United States Department of Labor
Employees' Compensation Appeals Board

H.S., Appellant	)	
and	)	**Docket No. 13-519**
	)	**Issued: September 12, 2013**
DEPARTMENT OF THE AIR FORCE, El Segundo, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 28, 2012 appellant filed a timely appeal from an October 31 and December 20, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant was entitled to continuation of pay; and (2) whether appellant has met his burden of proof to establish that his myocardial infarction, job-related stress, increased hypertension and high blood pressure are employment related.

FACTUAL HISTORY

On March 2, 2011 appellant, then a 57-year-old contract specialist, filed a traumatic injury claim alleging that his December 23, 2008 heart attack was due to walking one-half mile from the aerospace building to another building and up four flights of stairs. He stopped work on

[1] 5 U.S.C. §§ 8101-8193.

December 28, 2008 and returned to regular duty on January 26, 2009. Appellant retired on August 27, 2011.

Appellant was treated by Dr. Taha Ahmad, Board-certified in internal and occupational medicine, on February 28, 2011. He reported that on December 23, 2008, after walking a half mile from his office and then ascending several flights of stairs he had a myocardial infarction. Appellant reported being treated for hypertension, pneumonia and coronary artery disease. Dr. Ahmad diagnosed coronary artery disease in native artery. She opined that the injury more likely than not was caused by the employment. In a March 1, 2011 attending physician's report, Dr. Ahmad diagnosed coronary artery disease in a native artery and noted with a checkmark "yes" that appellant's condition was caused by an employment activity. She noted that he could return to work.

On April 28, 2011 OWCP denied the claim on the grounds that medical evidence was insufficient.

Appellant requested an oral hearing which was held on September 16, 2011. He submitted a December 23, 2008 report from Dr. Leonard Scuderi, a Board-certified cardiologist, who treated appellant for an acute posterior myocardial infarction. Dr. Scuderi performed an arteriography, left heart catheterization and left ventriculography. He diagnosed myocardial infarction, hypertension, diabetes and excess body weight. On February 7, 2011 appellant was treated by Dr. Renado Labog, a Board-certified family practitioner, who noted that appellant had multiple medical problems aggravated by stress.

In a December 15, 2011 decision, an OWCP hearing representative vacated the April 28, 2011 decision and remanded the matter for further development. The hearing representative indicated that Dr. Ahmad's reports warranted additional medical development of appellant's claim and instructed OWCP to refer appellant to a second opinion physician.

Appellant submitted reports from Dr. Scuderi dated December 23 to 26, 2008, who diagnosed acute inferolateral myocardial infarction. Dr. Scuderi noted that appellant underwent a cardiac catheterization and noted findings of moderate coronary atherosclerotic disease. A February 3, 2009 report from Dr. R. Fernando Roth, a Board-certified cardiologist, diagnosed stable cardiovascular status, status post myocardial infarction on December 23, 2008 secondary to aneurismal ectatic coronary artery disease, diabetes mellitus, obesity, hypertension, gastroesophageal reflux disease, sleep apnea and hyperlipidemia. He noted that appellant presented feeling fine with no chest pain, shortness of breath, palpitations or syncope.

On March 9, 2012 OWCP referred appellant for a second opinion to Dr. Richard M. Hyman, a Board-certified cardiologist. It provided Dr. Hyman with appellant's medical records, a statement of accepted facts and a description of appellant's work duties. In a March 27, 2012 report, Dr. Hyman noted examining appellant and reviewing his records. He advised that appellant had hypertension since 1991. Dr. Hyman noted that appellant had not been rehospitalized after the December 23, 2008 episode and currently walked four miles on a treadmill for 20 minutes at least four times a week without symptoms. Appellant reported no chest pain, abdominal pain or shortness of breath. Dr. Hyman noted an essentially normal physical examination, blood pressure was 140/80, pulse was 70 and weight was 246 pounds, which was 38 pounds above his ideal body weight. He diagnosed a nonsegment elevation myocardial infarction and hypertension. Dr. Hyman noted that appellant had a cardiac

catheterization, which showed occluded blood vessels and an angiogram and radioactive isotope test revealed areas of heart damage. He opined that the exercise on December 23, 2008 did contribute to the myocardial infarction and hospitalization and noted that appellant had preinfarction angina. Dr. Hyman noted that the underlying condition, coronary artery disease, was probably not caused by appellant's work but the heart attack was an aggravation of the underlying coronary artery disease, which was temporary and should have resolved by January 26, 2009 when appellant returned to work. He noted that appellant's heart attack was very small and appellant's exercise capacity objectively documented on treadmills was excellent demonstrating that his heart did not sustain a significant amount of damage and did not alter his exercise capacity. Appellant noted that the aggravation of his condition did not significantly alter his underlying disease and did not increase any disability or impairment that would not exist on the basis of underlying coronary disease itself.

