United States Department of Labor
Employees' Compensation Appeals Board

G.A., Appellant	)	
and	)	**Docket No. 21-1362**
	)	**Issued: February 23, 2023**
DEPARTMENT OF THE AIR FORCE, AIR FORCE MAINTENANCE, ROBINS AIR FORCE BASE, GA, Employer	)	

Appearances:
Paul H. Felser, Esq., for the appellant[1]
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 September 16, 2021 appellant, through counsel, filed a timely appeal from a July 29, 2021 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 met his burden of proof to establish that he was injured in the performance of duty on January 25, 2020, as alleged.

FACTUAL HISTORY

On May 19, 2020 appellant, then a 56-year-old, hazardous waste disposer/rubber products compounder, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2020 his exposure to hazardous waste at work caused him to have a seizure while leaving the base to go home, and resulted in a motor vehicle accident. He explained that he sustained fractured left wrist; lower back, lower neck, and left leg pain; left arm and hand numbness; and back arteriovenous malformation (AVM). Appellant stopped work on January 25, 2020 and returned on March 16, 2020.

In a February 20, 2020 return to work certificate, Dr. Darl W. Rantz, a family medicine specialist, noted that appellant had been under his care for treatment of injuries sustained in a motor vehicle accident. He released appellant to return to work on March 16, 2020.

In a report dated March 10, 2020, Dr. Rantz noted that appellant was evaluated on February 2, 2020 following his hospitalization from January 25 to 29, 2020. He opined that the seizure appellant experienced appeared to be linked to repeated exposure to hazardous materials (HazMat) chemical waste at work. Dr. Rantz released appellant to return to work on March 16, 2020 with restrictions of no driving vehicles and forklifts until August 1, 2020 and to avoid exposure to HazMat chemical waste.

An employing establishment work status form report dated May 26, 2020 indicated that as of May 18, 2020 appellant's restrictions were: no driving vehicles or forklifts until August 1, 2020; no walking over 200 yards; no climbing stands or ladders; and no work in proximity to or transport of hazardous chemical waste; and desk work only.

Dr. Rantz, in a May 13, 2020 work release certificate, diagnosed motor vehicle injuries, seizure disorder, left leg neuropathy, and lumbar degenerative joint disease.

In a development letter dated May 26, 2020, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It noted that he had a prior claim under OWCP File No. xxxxxx228, which revealed that he had a long, preexisting history of seizure disorder. OWCP advised appellant of the type of factual and medical evidence required to establish his claim. It afforded him 30 days to respond.

By decision dated June 30, 2020, OWCP denied appellant's claim, finding that causal relationship between appellant's diagnosed medical condition and accepted employment-related exposure had not been established. It noted that he had a history of seizure disorder.

Following the denial of the claim, OWCP received reports regarding appellant's hospitalization from January 25 to 29, 2020. In a hospital report dated January 25, 2020, Dr. Dennis Wayne Ashley, a Board-certified surgeon, noted that appellant had been admitted to the emergency room after he had a seizure and lost consciousness while driving, causing him to

swerve off the road and hit a tree. Physical examination findings were detailed and diagnostic tests reviewed. Dr. Ashley admitted appellant to the hospital to watch closely for any neurologic changes. Appellant stated that he had a history of seizures following a lobotomy in the 1990's. During his hospital stay, he was also seen by Dr. Lindsey C. Bridges, an osteopath specializing in general surgery, who diagnosed concussion, left L4 transverse process fracture, and possible left ulnar fracture. It was noted that appellant had not had a seizure in 10 years and that a seizure likely preceded the motor vehicle accident. A discharge summary dated January 29, 2020 provided a summary of care and significant findings by Dr. Swathi Gopishetty, a Board-certified internist. Discharge diagnoses included: seizure, syncope, history of traumatic brain injury, memory impairment, hypertension, hyperlipidemia, post-traumatic stress disorder, hypomagnesemia, and hypokalemia.

On July 29, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on October 27, 2020.

