United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
	)	**Docket No. 07-2359**
and	)	**Issued: March 21, 2008**
	)	
DEPARTMENT OF HOMELAND SECURITY, U.S. BORDER PATROL, Tucson, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 18, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated September 5, 2007, which denied his claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a heart condition in the performance of duty.

FACTUAL HISTORY

This is the second appeal in the present case. In a December 18, 2006 decision, the Board set aside the Office decision dated September 2, 2005 and remanded the claim for further medical development. The Board instructed the Office to secure a medical report containing a reasoned medical opinion on the issue of whether appellant's cardiac condition was caused or

aggravated by his work duties. 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 January 9, 2007 the Office referred appellant for a second opinion to Dr. Kirk M. Gavlick, an osteopath and Board-certified cardiologist. The Office provided Dr. Gavlick with appellant's medical records, a statement of accepted facts as well as a detailed description of his employment duties.

In a February 8, 2007 report, Dr. Gavlick noted examining appellant and reviewing his records. He noted a history of his condition. Dr. Gavlick noted that an essentially normal physical examination with blood pressure of 114/80, pulse 77 and regular, his chest was clear auscultation and his cardiovascular examination revealed no murmur, gallop or rub. He diagnosed mitral valve disorder, status post mitral valve repair with annuloplasty, status post implantation of permanent pacemaker, status post L2-S1 fusion and degenerative joint disease. Dr. Gavlick noted that he had not directly reviewed any of the surgical operative notes related to the findings of his mitral valve. He indicated that appellant had a natural degeneration of his mitral valve resulting in severe mitral regurgitation and opined that overwork from social and physiologic stress could aggravate his mitral regurgitation. Dr. Gavlick noted that there was no evidence of a preexisting finding of severe mitral regurgitation and recommended that appellant avoid prolonged strenuous activities which would aggravate his current physiologic state.

In a letter dated March 2, 2007, the Office requested that Dr. Gavlick clarify his opinion as to whether there were any objective medical findings which support that appellant's diagnosed cardiac condition was medically connected to the physical activities he performed at the employing establishment. The Office further requested that Dr. Gavlick review the statement of accepted facts, the complete medical records and operative reports when preparing his report. In a supplemental report dated May 17, 2007, Dr. Gavlick advised that the physical and emotional stress of appellant's job can aggravate, precipitate or accelerate his underlying cardiovascular base but he did not recollect whether direct physical or emotional stress could directly cause severe mitral insufficiency. He noted that the severe mitral regurgitation and chronotropic incompetence were surgically corrected and could not be directly related to appellant's current disability but they could be aggravated and accelerated by his occupation. Dr. Gavlick indicated that there was inadequate information from a cardiovascular standpoint to assess whether vocational rehabilitation and reemployment were possible.

In a memorandum dated June 22, 2007, the Office noted that on February 8, 2007 Dr. Gavlick's report was speculative and further clarification was requested. Dr. Gavlick's submitted a supplemental report dated May 17, 2007, which the Office determined did not contain a reasoned medical opinion addressing whether appellant's cardiac condition was caused or aggravated by his work duties, rather the opinion was determined to be speculative. Therefore, the Office requested another second opinion report be obtained.

[1] Docket No. 06-1839 (issued December 18, 2006).

On June 25, 2007 the Office referred appellant for a second opinion to Dr. Lee R. Goldberg, a Board-certified cardiologist. The Office provided Dr. Goldberg with appellant's medical records, a statement of accepted facts as well as a detailed description of his employment duties.

In an August 15, 2007 report, Dr. Goldberg noted examining appellant and reviewing his records. He noted a history of appellant's condition. Dr. Goldberg noted an essentially normal physical examination with blood pressure of 108/70, pulse 75 and regular, his chest was clear to auscultation and his cardiovascular examination revealed no murmur, gallop or rub, no carotid, abdominal aortic or renal bruits. He diagnosed severe mitral regurgitation treated successfully with mitral valve repair, paroxysmal atrial fibrillation, sick sinus syndrome and status post pacemaker. Dr. Goldberg noted that appellant was diagnosed with severe mitral regurgitation in 2004 and had a successful mitral valve repair. He indicated that diagnostic testing following surgery in June 2005 revealed a normal left ventricular systolic function and no detectable mitral regurgitation. Dr. Goldberg noted that mitral valve disease was most commonly the result of coronary artery disease, rheumatic fever and mitral valve prolapse. He stated that vigorous exercise or an extremely stressful job did not in itself lead to mitral valve disease. Dr. Goldberg opined that appellant's job did not contribute to the development of mitral valve disease and severe mitral regurgitation. He advised that mitral regurgitation was a chronic progressive condition and appellant likely had some degree of mitral regurgitation for years prior to developing symptoms and there was no doubt that surgery would have been required whether or not he worked in a stressful environment. Dr. Goldberg noted that before surgery in November 2004 appellant's complaints of dyspnea and fatigue could be attributed to severe mitral regurgitation. He indicated that, after the diseased mitral valve was successfully repaired, appellant continued to complain of fatigue and dyspnea. Dr. Goldberg opined that these symptoms could not be related to current cardiovascular disease as the physical examination and diagnostic testing, including a stress echocardiogram performed in June 2005, revealed a normal left ventricular systolic function and no evidence of mitral regurgitation. He advised that, although appellant continued to be severely symptomatic complaining of fatigue and dyspnea on exertion, there was no cardiac etiology for these symptoms but they may be attributed to pulmonary or infectious disease. Dr. Goldberg noted that appellant made an excellent recovery from surgery and should be able to work with a restriction that he not engage in vigorous activities.

