

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT SISOLAK and DEPARTMENT OF THE ARMY,
COMMUNICATIONS ELECTRONICS COMMAND, Tinton Falls, NJ

*Docket No. 00-952; Submitted on the Record;
Issued April 20, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a ruptured cerebral aneurysm as a result of accepted occupational stress; and (2) whether the Office of Workers' Compensation Programs committed error in selecting an impartial medical examiner.

On March 25, 1996 appellant, then a 49-year-old retired computer specialist, filed a notice of occupational disease, alleging that job-related stress from February to June 1995 caused the rupture of a cerebral aneurysm¹ on June 16, 1995.² The Office initially denied appellant's claim by a December 26, 1996 decision on the grounds that appellant had failed to establish a compensable factor of employment. Appellant disagreed with this decision and on January 13, 1997 requested an oral hearing, held on October 29, 1997.

In support of his assertion that the ruptured aneurysm was related to work stress, appellant submitted May 31, 1996 and December 12, 1997 reports from Dr. Ira Kasoff, an attending Board-certified neurosurgeon. In the May 31, 1996 report, Dr. Kasoff diagnosed a ruptured aneurysm of the left posterior communicating artery, with subsequent surgery and vasospasm, causing aphasia and right-sided paralysis. He noted that "for a few months prior to the hemorrhage, [appellant] had been very upset because of events that had occurred at work,

¹ Appellant sustained a subarachnoid hemorrhage secondary to the rupture of a left posterior communicating artery aneurysm.

² Appellant alleged that due to downsizing, he was forced to take on the duties of a safety and security officer and additional computer-related duties, without training or adequate support personnel. John Callahan, appellant's supervisor, submitted a December 24, 1996 statement confirming that appellant had been assigned several extra duties without training in 1995. Appellant was hospitalized from June 15 to 29, 1995, underwent craniotomy and clipping of the aneurysm, and sustained a stroke. He underwent inpatient rehabilitation from June 29 to August 28, 1995, but continued to have significant deficits in speech, vision, ambulation, cognition and activities of daily living.

specifically he was made a security officer in addition to his regular duties as a computer specialist.”

Dr. Kasoff related appellant’s account that the “added burden caused ... great anxiety, concern and tension.” He opined that while an intracranial aneurysm was “considered to be a congenital problem, these aneurysms have potential to rupture in the face of tension, anxiety, etc. There is quite likely a direct connection between the ongoing tension that [appellant] experienced as a result of these events at work and the ultimate rupture of his aneurysm.”

In the December 12, 1997 report, Dr. Kasoff stated that appellant sustained increased stress due to “the additional duties required of him [and] ... inaccurate training.” He opined that there was “no question that aneurysms may rupture as a result of such stress ... in [appellant’s] case this may have played a major role.”

By decision dated December 18, 1997, the Office hearing representative accepted that appellant had sustained stress while performing his assigned duties as well as the additional assignments he received without adequate training or support. The hearing representative remanded the case to the Office for referral of appellant to a second opinion specialist to obtain a rationalized medical opinion regarding any causal relationship between the aneurysm rupture on June 15, 1995 and the accepted employment factors.³

In January 1998, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Michael Merkin, a Board-certified psychiatrist and neurologist, for a second opinion examination and report. Dr. Merkin submitted a February 5, 1998 report noting the accepted factors of employment, the June 15, 1995 aneurysm rupture and his subsequent course of treatment. He opined that appellant had a congenital intracranial aneurysm which “over time ha[d] a certain chance of rupturing.” Dr. Merkin concluded: “[I]n all medical probability the reported stress and anxiety [are] not known to necessarily be related to the rupturing of an aneurysm. To my knowledge there is no literature to support the contention that increased stress has been causative in intracranial aneurysmal rupture.”⁴

By decision dated March 2, 1998, the Office denied appellant’s claim, based on Dr. Merkin’s reports as the weight of the medical evidence. Appellant disagreed with this decision and in a March 4, 1998 letter requested an oral hearing before a representative of the Office’s branch of hearings and review.

By decision dated September 11, 1998 and finalized September 14, 1998, the Office hearing representative found a conflict of medical opinion evidence between Drs. Merkin and Kasoff and remanded the case for referral to an independent medical examiner to resolve the conflict.

³ Appellant’s representative submitted January 6 and 29, 1998 letters requesting to participate in the selection of an impartial medical examiner. However, the hearing representative directed referral to a second opinion specialist, not an impartial medical examiner.

⁴ In a February 9, 1998 supplemental report, Dr. Merkin opined that appellant was totally and permanently neurologically disabled and would require life-long medical management.

In a September 24, 1998 letter, appellant requested to participate in the selection of the impartial medical examiner.

On October 6, 1998 the Office referred appellant to Dr. Bruce Skolnick, a Board-certified vascular surgeon, for an impartial medical examination. The record contains an October 16, 1998 Office internal memorandum stating:

“Dr. Skolnick refused to do RME [referee medical examination]. (1) He said he does n[o]t do this type of referral evaluation. So remove him from list. (2) He said he [i]s friends with one of the physicians of record. Please arrange for a B[oard]-[c]ert[ified] cardiovascular surgeon RME.”

The memorandum added that appellant’s attorney “must receive” copies of the Office’s letters to appellant and the referee medical examiner.

The Office then referred appellant to Dr. Ravindra Patel, a Board-certified cardiologist,⁵ who submitted an October 30, 1998 report containing a history of appellant’s condition and treatment. Dr. Patel diagnosed a subarachnoid hemorrhage secondary to rupture of a left posterior artery aneurysm. He noted that appellant “possibly had a congenital cerebral aneurysm and over time it may have progressed in size. However, the exact cause of the rupture of his aneurysm is not known. In all medical probability, the rupture of the aneurysm and relation to stress is not known. To my knowledge, there is no literature to support the cause and effect of stress and rupture of the aneurysm.”

