

**United States Department of Labor
Employees' Compensation Appeals Board**

C.R., Appellant)

and)

ENVIRONMENTAL PROTECTION AGENCY,)
OFFICE OF THE INSPECTOR GENERAL,)
Boston, MA, Employer)

Docket No. 11-1445
Issued: January 26, 2012

Appearances:

Damon Williams, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 2, 2011 appellant, through his attorney, filed a timely appeal from the December 28, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the termination of compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation benefits effective December 4, 2008 on the grounds his work-related injury ceased without residuals; and (2) whether he had any continuing employment-related residuals or disability after December 4, 2008.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 12, 2007 appellant, then a 63-year-old auditor, filed an occupational disease claim alleging that his heart condition was aggravated as a result of his federal employment duties. OWCP accepted the claim for a temporary aggravation of ischemic heart disease. Appellant stopped work on August 4, 2007 and began receiving ongoing wage-loss compensation based on temporary total disability due to time missed from work.

On August 8, 2007 Dr. Xue-Jun (June) Kong, a Board-certified internist, noted treating appellant for three vessel coronary artery disease. She advised that he had a coronary artery bypass graft in 1998 and also had hypertension, hyperlipidemia and poorly controlled insulin-dependent diabetes. Appellant had five episodes of recurrent acute coronary symptoms over the last nine years. Dr. Kong opined that his work stress from frequent travel and very precise work under tight deadlines contributed to his medical conditions. In November 19 and December 18 and 21, 2007 reports, Dr. Parnag Kasarjian, a Board-certified internist and OWCP referral physician, opined that the physical demands of appellant's job temporarily aggravated his heart condition.

On September 6, 2008 OWCP referred appellant to Dr. Stephen Saltz, a Board-certified cardiologist, to address his work-related condition. In an October 6, 2008 report, Dr. Saltz noted appellant's history of having undergone multiple coronary artery bypass grafting and his episodes of symptomatology over the past three years. He reviewed the medical reports and presented physical examination findings. A clinical impression of coronary artery disease (which had been addressed with coronary artery bypass grafting) was provided along with the identification of risk factors for the development of coronary artery disease, which included preexisting lipid abnormality, diabetes mellitus and a significant history of cigarette smoking. Dr. Saltz opined that appellant's medical problems and disability were not causally related to his employment or to his duties as an auditor. He explained the diabetes mellitus and hyperlipidemia were genetic in nature and could be contributed to lifestyle by lack of exercise and obesity, but this was not a causal relationship. Dr. Saltz stated that the coronary artery disease was a consequence of those factors but was also not related to his employment. All of the factors were preexisting conditions. He stated that there was no objective evidence of symptoms related to his ischemic heart disease and, therefore, appellant did not suffer any residuals from his myocardial infarction and coronary artery bypass grafting. Thus, Dr. Saltz opined that there was no work-related condition which caused appellant to be disabled.

On October 22, 2008 OWCP proposed to terminate appellant's medical benefits and wage-loss compensation as the weight of the medical evidence, represented by Dr. Saltz, established that the temporary aggravation of ischemic heart disease had ceased and appellant no longer had any disability or residuals of his accepted work-related condition.

Appellant submitted a statement explaining that the improvement in his condition was due to the elimination of job stress. In an October 29, 2008 report, Dr. James Januzzi, a Board-certified cardiologist, noted that appellant had a history of severe coronary artery disease, hypertension, elevated serum cholesterol, diabetes and tobacco use. He stated "given the rather extreme stress that his current line of work puts him under, [appellant] unfortunately suffers from somewhat significant complications of his medical comorbidities including worsening of his

glycemic control, weight gain, rise in serum lipids and stress-related resumption of tobacco use.” Dr. Januzzi opined that the stressors of appellant’s current line of work puts him at extraordinarily high risk for complications of his medical conditions.

In a December 4, 2008 decision, OWCP terminated appellant’s compensation benefits based on the report of Dr. Saltz.

On December 21, 2008 appellant requested an oral hearing, which was held on March 27, 2009. Appellant’s attorney submitted and discussed additional medical documentation in support of the claim. He also provided a brief explaining his arguments and a statement from appellant describing the work duties he felt caused his condition.