In a decision dated September 5, 2007, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by his employment duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was

[2] 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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.[4]

ANALYSIS

On February 1, 2005 appellant filed an occupational disease claim alleging that he developed a cardiac condition while in the performance of duty. The employing establishment did not dispute appellant's description of his work duties, noting that he worked over 1000 hours of overtime in 2004 and that his workload was "extremely heavy" when the employing establishment merged with another agency. In a decision dated September 2, 2005, the Office denied appellant's claim finding that the medical evidence did not establish that he developed the diagnosed condition as a result of his employment duties.

In a December 18, 2006 decision, the Board set aside the Office decision dated September 2, 2005 and remanded the claim for further medical development. The Board instructed the Office to secure a medical report containing a reasoned medical opinion on the issue of whether appellant's cardiac condition was caused or aggravated by his work duties.

Initially, the Office referred appellant to Dr. Gavlick who issued reports dated February 8 and March 2, 2007. However, Dr. Gavlick only provided speculative support concerning whether appellant's employment caused or aggravated his cardiac condition noting that overwork "could" aggravate a mitral regurgitation in his initial report. In his subsequent report, after the Office requested clarification, Dr. Gavlick again rendered a similar opinion noting that job stress "can" aggravate a cardiovascular condition but he did not provide an unequivocal and

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *Solomon Polen*, 51 ECAB 341 (2000).

reasoned opinion regarding the cause of appellant's condition.[5] The Board finds that the Office properly found that Dr. Gavlick's opinion was insufficient to resolve the issue in the claim and that it properly referred appellant to Dr. Goldberg.[6]

In a report dated August 15, 2007, Dr. Goldberg noted an essentially normal physical examination with blood pressure of 108/70, pulse 75 and regular, appellant's chest was clear to auscultation, his cardiovascular examination revealed no murmur, gallop or rub, no carotid, abdominal aortic or renal bruits. He diagnosed severe mitral regurgitation treated successfully with mitral valve repair, paroxysmal atrial fibrillation and sick sinus syndrome status post pacemaker. Dr. Goldberg noted that appellant was diagnosed with severe mitral regurgitation in 2004 and had a successful mitral valve repair. He noted that mitral valve disease is most commonly the result of coronary artery disease, rheumatic fever and mitral valve prolapse; however, vigorous exercise or an extremely stressful job does not in itself lead to mitral valve disease. Dr. Goldberg opined that he did not believe appellant's job contributed to the development of mitral valve disease and severe mitral regurgitation and asserted that surgery would have been required at some point whether or not he was in a stressful environment. He noted that appellant continued to complain of fatigue and dyspnea despite a successful surgery and he opined that he could not relate any of these subjective symptoms to a cardiac etiology or current cardiovascular disease but opined that they may be attributed to pulmonary or infectious disease. Dr. Goldberg advised that appellant made an excellent recovery from surgery and should be able to work as long as he did not engage in vigorous activities.

The Board finds that the weight of the medical evidence rests with the well-rationalized opinion of Dr. Goldberg to whom appellant was referred for a second opinion examination and who reviewed the statement of accepted facts prepared by the Office. The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality and the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7] The Board has carefully reviewed Dr. Goldberg's August 15, 2007 report and notes that it has such reliability, probative value and convincing quality. Prior to reaching his conclusions, Dr. Goldberg extensively detailed appellant's factual and medical history and reported the findings of his examination of appellant. Dr. Goldberg had the benefit of a statement of accepted facts which delineated those employment-related incidents and conditions. Moreover, he provided a proper analysis of the factual and medical history and the findings on examination and reached conclusions regarding appellant's condition which comported with this analysis.

[5] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

[6] *See Ayanle A. Hashi*, 56 ECAB 234 (2004) (when the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues).

[7] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1959).

Appellant previously submitted an April 19, 2005 report from Dr. Garcia who indicated that appellant had severe mitral regurgitation that required surgery and that his duties involved heavy exertion that contributed to his diagnosed conditions of mitral regurgitation and cardiomyopathy. The Board finds that, although Dr. Garcia supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's mitral regurgitation and cardiomyopathy and the factors of employment.[8] For example, Dr. Garcia did not explain the process by which heavy exertion would cause the diagnosed condition and why such condition would not be due to any nonwork factors. Therefore, this report is insufficient to establish appellant's claim or to create a conflict with the report of Dr. Goldberg.

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed heart condition was causally related to his work duties.

CONCLUSION

The Board finds that appellant has not established that he developed a sustained heart condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 5, 2007 is affirmed.

Issued
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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