By decision dated December 2, 1998, the Office denied appellant’s claim on the grounds that casual relationship was not established, based on Dr. Patel’s report.

By second decision dated December 2, 1998, the Office found that appellant was not entitled to participate in the selection of the impartial medical examiner because as his stated reason, that appellant receive a “truly impartial evaluation,” was insufficient. The Office noted that appellant did not provide a valid reason for challenging Dr. Patel as impartial medical examiner, such as “documented bias or documented unprofessional conduct.”

Appellant disagreed with these decisions and in a December 7, 1998 letter requested an oral hearing.

At the hearing, appellant, through his attorney representative, asserted that the Office’s selection of Dr. Patel as the impartial medical examiner was improper. He also asserted that Dr. Patel’s report was insufficient to resolve the conflict of medical opinion because he did not provide a rationalized opinion explaining how and why the accepted employment factors would or would not cause or contribute to the rupture of appellant’s intracranial aneurysm. In rebuttal of Dr. Patel’s contention that there was no medical literature linking emotional stress with intracranial aneurysmal rupture, appellant submitted printouts from several medical internet

⁵ Appellant’s representative submitted an October 28, 1998 letter requesting to participate in the selection of the impartial medical examiner.

sites, written by various physicians, supporting a causal relationship between stress and the rupture of aneurysms.

By decision dated and finalized September 28, 1999, the Office hearing representative affirmed the December 2, 1998 decision, finding that appellant had failed to establish a causal relationship between the accepted work factors and the ruptured aneurysm, based on Dr. Patel's report as the weight of the medical evidence. The hearing representative further found that appellant was not entitled to participate in the selection of the impartial medical examiner as he did not raise a valid objection to Dr. Patel's appointment.

The Board finds that the case is not in posture for decision due to an outstanding conflict of medical evidence.

The Federal Employees' Compensation Act,⁶ at 5 U.S.C. § 8123(a), provides: "If there is a 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." Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for resolution of the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷ In this case, however, Dr. Patel's report is insufficiently rationalized to constitute the weight of the medical evidence and resolve the conflict of medical opinion.

The conflict of medical opinion that Dr. Patel was selected to resolve is between Drs. Kasoff and Merkin. All three agree that appellant's intracranial aneurysm was congenital. The divergence of opinion concerns what caused appellant's aneurysm to rupture on June 15, 1995.

In his May 31, 1996 report, Dr. Kasoff stated that intracranial "aneurysms have potential to rupture in the face of tension, anxiety, etc. There is quite likely a direct connection between the ongoing tension that [appellant] experienced as a result of these events at work and the ultimate rupture of his aneurysm." Dr. Kasoff added in his December 12, 1997 report that there was "no question that aneurysms may rupture as a result of such stress ... in [appellant's] case this may have played a major role."

Dr. Merkin, in his February 5, 1998 report, offered a directly opposite opinion: "In all medical probability the reported stress and anxiety is not known to necessarily be related to the rupturing of an aneurysm. To my knowledge there is no literature to support the contention that increased stress has been causative in intracranial aneurysmal rupture."

In his October 30, 1998 report, Dr. Patel echoed Dr. Merkin's opinion, in nearly identical language, stating: "In all medical probability, the rupture of the aneurysm and relation to stress is not known. To my knowledge, there is no literature to support the cause and effect of stress and rupture of the aneurysm." Thus, Dr. Patel's report merely restates Dr. Merkin's conclusion

⁶ 5 U.S.C. § 8101 *et seq.*

⁷ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

that there was no causal relationship between the accepted work factors and the aneurysmal rupture.

Dr. Patel's report offers no new rationale addressing causal relationship, although the Office specifically appointed him to provide such rationale. He did not explain why Dr. Merkin's opinion was superior to Dr. Kasoff's, or why Dr. Kasoff would be incorrect to assert that the accepted work factors could cause or contribute to the aneurysmal rupture. Without such rationale, Dr. Patel's report is not of sufficient weight to be of dispositive authority in this case.⁸

In addition, the Board notes that appellant's representative submitted printouts from various medical information sites on the internet discussing the relationship between stress and aneurysm ruptures. Medical literature of general application is of no evidentiary value in establishing causal relationship because it does not address the employment factors and incidents idiosyncratic to a claimant's case.⁹ However, in this case, appellant's representative submitted this literature not to assert the truth of its contents, but to rebut Dr. Patel's statement that he was not aware of such literature.

Appellant's representative has clearly shown that such literature does exist and is quite readily available even to nonmedical researchers. Therefore, the Board finds that Dr. Patel's statement that he was "unaware" of such literature indicates a lack of expertise, which diminishes the value of Dr. Patel's opinion.

Because Dr. Patel's report is insufficient to resolve the conflict of medical opinion between Drs. Merkin and Kasoff, the case must be remanded to the Office for further development. On remand, the Office shall refer appellant, the medical record and a statement of accepted facts to an appropriate Board-certified specialist or specialists to obtain a rationalized medical opinion as to whether the accepted factors of appellant's federal employment did cause a cerebral aneurysm to rupture. This opinion should provide a detailed discussion on whether appellant's emotional stress would exert any pathophysiologic influence on appellant's cerebral aneurysm. Following this and any other development that the Office deems necessary, the Office shall issue a *de novo* decision in the case.

The Board finds that, as the case must be remanded for appointment of a second impartial medical examiner, the issue regarding the propriety of Dr. Patel's appointment is moot.

The September 28, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further development consistent with this decision.

Dated, Washington, DC
April 20, 2001

⁸ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁹ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member