In a February 10, 2009 report, Dr. Rakhi N. Kheraj, a Board-certified internist, attributed the worsening of appellant’s condition to an aggravation of his underlying hypertension. He indicated that appellant’s blood pressure has increased during the time he was working after his extensive cardiac surgery likely in part due to a hectic schedule with increased work stressor in travel and audits in addition to his family life. Appellant’s hypertension also likely worsened with increased stress from work. Dr. Kheraj opined that, given the obvious stress associated with appellant’s line of work, one could see an increase in morbidity such as not well-controlled diabetes, hypertension, depression and coronary artery disease exacerbated by his work.

In a February 12, 2009 report, Dr. Januzzi opined that the stressful nature of appellant’s job negatively affected his overall health and particularly worsened his cardiovascular risk factors and exacerbated his ischemic heart disease. He stated that, while he did not think appellant’s hypertension was caused entirely by job stress, it was logical that such a stressful job would cause appellant’s blood pressure to be less controlled and his hypertension aggravated and accelerated.

In a February 27, 2009 report, Dr. Kong opined that appellant’s work stress, from frequent travels and very precise work performed under tight deadlines, was a major contributing and aggravating factor for his fluctuating blood press and blood sugar, which permanently accelerated his heart condition.

In an August 24, 2009 decision, an OWCP hearing representative affirmed the December 4, 2008 OWCP decision terminating benefits; however, based on the new medical reports received after the termination, a conflict in medical opinion was found as to whether appellant had residuals or was disabled as a result of his accepted condition. Accordingly, the case was remanded for referral to an impartial medical specialist.

OWCP referred appellant, together with a statement of accepted facts, the medical record and a list of questions, to Dr. Marie Gerhard-Herman, a Board-certified cardiologist, for an impartial medical evaluation. Appellant, however, was examined by Dr. Richard T. Lee, an associate of Dr. Gerhard-Herman.

As Dr. Lee was not selected by OWCP in accordance with its rotating selection procedures, OWCP scheduled an impartial medical evaluation with Dr. Howard Honig, a Board-certified cardiologist. In an April 7, 2010 report, Dr. Honig reviewed the medical record and set forth examination findings. He opined that, due to his objective findings, appellant was not

physically able to perform his prior job, which involved much traveling, long hours, overtime and demanding situations. Dr. Honig noted that, while appellant had anxiety and stress even when not working, he did not think that, even if appellant's stress was controlled, appellant could handle his prior occupation, due to his severe cardiac disease. He opined that appellant would be prone to more cardiac events in the future, although chronic stress would not be the critical issue. It would be the malignant and ongoing coronary artery disease, related to his multiple risk factors, including diabetes mellitus and prior myocardial infarction. In an April 14, 2010 addendum report, Dr. Honig opined that while appellant's underlying conditions were not caused or precipitated by his work activities, the work-associated stress had aggravated his condition. He opined that appellant's employment did not cause material changes in his underlying conditions as he still has severe coronary disease, left ventricular dysfunction and associated symptoms. While appellant was restricted to certain activities, Dr. Honig opined that his employment did not contribute to his physical disability. On April 14 and 30, 2010 Dr. Honig clarified that appellant's work caused a temporary aggravation of his underlying cardiac condition and the aggravation ceased when he stopped work.

By decision dated May 10, 2010, OWCP determined that appellant was not entitled to compensation for lost wages and medical benefits beyond December 4, 2008. Determinative weight was accorded to the reports of Dr. Honig, the impartial medical specialist.

On May 12, 2010 appellant requested an oral hearing, which was held on September 28, 2010. Appellant's attorney contended that appellant's medical conditions of ischemic heart disease, hypertension and diabetes were permanently aggravated and accelerated by his employment. He asserted that there was never any development of whether appellant had work-related aggravation of diabetes or hypertension and that he should have been receiving retroactive compensation while OWCP further developed the claim. Counsel stated that OWCP improperly relied on Dr. Honig's opinion and cited to the Board's decisions in *Betty J. Holderfield*² and *Virginia Davis-Banks*.³

In a December 28, 2010 decision, an OWCP hearing representative affirmed the May 10, 2010 decision. The hearing representative found that, as OWCP met its burden when it initially terminated compensation benefits, appellant was not entitled to reinstatement of compensation during the development or adjudication of issues pertaining to continuing benefits after December 4, 2008.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation

² Docket No. 03-1234 (issued September 15, 2003).

