

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ABEL E. CISNEROS, JR. and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Vacaville, CA

*Docket No. 01-1759; Submitted on the Record;
Issued September 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof in establishing that he had any disability for intermittent periods beginning September 16, 1993 to January 15, 1999 causally related to the accepted injury.

This is the second appeal in the present case. In a November 17, 1998 decision, the Board set aside the Office of Workers' Compensation Programs' decision dated October 3, 1996. The Board found that the medical evidence submitted by appellant raised an uncontroverted inference of causal relationship between appellant's September 16, 1993 heart attack and his factors of federal employment and was sufficient to require further development by the Office. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.¹

On December 17, 1998 appellant was referred for a second opinion to Dr. Thomas A. Haffey, an osteopath. The Office provided Dr. Haffey with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated January 14, 1999, Dr. Haffey indicated that he reviewed the records provided to him and performed a physical examination of appellant. He diagnosed appellant with status post myocardial infarction precipitated by the stress of his job. Dr. Haffey indicated that as a result of the myocardial infarction appellant sustained myocardial damage and deterioration of the cardiac function. He further noted that the thrombolytic and coronary artery bypass graft surgery was made necessary by the infarct.

In a decision dated February 23, 1999, the Office accepted appellant's claim for a myocardial infarct and paid appropriate compensation.

¹ Docket No. 97-470 (issued November 17, 1998).

In a decision dated June 4, 1999, the Office determined that appellant's modified position of mine safety and health inspector fairly and reasonably represents his wage-earning capacity. The Office indicated that appellant successfully worked in this position for 60 days.²

In a letter dated June 29, 1999, appellant requested a hearing before an Office hearing representative. He submitted a report from Dr. Jeffrey D. Kaplan, a Board-certified internist, dated September 10, 1999 and a report from Dr. Craig R. Narins, a Board-certified internist, dated September 17, 1999. Dr. Kaplan's report of September 10, 1999 noted that appellant was being treated for recent complaints of chest pain. He noted an essentially normal physical examination, indicating that the electrocardiogram was normal. Dr. Kaplan indicated that appellant was having atypical chest discomfort and additional testing was warranted. Thereafter, appellant was referred to Dr. Narins, whose report of September 17, 1999 noted a history of appellant's work-related injury and his current symptoms of nocturnal chest discomfort. He determined that appellant was at low risk for a cardiac event in the near future and the likelihood of a cardiac etiology for his chest pain was low. Dr. Narins indicated that appellant underwent a stress cardioliite which revealed some abnormalities. He noted that appellant's blood pressure was normal, rhythm was normal and the resting electrocardiogram was abnormal revealing an old inferior myocardial infarction (MI).

In a decision dated November 5, 1999, the Office set aside the decision dated June 4, 1999. The hearing representative noted that the Office must document the evidentiary source of the GS-11, step 1 pay effective September 19, 1996 and issue an appropriate decision regarding appellant's entitlement to wage-loss compensation.

Appellant filed a Form CA-7 requesting wage-loss compensation for disability for the intermittent period of September 16, 1993 to January 15, 1999.

In a decision dated June 6, 2000, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that the claimed periods of disability beginning September 16, 1993 to January 15, 1999 were causally related to appellant's accepted injury of September 16, 1993.

By letter dated June 20, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on March 1, 2001. Appellant submitted a hospital admission from September 16 to 20, 1993; a report from Dr. Richard M. Green, an internist, dated September 20, 1993; medical reports from Dr. Douglas R. Martel, a Board-certified internist, dated October 20, 1993 and September 7, 1995; a report from Dr. Barry W. Ramo, a Board-certified internist, dated December 18, 2000; and various insurance bills. The hospital admission from September 16 to 20, 1993 noted a history of appellant's work-related injury indicating he was status post MI on September 16, 1993. Appellant was discharged with recommendations not to drive or do any heavy physical labor. The note from Dr. Green dated September 20, 1993 recommended that appellant stay off work for six weeks after his heart attack on September 16, 1993. Dr. Martel's report of October 20, 1993 indicated that appellant could return to full-work capacity without any restrictions beginning November 1, 1993. His

