

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of R. MIKEL JACKSON and DEPARTMENT OF THE NAVY,  
NAVAL HOSPITAL, Bremerton, WA

*Docket No. 99-1203; Submitted on the Record;  
Issued April 12, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant's cardiac condition was causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion pursuant to 5 U.S.C. § 8128 by denying merit review on January 28, 1999.

The Board has duly reviewed the case record and finds that appellant failed to meet his burden of proof in establishing his claim.

There is no dispute that appellant is a federal employee and timely filed his claim for compensation. However, the medical evidence is insufficient to establish that appellant's cardiac condition was caused by or aggravated by factors of federal employment. In a June 29, 1998 report, Dr. M. Ryan Gross, Board-certified in internal medicine, stated that appellant has had coronary artery disease since 1984 and had his most recent heart attack in April 1998.

Dr. Gross added:

"The cause of his coronary is related to many things and is exacerbated by a stressful work environment. The patient has coronary disease, most likely on the basis of hyperlipidemia, hypertension and obesity.... It has been well documented that emotional and environmental stress can exacerbate anginal symptoms. The patient has now had three significant heart attacks and is unlikely to do well with additional heart attacks should he have them in the future. To the degree that stress is playing a role in his ongoing illness, that stress should be reduced as much as possible."

This report, however, only generally relates appellant's condition to factors of his federal employment.

In an April 7, 1998 medical report, Dr. Ian Becke, Board-certified in internal medicine, determined after examining appellant that he should undergo immediate heart surgery. He

stated: “It would appear that the patient’s cardiac complaints on this occasion were precipitated by severe stress at work.”

This report fails to attribute the cause of appellant’s cardiac condition to specific employment factors and thus is insufficient to establish causal relationship.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Werner Samson, Board-certified in cardiovascular disease and internal medicine, for a second opinion examination. In the statement of accepted facts, the Office described appellant’s duties as an industrial hygienist, including his exposure to the risks and discomforts associated with the functions of the shipyard installation, which required the use of a variety of protective clothing and equipment. Appellant was admitted to the emergency room on April 4, 1998 and then to the heart catheterization room with acute myocardial infarction. The statement included appellant’s history of hypertension, hypercholesterolemia, obesity, smoking and drinking histories and noted prior cardiac infarctions in 1994 and 1996.

In a November 8, 1998 report, Dr. Samson diagnosed ischemic heart disease, status post posterior myocardial infarction 1984, nonQ-wave myocardial infarction in 1996 and probably nonQ-wave myocardial infarction in April 1998. He stated that appellant’s employment was not a causal factor in his disease, including the acute nonQ-wave myocardial infarction, because there was no evidence of any unusual job stress prior to April 1998.

On December 3, 1998 the Office referred Dr. Samson’s report to Dr. Christopher C. Johnson for comment.<sup>1</sup>

In a December 28, 1998 decision, the Office denied appellant’s claim on the grounds that the evidence of record failed to demonstrate a causal relationship between appellant’s condition and his employment.

On January 13, 1999 appellant requested reconsideration. By nonmerit decision dated January 28, 1999, the Office denied appellant’s request.

The Board finds the medical evidence insufficient to establish that appellant’s cardiac condition was caused or aggravated by factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> 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 an injury was 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.<sup>3</sup> These are

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<sup>1</sup> Dr. Johnson examined appellant on April 4, 1998 and recommended immediate surgery.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

Appellant contends that his job, which required finishing reports on deadline, analyzing materials microscopically to assess the presence of asbestos and assessing work environments caused his cardiac condition.<sup>5</sup> Although his treating physicians opined that appellant's condition was caused by work-related stress, they did not specify which factor or factors caused or aggravated appellant's condition.

On the other hand, Dr. Samson noted that appellant had ischemic heart disease, which was not caused or aggravated by employment factors. Dr. Samson, after review of all the medical evidence, found that appellant's coronary episodes were ischemic episodes without any evidence of precipitating job stress. While appellant had some disease of the left coronary artery, he had an appropriate blood pressure, no chest pain and no diagnostic electrocardiograph changes after a May 20, 1998 exercise test. Dr. Samson stated that appellant had reached maximum medical improvement and could work in his prior position.

Based on the medical evidence of record, the Board finds that the reports of Dr. Samson represent the weight of medical opinion in this case. Appellant, therefore, has not submitted any probative medical evidence that would establish that employment factors in his job caused or aggravated his cardiac condition.

The Board also finds that the Office acted within its discretion by denying merit review on January 28, 1999.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>6</sup> the Office's regulations provide that an application for reconsideration must set forth arguments that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>8</sup> To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.<sup>9</sup>

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<sup>4</sup> *David M. Ibarra*, 48 ECAB 218 (1996).

<sup>5</sup> Appellant listed these work stressors in a report submitted by the employing establishment on June 3, 1998.

<sup>6</sup> Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b).

<sup>8</sup> *Carol Cherry*, 47 ECAB 658 (1996).

<sup>9</sup> 20 C.F.R. § 10.607.

In this case, appellant submitted a narrative report in support of his request for reconsideration, alleging that the Office failed to provide his treating physicians with sufficient time to respond to its requests for medical evidence, that the Office erred in finding merit in Dr. Gross' finding of no unusual stress triggers related to work because appellant's claim was based on usual stress triggers and that the claims examiner used poor judgment in the development of his claim. Appellant also listed additional stress factors associated with his employment.

Appellant's narrative neither established that the Office erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by the Office, nor constituted relevant and pertinent new evidence not previously considered by the Office. Consequently, the evidence submitted by appellant did not meet the requirements set forth at 20 C.F.R. § 10.606. For these reasons, the Office's refusal to reopen the case for a merit review did not constitute an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated January 28, 1999 and December 28, 1998 are hereby affirmed.

Dated, Washington, DC  
April 12, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member