In a decision dated April 15, 2012, OWCP accepted appellant's claim for temporary aggravation of myocardial infarction for a closed period ending on January 26, 2009. In another April 5, 2012 decision, it denied his claim for continuation of pay as it was untimely filed.

On April 25, 2012 appellant requested an oral hearing which was held on August 9, 2012. He submitted a Form CA-2, notice of occupational disease, asserting that he developed an exacerbation of stress and high blood pressure after the employing establishment refused to make reasonable accommodations.

In a decision dated October 31, 2012, an OWCP hearing representative affirmed the April 5, 2012 OWCP decision denying appellant's claim for continuation of pay.

On November 2, 2012 appellant requested reconsideration. He requested that his accepted condition be expanded to include myocardial infarction, job-related stress, increased hypertension and stress related to high blood pressure due to the December 23, 2008 heart attack and change in work environment. Appellant submitted reports from Dr. Labog dated January 14, 2010 to February 7, 2011, who treated him for angina controlled with medication. He diagnosed old myocardial infarction which was stable, controlled hypertension and hypercholesterolemia, diabetes mellitus without complications and controlled blood pressure. In reports dated October 26, 2010 to October 9, 2012 Dr. Labog diagnosed recurrent back pain, tinnitus and headaches secondary to tension. A May 14, 2012 report from Dr. Charles Imbus, a Board-certified pediatrician, noted treating appellant for bilateral headaches and tinnitus. He diagnosed cervical dystonia, muscle tension headaches, work stress and glaucoma. On March 21, 2012 appellant was treated by Dr. Catherine Louden, a Board-certified otolaryngologist, who noted that a computerized tomography scan of the sinus revealed no disease. Dr. Louden diagnosed a headache. An x-ray of the cervical spine dated May 14, 2012 revealed scoliosis, cervical lordosis and mild osteoarthritis.

In a November 15, 2012 letter, OWCP noted receipt of appellant's statement asserting that he developed job-related stress and aggravation of hypertension and advised that this constituted a new occupational disease for conditions arising after the December 23, 2008 heart attack and instructed him to file a new occupational disease claim. It also advised that if appellant wanted to pursue a recurrence of disability for his current claim that he must submit a Form CA-2a with supporting medical documentation.

In a decision dated December 20, 2012, OWCP denied appellant's claim for myocardial infarction, job-related stress, increased hypertension and stress-related high blood pressure due to the December 23, 2008 heart attack.

LEGAL PRECEDENT -- ISSUE 1

Section 8118(a) of FECA authorizes continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.[2] This latter section provides that written notice of injury shall be given within 30 days.[3] The context of section 8122 makes clear that this means within 30 days of the injury.[4]

OWCP regulations provide, in pertinent part, that to be eligible for continuation of pay, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.[5]

The Board has held that section 8122(d)(3) of FECA,[6] which allows OWCP to excuse failure to comply with the time limitation provision for filing a claim for compensation because of exceptional circumstances, is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay. Thus, there is no provision in the law for excusing an employee's failure to file a claim within 30 days of the employment injury.[7]

ANALYSIS -- ISSUE 1

Appellant filed a written notice of a traumatic injury on March 2, 2011 more than two years after his injury on December 23, 2008. Because he filed the claim on March 2, 2011, the Board finds that it was not filed within 30 days of the injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. There is no provision in FECA for excusing a late filing and appellant is not entitled to continuation of pay.[8] This is so regardless of any failure on the part of the

[2] *Id.* at § 8118(a).

[3] *Id.* at § 8122(a)(2).

[4] *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

[5] 20 C.F.R. § 10.205(a)(1-3). *See also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

[6] 5 U.S.C. § 8122(d)(3).

[7] *Dodge Osborne*, 44 ECAB 849, 855 (1993).

[8] *Id.*

employing establishment.[9] The Board finds that appellant was not entitled to continuation of pay as he did not file within the requisite 30 days from the date of injury.[10]

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[11]

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[12] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a 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.[13] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[14]

ANALYSIS -- ISSUE 2

Appellant alleges that he developed myocardial infarction, job-related stress, increased hypertension and high blood pressure due to the December 23, 2008 heart attack. OWCP accepted the claim, as noted, for temporary aggravation of myocardial infarction that resolved by January 26, 2009. It based its determination on the opinion of Dr. Hyman, an OWCP referral physician. The Board finds that the medical evidence is insufficient to establish that appellant developed a myocardial infarction, job-related stress, increased hypertension and high blood pressure causally related to this work injury.