³ 44 ECAB 389 (1993).

⁴ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for temporary aggravation of ischemic heart disease. It terminated his compensation benefits effective December 4, 2008 on the grounds that the accepted work-related condition had resolved without residuals. OWCP accorded determinative weight to the opinion of Dr. Saltz, the second opinion specialist.

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the October 6, 2008 report of Dr. Saltz who reviewed appellant's medical history, examined him and found no objective evidence of ongoing residuals or disability due to the accepted temporary aggravation of ischemic heart disease. Dr. Saltz reviewed the statement of accepted facts and the medical record. He found no objective evidence of symptoms related to the ischemic heart disease condition. Dr. Saltz found no evidence of other conditions or residuals related to appellant's employment. He explained that appellant's medical problems and disability were not causally related to his employment but were genetic in nature and could be attributed to lifestyle and obesity and the coronary artery disease was a consequence of those factors. Dr. Saltz noted that he found no evidence of other conditions or residuals related to the accepted condition.

In his October 29, 2008 report, Dr. Januzzi opined that the stressors of appellant's line of work puts him at extraordinary high risk for complications of his medical conditions. However, he failed to provide a reasoned medical opinion, based on a complete and accurate factual background, that appellant's current condition was still related to his work. Dr. Januzzi did not explain how the accepted temporary aggravation of ischemic heart disease continued where appellant had not worked for over a year. This lack of rationale greatly reduces the probative value of his opinion.⁸ Additionally, the fear of a recurrence of disability if an employee returns to work is not a basis for compensation.⁹

The Board finds that Dr. Saltz' report represents the weight of the medical evidence at the time OWCP terminated benefits and that OWCP properly relied on his report in terminating

⁵ *Id.*

⁶ *Roger G. Payne*, 55 ECAB 535 (2004).

⁷ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *See Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980).

appellant's benefits. Dr. Saltz' opinion is based on proper factual and medical history and his report contained a detailed summary of this history. He addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.¹⁰ Dr. Saltz found no basis on which to attribute any residuals or continued disability to appellant's accepted injury. He also found no basis on which to attribute appellant's nonaccepted preexisting conditions of diabetes mellitus and hyperlipidemia to appellant's employment.¹¹

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate compensation, the burden shifted to appellant to establish that he had ongoing disability causally related to his accepted injury.¹²

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹³ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

A physician selected by OWCP to serve as an impartial medical specialist should be one wholly free to make a completely independent evaluation and judgment. In order to achieve this, OWCP has developed specific procedures for the selection of impartial medical specialists designed to provide adequate safeguards against any possible appearance that the selected physician's opinion was biased or prejudiced. The procedures contemplate that impartial medical specialists will be selected on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and OWCP.¹⁵

ANALYSIS -- ISSUE 2

After terminating benefits on December 4, 2008, appellant submitted new medical evidence addressing his condition. OWCP determined that a conflict existed in the medical

¹⁰ See *Michael S. Mina*, 57 ECAB 379 (2006) (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 analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

¹¹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by OWCP, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹² See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

¹³ 5 U.S.C. § 8123(a).

¹⁴ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁵ *Raymond J. Brown*, 52 ECAB 192 (2001).

evidence between Dr. Saltz, for OWCP and appellant's treating physicians, Drs. Kheraj, Januzzi and Kong, as to whether appellant had any disability or residuals due to his accepted work-related condition after December 4, 2008. It initially referred appellant to Dr. Gerhard-Herman for an impartial examination to resolve the medical conflict. However, Dr. Lee, a colleague of Dr. Gerhard-Herman, performed the examination. OWCP properly found that a referral to a second impartial examiner was required as Dr. Lee had not been selected to resolve the conflict.¹⁶ Thus, it properly referred appellant to Dr. Honig, a Board-certified cardiologist, for a second impartial medical examination.

