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M.A., Appellant)	
)	
and)	Docket No. 24-0930
)	Issued: January 30, 2025
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
REGION IV, Atlanta, GA, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

³ The Board notes that, following the September 3, 2024 decision, OWCP received additional evidence. 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 OWCP has met its burden of proof to rescind the acceptance of appellant's claim for multiple sclerosis (MS).

FACTUAL HISTORY

On February 14, 2023 appellant, then a 51-year-old environmental protection specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2004 he experienced numbness throughout his body and lost the use of his arms and hands, particularly the right side of his body, while in the performance of duty. He explained that, while he was drilling and collecting hazardous and toxic waste samples during a criminal investigation, he inhaled hazards from the waste being collected.

OWCP received medical evidence, including reports dated May 25, 2004 and September 2, 2011 by Dr. Edward S. Novey, an attending neurologist, who discussed his physical examination findings and diagnostic test results. Dr. Novey diagnosed MS and new onset atrial fibrillation.

In a development letter dated March 20, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

OWCP subsequently received an April 3, 2023 report, wherein Dr. Tifani Gleeson, Board-certified in occupational medicine, noted her review of appellant's medical records on behalf of the employing establishment. Dr. Gleeson asserted that appellant's medical records did not provide a well-rationalized physician's opinion establishing that appellant sustained MS due to his unspecified work exposures on May 17, 2004 at work. She explained that there was a time lapse between the initial inflammation and the development of nervous system pathology, which may progress to various degrees of clinically apparent symptomatology. Thus, Dr. Gleeson found that it was not logical that a one-time exposure was competent enough to have caused the diagnosed condition, during or immediately following the exposure. She, however, recommended that appellant be referred to a neurologist to determine any causal relationship between his unspecified work exposures and diagnosed conditions.

On April 19, 2023 OWCP referred appellant, along with the case record, and a statement of accepted facts (SOAF), to Dr. Nizar Souayah, Board-certified in electrodiagnostic medicine, neuromuscular medicine, psychiatry, and neurology, serving as a district medical adviser (DMA) for an opinion on whether appellant developed MS and/or unspecified atrial fibrillation, causally related to the alleged May 17, 2004 employment incident.

On May 2, 2023 appellant responded to OWCP's March 20, 2023 development questionnaire. He recounted that he collected hazardous and toxic waste samples at work and developed the loss of use of his right arm the next day. Appellant reiterated his allegation that his MS was caused by his employment exposure to these waste samples. He also described his medical treatment.

In a May 21, 2023 report, Dr. Souayah noted the history of the alleged May 17, 2004 employment incident. He reviewed the medical record, including Dr. Novey's September 2,

2011 report and Dr. Gleeson's April 3, 2023 report. Dr. Souayah opined that appellant did not develop a brain demyelinating disease (MS) and atrial fibrillation because of inhalation of toxic waste material at work. He explained that the short-time temporal association of appellant's development of MS symptoms immediately following inhalation of toxic wastes did not support a plausible cause effect mechanism to explain the clinical findings. Dr. Souayah noted that this was similar to the occurrence of atrial fibrillation which was diagnosed several years after exposure to toxic wastes according to medical records.

OWCP subsequently received a May 10, 2023 attending physician's report (Form CA-20) wherein Dr. Jon S. Poling, a Board-certified neurologist, diagnosed MS and opined that the diagnosed condition was caused or aggravated by appellant's exposure to hazardous/toxic waste at work on May 17, 2004.

By decision dated June 22, 2023, OWCP accepted that the May 17, 2004 employment incident of exposure occurred as alleged, but denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical condition and the accepted May 17, 2004 employment incident of exposure.

In a subsequent decision dated June 27, 2023, OWCP found that while it had allowed appellant 60 days to submit evidence in response to its March 20, 2023 development letter, it did not send him an interim notice prior to denying his traumatic injury claim in accordance with 20 C.F.R. § 10.121. Thus, it found that its June 22, 2023 decision was issued in error and vacated that decision to provide appellant a full 60 days to submit evidence in support of his claim.

OWCP, in a June 27, 2023 development letter, again advised appellant of the deficiencies of his traumatic injury claim and requested that he submit additional medical evidence to establish his claim. He was afforded 60 days to submit the necessary evidence.

In undated statements, appellant responded by again recounting his history of injury during the week of May 17, 2004.

