

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN F. CONTE and U.S. POSTAL SERVICE,
POST OFFICE, Van Nuys, Calif.

*Docket No. 96-502; Submitted on the Record;
Issued March 2, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On August 9, 1991 appellant, then a 54-year-old communications manager, filed an occupational disease claim alleging that he sustained a heart attack caused by stress in his job. Appellant attributed his stress condition to having to respond to: (1) media inquiries about employing establishment functions: (2) having to prepare a monthly newsletter, press materials and speeches regarding activities of the employing establishment in his division: (3) being responsible for external communications involving community projects, publicity and promotional campaigns, and open functions: (4) having to monitor the public's perception of the employing establishment; and (5) having to manage and monitor the work of two employees. He attributed his emotional condition to his inability to perform these job functions even though he frequently worked for 12 hours or more per day and sometimes worked at home.

In a report dated June 19, 1991, Dr. Harris Schoenfeld, a Board-certified cardiologist, provided a history of appellant's condition and noted that appellant's job was very demanding of his time and had contributed considerably to his stress.

By decision dated January 22, 1992, the Office of Workers' Compensation Programs denied appellant's claim for an emotional condition on the grounds that the factual and medical evidence was insufficient to establish that he had sustained a stress or heart condition causally related to compensable factors of his employment.

By letter dated March 11, 1993, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Allen W. Feld, a Board-certified cardiologist, for an examination and evaluation as to whether appellant had sustained any medical condition causally related to factors of his federal employment. In the statement of accepted facts submitted to Dr. Feld, the Office accepted that the following incidents or

situations were compensable facts of employment: appellant's emotional reaction to his inability to perform his various job functions, working long hours, and receiving telephone calls from his supervisor while he was hospitalized in which the supervisor discussed work matters.

In a report dated April 12, 1993, Dr. Feld provided a history of appellant's condition, a history of his treatment, and concluded that there was no substantive evidence to suggest that job stresses had caused, aggravated, precipitated or accelerated appellant's coronary arteriosclerotic disease or his acute myocardial infarction in 1991. Dr. Feld stated that the heart attack in May 1990 was not a job-related event.

By decision dated April 14, 1993, the Office denied appellant's claim for compensation benefits on the grounds that the weight of the medical evidence, as represented by the report of Dr. Feld, established that appellant's myocardial infarction and cardiovascular condition were not related to factors of his employment.

By letter dated May 3, 1993, appellant requested an oral hearing before an Office hearing representative.

In a report dated December 20, 1994, Dr. Thomas E. Jacobson, a Board-certified cardiologist, related that appellant felt extremely stressed prior to his May 1991 heart attack due to numerous pressures on his job and that these pressures aggravated his coronary artery disease. He noted that appellant was frustrated that he could not get his job done and, on the day just prior to his myocardial infarction, he had spent many extra hours cleaning up his office. He stated that he had been told not to work extra hours and yet was expected to do so to complete his tasks. Dr. Jacobson stated his disagreement with Dr. Feld that appellant's heart condition was not caused or aggravated by his employment factors. Dr. Jacobson stated:

“[Appellant] was placed under undue emotional stress with the particularity that he is an extremely emotional human being and very sensitive to stresses. He had trouble with his director demanding too much work from him and even making him try to do work while he was still recuperating from his myocardial infarction.... The increasing work overload; having him work long weekend hours; stress ... in the form of harassment, *i.e.* that he had to report on the sexual activities related to his fellow workers. He had to endure many abuses. He was at all times diligent in his work and tried to accomplish every task.”

Dr. Jacobson stated his opinion that appellant's work situation aggravated his mental and physical condition and precipitated his heart attack.

On January 26, 1995 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated April 6, 1995, the Office hearing representative set aside the Office's April 14, 1993 decision and remanded the case for referral of appellant to an impartial medical specialist to resolve the conflict in medical opinion between Drs. Jacobson and Feld.

By letter dated April 27, 1995, the Office referred appellant, along with the entire case record to Dr. Raj Chanderraj, a Board-certified cardiologist, for an examination and evaluation in order to resolve the conflict in medical opinion as to whether appellant's heart condition was causally related to factors of his employment.

In a report dated May 16, 1995, Dr. Chanderraj provided a history of appellant's condition and findings on examination and diagnosed a history of a myocardial infarction. He stated that he had reviewed the medical record at length and did not feel that there was any basis for stress-related cardiac injury in his situation. Dr. Chanderraj stated:

“Of all the professions, only policemen and firemen have been identified as the professions that are prone to stress-related heart and lung disease. I have reviewed the literature extensively and do not find any basis for stress-related occupational injury in the situation that [appellant] was in. I tend to disagree with Dr. Jacobson because stress is stress, and it does not have to be in [Los Angeles] or in Hawaii, besides there is no documented study indicating the stress level is different in [Los Angeles] from Hawaii. Unless this can be established, we have to go by the existing data in the literature that does not substantiate any of [appellant's] claims.

By decision dated June 14, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Chanderraj, established that appellant's claimed cardiac condition was not causally related to factors of his federal employment.

By letter dated July 13, 1995, appellant, through his representative, requested reconsideration of the denial of his claim and presented additional argument.

By decision dated July 27, 1995, the Office denied modification of its June 14, 1995 decision.¹

The Board finds that this case is not in posture for a decision.

In the present case, the Office determined that there was a conflict in the medical opinion between appellant's attending Board-certified cardiologist, Dr. Jacobson, and the government physician, Dr. Feld, a Board-certified cardiologist acting as an Office referral physician, on the issue of whether appellant's emotional condition and myocardial infarction were causally related to his employment. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Chanderraj, a Board-certified cardiologist, for an impartial medical examination and an opinion on the matter.²

¹ This case record contains a document belonging to someone other than the appellant. Upon return of the case record, the Office should place this document in the correct file.

² Section 8123(a) of the Act provides in pertinent part: “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.” 5 U.S.C. § 8123(a).

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.³

In this case, the Board finds that the report of the impartial medical specialist, Dr. Chanderraj, is of diminished probative value and therefore insufficient to resolve the conflict in medical opinion in this case. In his May 16, 1995 report, he did not address whether any of the factors of employment which the Office had determined to be compensable factors of employment had caused or contributed to appellant's claimed emotional condition and heart condition. Dr. Chanderraj generally stated that the medical literature he reviewed regarding job-related stress did not support appellant's claim as the medical literature had identified only policemen and fireman as being prone to stress-related heart and lung disease. He therefore concluded he could not find a basis for appellant's stress-related occupational injury claim. Therefore, the Board finds the report of Dr. Chanderraj is of diminished probative value on the issue as to whether appellant's claimed condition was causally related to factors of his employment and his report is not entitled to be accorded any special weight.

On remand, the Office should refer appellant to a new Board-certified medical specialist for an examination and evaluation which addresses the factors of employment which the Office determined were compensable factors of employment. The Office should then issue a *de novo* decision on appellant's entitlement to compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated July 27, June 14, and April 6, 1995 are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
March 2, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski

³ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

Alternate Member