In a report dated August 11, 2020, Dr. Rantz found that appellant's seizure appeared to be related to repeated exposure to HazMat chemical waste at work. He released appellant to return to work with a restriction that he not work in close proximity, or in the transport of, HazMat chemical waste.

On November 13, 2020 OWCP received a copy of the police report regarding the January 25, 2020 motor vehicle accident.

OWCP also received an undated statement from appellant detailing his seizure history beginning in 1997 when he had a jeep accident and sustained a traumatic brain injury for which he underwent a frontal lobotomy. Appellant noted that he had a seizure in 2008, which the physician attributed to very low levels of Dilantin. He noted that in the years between 2009 and 2013, his coworker would pack sealants while he made labels and delivered them to the hangar. Appellant stated that in November 2014 he was transferred to a hazardous waste handler, while his job was listed as a rubber handler. He stated that he told his supervisor that handling the chemicals in the bags and drums caused headaches and dizziness. When this was brought to Dr. Rantz' attention, appellant stated that the employing establishment should have known that he should not be around hazardous chemicals given his seizure history. He stated that he was taken off disposing of chemical waste in 2019. On January 25, 2020 appellant stated that he was assigned to disposing of hazardous waste after he signed up for overtime, which he thought would involve issuing materials. However, at the end of shift, appellant was called to dispose of a hazardous waste materials bag, which was loaded with mixed chemicals, and two 55-gallon drums onto a pallet. He noted strong fumes emanating from the 55-gallon drums, and that he became light-headed. At this point, appellant went to his office to rest, but still did not feel well and had a headache. While going through the gates of the base to go home, he smelled a funny smell and that was the last thing he remembered before ending up in the emergency room.

In a report dated November 30, 2020, Dr. Rantz opined that appellant's seizure on January 25, 2020 appeared to be linked to repeated HazMat chemical waste exposure at work. He noted that appellant's last seizure due to a post-traumatic cause occurred 20 years prior. Thus, Dr. Rantz concluded that there was no reason to attribute appellant's seizure on January 25, 2020

to his preexisting seizure condition other than that something had changed. According to him, the something that changed was appellant's exposure to hydrocarbon HazMat chemical waste. The repeated exposure aggravated appellant's remote history of seizure disorder. Dr. Rantz explained that exposure to hydrocarbon HazMat waste can cause significant health risks. He reported that appellant's latest seizure was the cause of his automobile crash into a tree, which resulted in L4 left transverse process displaced fracture and left distal ulna nondisplaced fracture. Dr. Rantz released appellant to return to work with restrictions which included avoiding exposure to open hydrocarbon HazMat chemical waste as appellant had been seizure free for six months.

By decision dated December 22, 2020, OWCP's hearing representative set aside the June 30, 2020 decision and remanded the case for further development of the factual evidence. The hearing representative noted the record did not contain any comment from the employing establishment regarding appellant's claim or any documentation pertaining to exposure to hazardous wastes or whether the motor vehicle accident occurred in the performance of duty. In addition, she found that there was no evidence in the record concerning the alleged odor or actual chemical exposure.

In a development letter dated January 15, 2021, OWCP informed appellant of the type of additional evidence required to establish his claim. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding his chemical exposure. OWCP afforded both parties 30 days to respond.

In a statement dated December 9, 2020, E.M., appellant's supervisor, responded to appellant's complaint of discrimination for failure to provide reasonable accommodation. E.M. indicated that appellant worked as a rubber compounder until that position was eliminated around 2016-2017 and thereafter performed duties as a hazardous waste disposer. In that job, appellant would issue chemicals to painters and mechanics." E.M. indicated that before his January 2020 accident, appellant was working in B137 "The Pharmacy," which had hazardous chemicals on-site. E.M. stated that in January 2020 appellant's doctor provided work restrictions of no chemical exposure.

By decision dated February 16, 2021, OWCP found that appellant had established exposure to hazardous chemicals. However, it denied the claim, finding that the evidence of record was insufficient to establish that he sustained an injury and/or medical condition that arose during the course of employment and within the scope of compensable employment factors as defined by FECA. OWCP found that appellant was not on the employing establishment's premises at the time of the accident which occurred 25 minutes after the end of his work shift. Therefore, it concluded that "the evidence does not support that the injury and/or event(s) occurred within the performance of duty."