² By letter dated September 19, 1996, the employing establishment offered appellant a position as a mine safety and health inspector. Appellant accepted this position.

report of September 7, 1995 indicated that appellant could return to work on a light-duty basis, office work only, starting September 11, 1995. The report from Dr. Ramo dated December 18, 2000 noted that appellant presented with complaints of fatigue. His physical examination was essentially normal. Dr. Ramo diagnosed that appellant with fatigue based on obstructive sleep apnea with no cardiac basis; coronary artery disease without signs of cardiac problems; nausea and vomiting due to medication; and a variety of pains, none of which were of cardiac etiology. Appellant also submitted various insurance bills from March 1994 to May 1996 and October 1995 to October 1998.

In a decision dated May 31, 2001, the hearing representative affirmed the decision of the Office dated June 6, 2000 on the grounds that the evidence was insufficient to establish that the claimed period of disability was causally related to appellant's accepted injury of September 16, 1993 but modified the decision accepting four hours of disability on January 14, 1999; four hours of disability on February 21, 1999; and eight hours of disability on February 20, 1995.

The Board finds that appellant has failed to establish that his condition during the claimed period of disability is causally related to the accepted employment injury of September 16, 1993.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment.³

The Office accepted appellant's claim for MI. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the intermittent period beginning September 16, 1993 to January 15, 1999 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

Appellant submitted various reports, but they did not specifically address whether appellant's September 16, 1993 injury caused disability during the claimed period at issue. Dr. Green's report of September 20, 1993 recommended that appellant stay off work for six weeks after his heart attack on September 16, 1993. Dr. Martel's report dated October 20, 1993 indicated that appellant could return to full-work capacity without any restrictions beginning November 1, 1993. His report of September 7, 1995 indicated that appellant could return to work on a light-duty basis, office work only, starting September 11, 1995. The doctors did not in these reports or in others, specifically address whether appellant had employment-related disability beginning September 16 to October 29, 1993; September 5 to 16, 1994; February 20 to March 3, 1995; September 18 to 29, 1995; October 2 to 13, 1995; and January 12 to 15, 1999. The report from Dr. Ramo dated December 18, 2000 noted that appellant presented with complaints of fatigue. He diagnosed appellant with fatigue based on obstructive sleep apnea with no cardiac basis; coronary artery disease without signs of cardiac problems; nausea and vomiting due to medication; and a variety of pains none of which have a cardiac etiology. However, Dr. Ramo did not indicate that appellant was still experiencing symptoms of his

³ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

cardiac condition, rather he noted that his symptoms were not of a cardiac etiology. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted various medical bills from March 1994 to May 1996; October 1995 to October 1998. Although several of the bills indicate that appellant received treatment and surgery, none of the bills provide a rationalized opinion regarding the causal relationship between appellant's cardiac condition or treatment and the factors of employment believed to have caused or contributed to such condition.⁴ Therefore, these reports are insufficient to meet appellant's burden of proof.

The reports from Drs. Kaplan and Narins dated September 10 and 17, 1999 noted that appellant was being treated for atypical chest discomfort. They determined that appellant was at low risk for a cardiac event in the near future and the likelihood of a cardiac etiology for his chest pain was low. Dr. Narin indicated that appellant underwent a stress cardiogram which revealed some abnormalities resulting from an old inferior MI. However, they did not attempt to explain the relationship between the claimed periods of disability and the September 16, 1993 work injury. Therefore, these reports are insufficient to meet appellant's burden of proof.

Additionally the employing establishment offered appellant an assignment as a mine safety and health inspector on September 19, 1996, which complied with appellant's medical restrictions. Appellant accepted this position. There is no credible evidence that appellant was denied appropriate work during periods in which the medical evidence showed that he could perform his duties.⁵

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of September 16, 1993. Consequently, the medical evidence did not establish that the claimed periods of disability were due to appellant's employment injury.

⁴ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

⁵ See *Terry R. Hedman*, 38 ECAB 222 (1986).

The decision of the Office of Workers' Compensation Programs dated May 31, 2001 is hereby affirmed.

Dated, Washington, DC
September 17, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member