

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIN L. WILLIAMS and DEPARTMENT OF THE ARMY,
SEVENTH ARMY DINING FACILITY, Hanau, Germany

*Docket No. 03-792; Submitted on the Record;
Issued August 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that he suffered a heart condition due to work factors on or prior to September 16, 2000.

On October 12, 2001 appellant, then a 38-year-old food service worker, filed a notice of occupational disease alleging that he suffered a heart attack as a result of stressful working conditions. He noted that he had to work under "demanding conditions to meet time deadlines" and that the military cafeteria was "working [three to four] personnel short every day." He stated that he first realized his disease was aggravated by employment on September 16, 2000. In letters dated January 25 and 31, 2002, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim for compensation.

In a report dated October 16, 2001, appellant was listed as totally disabled from December 10, 2001 due to a heart infarction. The date of injury was listed as October 12, 2001. The signature of the physician is illegible and the name of the medical facility is listed in German. In a report dated October 28, 2001, a German physician identified as Dr. Steinbach advised that appellant suffered a heart attack on October 12, 2001, the listed date of injury. He check marked a box indicating that appellant's diagnosed condition was due to stress and work pressures caused or aggravated by his federal employment. The record contains several medical treatment notes, and electrocardiogram (EKG) reports of record that are written in German without any written translation for review. Appellant also submitted medical treatment records from a German health clinic identified as "Beudingen," which indicated that he was seen for "a follow-up on a work-related injury" and underwent various undated blood pressure checks.

In a March 20, 2002 statement, appellant alleged that aspects of his job were detrimental to his health including the fact that, while the dining facility was authorized to have 10 personnel serving an average of 230 soldiers per meal, the facility usually opened in the morning with only 2 personnel and then closed in the evening with 2 personnel. He stated that the job also required exposure to harsh chemicals and a lot of walking up and down steps to insure that there were enough plates and utensils for the troop. Appellant related that he discovered his cardiac

condition on January 24, 2001 during a blood pressure check, and followed with EKGs on January 31 and March 1, 2001. He alleged that he had just gotten off work on October 12, 2001 when he began experiencing chest pains on the drive home.

In a June 13, 2002 letter, the Office requested information from the employing establishment as to whether there had been staffing shortages or aspects of appellant's job that could have been perceived as stressful. The Office noted that, in the absence of a full reply from the employing establishment, appellant's allegations with respect to his work factors would be accepted as factual.¹ The Office also requested that appellant furnish additional information.

In a decision dated July 16, 2002, the Office denied compensation on the grounds that appellant failed to establish that his heart condition was causally related to work factors prior to September 16, 2000.

The Board finds that the case is not in posture for a decision.²

An employee seeking benefits under the Federal Employees' Compensation Act³ 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. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing a causal relationship the claimed condition or disease and the identified employment factors.⁵

In this case, the only translated medical report addressing whether or not appellant sustained a work-related injury is the attending physician's CA-20 report from Dr. Steinbach who advised that appellant suffered a heart attack on October 12, 2001. Dr. Steinbach indicated on the form report that appellant's diagnosed condition was attributable to stress and work pressures caused or aggravated by his federal employment. Although the Office correctly noted

¹ A position description for a food service leader/worker had been previously provided.

² On August 5, 2002 appellant requested a hearing. He then appealed to the Board and the Board acquired jurisdiction over the case. The Board and the Office may not have concurrent jurisdiction over the same issue in a case; see *Russell E. Lerman*, 43 ECAB 770 (1992) and *Douglas E. Billings*, 41 ECAB 880 (1990).

³ 5 U.S.C. §§ 8101-8193.

⁴ *James Mac*, 43 ECAB 321 (1991); *Willie J. Clements, Jr.*, 43 ECAB 244 (1991).

⁵ *Arturo A. Adame*, 49 ECAB 421 (1998); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

that Dr. Steinbach's report is not sufficiently reasoned to establish a nexus between appellant's heart attack and factors of his federal employment, it is an uncontradicted opinion on causal relationship. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The uncontroverted inference created by Dr. Steinbach's opinion requires the Office to further develop the issue of whether appellant sustained a heart attack as a result of work factors as alleged.⁷

On remand the Office should compile a statement of accepted facts and refer appellant together with the complete case record and questions to be answered to a Board-certified specialist for a detailed opinion regarding whether appellant's October 12, 2001 heart attack was caused or aggravated by factors of employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.⁸

The decision of the Office of Workers' Compensation Programs dated July 16, 2002 is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
August 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998); *Mark A. Cacchione*, 46 ECAB 148 (1994).

⁷ See *John J. Carlone*, 41 ECAB 353 (1989).

⁸ The employing establish submitted evidence subsequent to the decision (R 86) and appellant also submitted evidence to the Office with his appeal. The Board jurisdiction is limited to evidence that was before the office at the time it issued its final decision; see 20 C.F.R. § 501.2; *Felix Flecha*, 52 ECAB 268 (2001). Consequently, the Board is unable to review the submissions made by the employing establishment and appellant after the Office's June 16, 2002 decision.