On July 13, 2023 OWCP referred appellant, along with the case record, a SOAF, and a series of questions, to Dr. Mohamad Salles, a Board-certified neurologist, for a second opinion evaluation and determination regarding whether he developed the claimed conditions due to the alleged May 17, 2004 employment exposure.

In a July 13, 2023 letter, Holly K. Collier, a Board-certified advanced practice registered nurse and family nurse practitioner, noted that prior to appellant's significant exposure to toxic waste on May 18, 2004, he had no neurological symptoms or problems. She related that although there was no definitive testing to identify a trigger for MS initial presentation or exacerbation, the exposure was certainly temporally associated as he never had any type of symptoms prior to this day.

In a July 27, 2023 second opinion report, Dr. Salles noted a history of the alleged May 17, 2004 employment incident and appellant's medical treatment. He reported his examination findings and provided assessments of MS, anxiety, and history of atrial fibrillation. Dr. Salles agreed with Dr. Gleeson that appellant's work exposure was not responsible for his demyelinating brain disease. However, he advised that it likely caused an acceleration of

appellant's symptoms as appellant performed physical work on May 17, 2004. Dr. Salles concluded that appellant could return to work in his environmental protection specialist position. In an accompanying work capacity evaluation (Form OWCP-5c) dated July 31, 2023, he advised that appellant could not perform his date-of-injury job without restriction, but appellant could work six hours per day with restrictions for two years.

In an August 18, 2023 letter, OWCP requested that Dr. Salles provide a supplemental report addressing whether the acceleration of appellant's symptoms of demyelinating brain disease were temporary or permanent and whether the acceleration of his symptoms had resolved.

OWCP received an additional letter dated August 29, 2023 from Ms. Collier. Ms. Collier advised that although appellant's initial exacerbation of his MS symptoms had resolved, he continued to have additional relapses and remissions of the condition.

In a supplemental report dated August 28, 2023, Dr. Salles responded to OWCP's August 18, 2023 letter. He noted that MS is a chronic progressive disease and advised that appellant's symptoms and signs were consistent with a permanent change. Dr. Salles further advised that his condition had not resolved.

By decision dated September 11, 2023, OWCP accepted appellant's claim for MS.

On December 8, 2023 OWCP requested that its DMA, Dr. Souayah, review Dr. Salles' July 27, 2023 report and determine whether he agreed with his findings.

In a December 26, 2023 response, Dr. Souayah noted his review of the medical record, including the reports of Dr. Gleeson and Dr. Salles. He opined that appellant did not develop MS and atrial fibrillation because of inhalation of toxic waste material at work. Dr. Souayah reiterated his prior opinion and supporting rationale set forth in his May 21, 2023 report that appellant's exposure to toxic waste did not accelerate his symptoms of brain demyelination because the short-term temporal association did not provide a plausible cause-and-effect mechanism to support the clinical findings and the diagnosis of atrial fibrillation occurred several years after appellant was exposed to toxic chemicals at work on May 17, 2004. He noted that there was no clear evidence, biomarkers, ancillary testing, or rationale supporting that appellant's brief exposure to toxic waste accelerated his MS symptoms.

In a February 14, 2024 letter, OWCP advised appellant that it proposed to rescind its prior acceptance of his claim for MS based on its error. It explained that the weight of the medical opinion evidence with respect to whether he had employment-related MS rested with the well-rationalized opinion of Dr. Souayah, its DMA. OWCP found that the opinion of Dr. Souayah "invalidates" the original acceptance of MS as he determined that appellant's MS and atrial fibrillation conditions were not caused by his exposure to toxic waste at the employing establishment. It afforded appellant 30 days to present evidence and argument challenging the proposed rescission action.

In statements dated February 21, 22, and 27, and May 30, 2024, appellant contended that the medical evidence of record established that his MS was causally related to collecting and handling hazardous and toxic waste while working at the employing establishment.

Appellant resubmitted a May 25, 2004 report, wherein it noted appellant's chief complaint of lack of right-hand coordination. He reported normal findings on physical examination.

By decision dated August 14, 2024, OWCP found that appellant had established that the May 17, 2004 incident of exposure had occurred as alleged, but denied his traumatic injury claim, finding that the medical evidence of record was insufficient to establish that he sustained MS in connection with the accepted May 17, 2004 employment incident of exposure. It explained that the weight of the medical evidence of record rested with the May 21, 2023 opinion of its DMA, Dr. Souayha, that appellant did not develop MS and atrial fibrillation causally related to the accepted May 17, 2004 employment incident of exposure.