In an April 7, 2010 report, Dr. Honig reviewed appellant's medical record, set forth his examination findings and opined that, due to his severe cardiac disease, appellant was unable to work at his prior occupation. He stated that this was due to appellant's malignant and ongoing coronary artery infraction, which was related to multiple risk factors including diabetes mellitus and prior myocardial infarction. In April 14, 2010 report, Dr. Honig stated that, the work-associated stress had aggravated appellant's underlying conditions and clarified, in addendum reports of April 16 and May 4, 2010 that appellant's work caused a temporary aggravation of his underlying cardiac condition, which ceased when he stopped work.

The Board finds that Dr. Honig's opinion was of sufficient weight to resolve the conflict of medical evidence. It was based on a complete and accurate factual and medical history¹⁷ and presented detailed clinical findings demonstrating no residuals of the accepted conditions. Dr. Honig provided a clear explanation that while appellant's work had aggravated his condition, it did not cause his underlying cardiac condition and the aggravation it had caused was temporary and ceased when appellant stopped work. Thus, he was unequivocal in finding that the accepted temporary aggravation of ischemic heart disease had resolved.¹⁸ Therefore, OWCP properly accorded Dr. Honig's opinion the weight of the medical evidence.

On appeal, appellant contends that Dr. Honig's opinion is faulty and unrationalized because he came to a different conclusion on the issue of the permanency of appellant's aggravation of ischemic heart disease than Dr. Lee, who had provided an impartial medical report. As previously noted, OWCP properly found that Dr. Lee's opinion could not be used to resolve the medical conflict as Dr. Lee was not selected as an impartial specialist according to OWCP procedures. Dr. Honig was properly selected as an impartial medical specialist and based his opinion that the work-related aggravation of ischemic heart disease was temporary and ceased after appellant stopped work. There is no evidence to support that appellant's work had changed his underlying conditions in any way. As noted, Dr. Honig's opinion is well reasoned and consistent with the facts and medical history of the case.

¹⁶ See *id.*; see also *Shirley L. Steib*, 46 ECAB 309 (1994) (where an associate of the physician selected by OWCP to serve as an impartial medical specialist examined the claimant and provided an opinion, the Board found that the associate's opinion could not constitute the weight of the medical evidence as the associate was not selected as an impartial specialist according to OWCP procedures).

¹⁷ *E.S.*, Docket No. 10-565 (issued December 21, 2010).

¹⁸ *D.E.*, 58 ECAB 369 (2007).

Appellant argues that OWCP should have developed the issues of whether appellant's employment aggravated his preexisting conditions of diabetes and hypertension. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹⁹ The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts OWCP's burden of proof to disprove an employment relationship.²⁰ There is no reasoned medical opinion which explains how particular aspects of appellant's work caused or aggravated his preexisting diabetes and hypertension. Dr. Honig found no basis on which to attribute any other condition to appellant's employment. Thus, there is insufficient evidence to establish that these conditions are employment related.

Appellant argues that the *Holderfield*²¹ decision supports that OWCP should have reinstated wage-loss compensation benefits back to the date of termination while it engaged in further development of the evidence. In *Holderfield*, the Board reversed OWCP's termination decision. It found that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation due to an unresolved conflict in medical opinion and, thus, the issue of whether appellant was entitled to continuing wage-loss compensation for partial disability also remained unresolved. In this case, unlike the facts in *Holderfield*, the evidence sufficient to create a conflict in medical opinion was not of record until after OWCP had properly terminated his compensation benefits. As OWCP properly met its burden of proof in terminating appellant's compensation benefits, it is not required to reinstate compensation when it concludes, based on newly submitted evidence, that further development is needed.²²

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation benefits effective December 4, 2008 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries. The Board further finds that he has not met his burden to establish that he had any continuing disability or residuals due to his accepted employment injury.

¹⁹ *Alice J. Tysinger*, 51 ECAB 638 (2000); see *supra* note 11.

²⁰ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

²¹ See *supra* note 2.

²² *Virginia Davis-Banks*, *supra* note 3, *Joseph M. Campbell*, 34 ECAB 1389, 1396 (1983).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated December 28, 2010 is affirmed.

Issued: January 26, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board