish causal relationship. 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 incident.[9]

ANALYSIS

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

Appellant alleged a traumatic injury on December 21, 2016 as a result of the altitude changes during his flights from Bagram, Afghanistan to Seattle, Washington. Due to appellant's incapacity, in a supplemental statement, his wife alleged a stressful warzone environment and scheduling stress regarding appellant's return flights home. During the November 9, 2017 telephonic hearing, appellant alleged a stressful work environment from November 11 until 23,

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *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).

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

2016 due to a suicide bomber detonating a vehicle on base on November 11, 2016, 12 days prior to his flights home. He described the employment conditions he endured following that incident, including wearing a 60-pound protective vest. Therefore, it is unclear whether appellant is alleging an occupational disease produced by his work environment over a period longer than a single workday or shift, or a traumatic injury from a single occurrence within a single workday or shift.[10]

Under FECA, although it is the employee's burden of proof to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence.[11] It is the duty of the claims examiner to develop a claim based on the facts at hand and not solely on the basis of the type of claim form filed.[12] OWCP's procedures provide that if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, OWCP should make a determination as to whether the correct claim was established and, if not, it should convert the claim to the proper type of claim, and notify the claimant and employing establishment (and any representative, if applicable) of the conversion.[13]

While OWCP issued a January 25, 2017 development letter, it did not further investigate the additional factors alleged by either appellant's wife (a stressful warzone environment and flight scheduling stress) or by appellant (the work conditions endured from November 11 until 23, 2016) and address whether those factors claimed were accepted employment factors. In this instance, it did not discharge its burden to make findings as to whether appellant sustained a traumatic injury or an occupational disease. Therefore, the case shall be remanded for further findings regarding whether appellant has alleged a traumatic injury or an occupational disease in the performance of duty.[14]

Following this and any other further development deemed necessary, it shall issue a *de novo* decision.

[10] A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[11] *See G.S.*, Docket No. 16-0908 (issued October 26, 2017); *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

[12] *Id.*

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2)(b) (June 2011). *C.f. S.N.*, Docket No. 12-1814 (issued March 11, 2013).

[14] *Colleen A. Murphy*, Docket No. 01-1319 (issued November 6, 2002).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: January 2, 2020
Washington, DC

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

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

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