In a separate decision dated August 14, 2024, OWCP finalized the proposed rescission of the acceptance of appellant's claim for MS, effective that date. It found that the weight of the medical evidence rested with the May 21 and December 26, 2023 reports of Dr. Souayah, the DMA, and July 27, 2023 report of Dr. Salles, OWCP's referral physician.

On August 27, 2024 appellant requested reconsideration of the August 14, 2024 rescission decision. In an accompanying statement dated August 27, 2024, he contended that the medical evidence of record was sufficient to establish that he developed a lifelong autoimmune condition due to his exposure to hazardous and toxic waste and use of equipment while in the performance of duty during the week of May 17, 2004.

OWCP, by decision dated September 3, 2024, denied modification finding that the acceptance of the claim was properly rescinded.

LEGAL PRECEDENT

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application.⁴ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁵ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁶

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. Once OWCP

⁴ 5 U.S.C. § 8128.

⁵ *L.M.*, Docket No. 19-0705 (issued September 11, 2019); *John W. Graves*, 52 ECAB 160, 161 (2000). *See also* 20 C.F.R. § 10.610.

⁶ *D.W.*, Docket No. 17-1535 (issued February 12, 2018).

accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁷ This also holds true where OWCP later decides that it erroneously accepted a claim.⁸

OWCP bears the burden of proof to justify rescission of acceptance on the basis of new evidence, legal argument, and/or rationale.⁹ Probative and substantial positive evidence or sufficient legal argument must establish that the original determination was erroneous. OWCP must also provide a clear explanation of the rationale for rescission.¹⁰

ANALYSIS

The Board finds that OWCP has met its burden of proof to rescind the acceptance of appellant's claim for MS.

In a May 21, 2023 report, Dr. Souayah, an OWCP DMA, found that appellant "did not develop a brain demyelinating disease (MS) and atrial fibrillation because of inhalation of toxic waste material at work." In a subsequent report dated December 26, 2023, he further opined that appellant's exposure to toxic waste did not cause or accelerate appellant's brain demyelination. In both reports, Dr. Souayah explained that the short-term temporal association did not provide a plausible cause-and-effect mechanism to support the clinical findings. In addition, in his December 23, 2023 report, he related that the medical evidence of record did not provide clear evidence, biomarkers, ancillary testing, or medical rationale supporting that appellant's brief exposure to toxic waste accelerated his MS. Dr. Souayah reviewed the medical record and provided sufficient medical rationale to support his conclusion that appellant's MS was not caused or accelerated by the May 17, 2004 employment incident of exposure.¹¹ He provided substantial probative evidence that appellant's claim should not have been accepted for MS based on the medical evidence of record, and lack of medical rationale establishing a causal relationship between appellant's MS condition and the accepted employment incident of exposure. Thus, the Board finds that Dr. Souayah's reports represent the weight of the evidence with regard to the rescission of the accepted claim.

Following OWCP's February 14, 2024 notice of proposed rescission, appellant resubmitted Dr. Novey's May 25, 2004 report. However, Dr. Novey did not address whether appellant's MS was causally related to the May 17, 2004 employment incident of exposure.¹² Thus, the Board finds that this evidence is insufficient to overcome the weight accorded to the reports of Dr. Souayah.

⁷ *Thomas Meyers*, 35 ECAB 381, 386 (1983).

⁸ *V.R.*, Docket No. 18-1179 (issued June 11, 2019); *Curtis Hall*, 45 ECAB 316 (1994).

⁹ *L.G.*, Docket No. 17-0124 (issued May 1, 2018); *Katherine A. Kirtos*, 42 ECAB 160, 165 (1990).

¹⁰ *W.H.*, Docket No. 17-1390 (issued April 23, 2018).

¹¹ *M.L.*, Docket Nos. 18-1058 and 18-1224 (issued November 21, 2019); *M.G.*, Docket No. 15-1396 (issued October 15, 2015).

¹² *C.F.*, Docket No. 20-0479 (issued August 2, 2022).

As such, the Board finds that OWCP met its burden of proof to rescind acceptance of appellant's MS claim.

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 OWCP has met its burden of proof to rescind acceptance of appellant's claim for MS.

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 2025
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