On February 19, 2021 OWCP received an undated statement from M.B., who related that on January 25, 2020 appellant was helping him move two 50-gallon drums of hazardous waste. M.B. related that appellant returned to the office following exposure to fumes from the drums.

On March 15, 2021 appellant, through counsel requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 11, 2021.

By decision dated July 19, 2021, OWCP's hearing representative affirmed OWCP's February 16, 2021 decision, finding that appellant had not established that he was injured in the performance of duty on January 25, 2020, as alleged. It further found that the medical evidence of record was insufficient to establish causal relationship.[3]

By decision dated July 29, 2021, OWCP reissued the July 19, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[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 determine whether a federal employee sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[8]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported

[3] Upon return of the case record, the hearing representative was instructed OWCP to administratively combine OWCP File No. xxxxxx228 with the current claim, OWCP File No. xxxxxx666. OWCP has administratively combined the files, with OWCP File No. xxxxxx228 serving as the master file.

[4] *Id.*

[5] *M.H.*, Docket No. 21-0891 (issued December 22, 2021); *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *M.H.*, *id.*; *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *M.H.*, *id.*; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *S.E.*, Docket No. 21-0666 (issued December 28, 2021); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *M.H.*, *supra* note 5; *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established employment factors.[10]

Where there is a preexisting condition affecting the same part of the body where a work injury or illness is claimed, the attending physician must provide a rationalized medical opinion, which differentiates between the effects of the employment-related injury or disease and the preexisting condition.[11]

ANALYSIS

The Board finds that appellant has established that he was injured in the performance of duty on January 25, 2020, as alleged. While OWCP found that his seizure occurred off-premises and outside of his work hours, appellant alleges that his exposure to hazardous chemicals caused his injury. The accepted exposure to hazardous chemicals arose during the course of employment and within the scope of compensable work factors. The Board thus finds that appellant was injured in the performance of duty on January 25, 2020, as alleged. Consequently, the question becomes whether the accepted employment exposure caused an injury.[12]

The Board further finds, however, that the case is not in posture for decision with regard to the issue of causal relationship.

In a report dated November 30, 2020, Dr. Rantz opined that appellant's seizure on January 25, 2020 appeared to be linked to repeated HazMat chemical waste exposure at work. He noted that appellant's last seizure due to a post-traumatic cause occurred 20 years ago. Thus, Dr. Rantz concluded that there was no reason to attribute appellant's seizure on January 25, 2020 to his preexisting seizure condition other than that appellant was exposed to HazMat chemical waste. Dr. Rantz explained that the repeated chemical exposure aggravated appellant's remote history of seizure disorder and that exposure to HazMat waste can cause significant health risks. He released appellant to return to work with restrictions which included avoiding exposure to open hydrocarbon HazMat chemical waste as appellant had been seizure free for six months.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] It has an obligation to see that justice is done.[14]

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[10] *M.H.*, *id.*; *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[12] *L.J.*, Docket No. 20-0998 (issued December 14, 2022); *J.T.*, Docket No. 20-0713 (issued July 11, 2022); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[13] *See S.D.*, Docket No. 22-1006 (issued December 5, 2022); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[14] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

The Board finds that Dr. Rantz' report, while not fully rationalized, is sufficient to require further development of the medical evidence.[15] On remand, OWCP shall prepare a statement of accepted facts and refer appellant to a specialist in the appropriate field of medicine for a second opinion examination and an evaluation regarding whether appellant sustained a medical condition causally related to the accepted hazardous chemical exposure. If the second opinion physician disagrees with the opinion of Dr. Rantz, he or she must provide a fully-rationalized explanation of why the accepted employment exposure was insufficient to have caused appellant's medical conditions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established that he was injured in the performance of duty on January 25, 2020 as alleged. The Board further finds, however, that the case is not in posture for decision with regard to the issue of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 23, 2023
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

[15] *See J.H., supra* note 6; *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).