OWCP had referred appellant to Dr. Hyman for a second opinion. Dr. Hyman diagnosed a myocardial infarction and hypertension. He noted a normal physical examination. Dr. Hyman found that the exercise at work on December 23, 2008 contributed to the myocardial infarction but that appellant's underlying coronary artery disease was probably not caused by his employment but was an aggravation of the underlying coronary artery disease which was temporary and resolved by January 26, 2009 when appellant returned to work. He noted that appellant's heart attack was very small and noted his exercise capacity objectively documented on treadmills was excellent. Dr. Hyman concluded that appellant's heart had not suffered a

[9] *See* 20 C.F.R. § 10.211 (the employing establishment responsibilities in continuation of pay cases).

[10] *Id.*

[11] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[12] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

[13] *Leslie C. Moore*, 52 ECAB 132 (2000).

[14] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

significant amount of damage, that the episode was not enough to alter his exercise capacity or significantly altered his underlying disease. He opined that the December 23, 2008 heart attack did not increase any disability or impairment that would not exist on the basis of underlying coronary disease itself.

The medical records submitted most contemporaneously with the date of the injury, a December 23, 2008 report from Dr. Scuderi, who noted performing an arteriography, left heart catheterization and left ventriculography. He diagnosed myocardial infarction, hypertension, diabetes and excess body weight. In other reports, Dr. Scuderi diagnosed acute inferolateral myocardial infarction and moderate coronary atherosclerotic disease. He did not attribute any diagnosed conditions to particular factors of appellant's employment. Dr. Roth's February 3, 2009 report diagnosed stable cardiovascular status, status post myocardial infarction on December 23, 2008 secondary to aneurismal ectatic coronary artery disease, diabetes mellitus, obesity, hypertension, gastroesophageal reflux disease, sleep apnea and hyperlipidemia. He did not find that the additional conditions claimed by appellant were work related.

Appellant submitted a February 28, 2011 report from Dr. Ahmad who diagnosed coronary artery disease in native artery. Dr. Ahmad opined that the injury more likely than not was caused by the employment. The Board notes that her report provides some support for causal relationship but is insufficient to establish that conditions other than the accepted temporary aggravation of myocardial infarction were causally related to his work duties. Dr. Ahmad failed to provide medical rationale explaining the basis of her opinion regarding the causal relationship between appellant's diagnosed coronary artery disease and the factors of employment and why such condition would not be due to any nonwork factors such as obesity, hypertension or diabetes.[15] Therefore, this report is insufficient to meet appellant's burden of proof. Similarly, in a March 1, 2011 attending physician's report, Dr. Ahmad diagnosed coronary artery disease in a native artery and noted with a checkmark "yes" that appellant's condition was caused by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[16] No other reports from Dr. Ahmad specifically address causal relationship between the nonaccepted conditions and his work factors.

Reports from other physicians are insufficient to establish that the claim should be expanded as these reports do not specifically address how a myocardial infarction, hypertension, hypercholesterolemia, diabetes mellitus, headaches or other conditions were due to the accepted work injury of December 23, 2008.[17]

There is no reasoned medical evidence supporting appellant's claim for an acute myocardial infarction, job-related stress, increased hypertension and high blood pressure as causally related to the December 23, 2008 work injury. Rather, the Board notes that he, in his November 2, 2012 letter, attributes the acute myocardial infarction, job-related stress, increased

[15] *See Jimmie H. Duckett, id.*

[16] *Lucrecia M. Nielson,* 41 ECAB 583, 594 (1991).

[17] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

hypertension and high blood pressure to the change in work environment after the December 23, 2008 injury, which caused a decisive increase in job-related stress. This appears to implicate new work factors that occurred after the December 23, 2008 injury. As explained, OWCP properly instructed appellant to file a new Form CA-2 for these conditions.

On appeal, appellant asserted that his claim should be expanded. As noted above, the Board finds that the medical evidence is insufficient to establish that additional conditions are causally related to the December 23, 2008 accepted injury.

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.

CONCLUSION

The Board finds that appellant was not entitled to continuation of pay for his December 23, 2008 employment injury. The Board finds that he did not meet his burden of proof to establish that he sustained an acute myocardial infarction, job-related stress, increased hypertension and high blood pressure causally related to his December 23, 2008 accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the December 20 and October 31, 2012 decision of the Office of Workers' Compensation Programs are affirmed.

Issued: September 12, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board