U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY T. GREENLEE and U.S. POSTAL SERVICE,
POST OFFICE, Blaine, TN

Docket No. 03-1266; Submitted on the Record;
Issued July 16, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained a heart condition caused or aggravated by factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On May 27, 2002 appellant, then a 47-year-old auxiliary route carrier, filed an occupational disease claim alleging that he sustained congestive heart failure due to factors of his federal employment. Appellant described the relationship between his condition and his employment as follows:

> "I not only carried my aux[iliary] [Route] 3 I also worked as a substitute for Routes 1 [and] 2 and on occasion was asked to carry my route and one of these other routes the same day. I also worked as a mail sorter in the absence of either the clerk or the postmaster. The stress from having to be able to handle all of this made it impossible to keep my blood pressure and diabetes under control resulting in my present condition."

Willie G. Wilson, the postmaster, related in an accompanying letter that appellant worked only three and a half hours per day and "asked for more time to work every chance he could." He stated that appellant sometimes worked "as a relief clerk when the assigned clerk was on leave" and did not cover other routes except for emergencies. Mr. Wilson indicated that appellant did not work for more than seven hours per day at any time.

In a statement accompanying his claim, appellant indicated that he had been trained to fill all vacancies at the employing establishment. He stated:

> "The week before my hospitalization M[r]. Wilson was planning to take a vacation and each day he was constantly going over things that needed to be done

while he was gone. He kept saying he was relying on me to see that everything was taken care of. I was hospitalized on the second day he was gone."

By letters dated June 21, 2002, the Office requested additional information from appellant and the employing establishment.

In a statement dated June 28, 2002, appellant related that the week prior to his hospitalization on June 13, 2001 the postmaster spent an hour each day telling him what to do during the postmaster's absence on vacation. Appellant stated, "I was only a carrier not a clerk but I ended up having to help do the clerk's job in the absence of Mr. Wilson." Appellant described tension at the employing establishment between Mr. Wilson and a clerk. Appellant related that during his hospitalization he received a call from the clerk asking him how to do the timecards.

By decision dated August 6, 2002, the Office denied appellant's claim on the grounds that he did not establish fact of injury. The Office found that appellant had experienced the claimed employment factors but had not submitted any medical evidence in support of his claim.

On September 9, 2002 appellant requested reconsideration of his claim. In a decision dated December 9, 2002, the Office found that appellant had established fact of injury because the medical evidence showed that he had a cardiac condition. The Office further found, however, that appellant had not established a causal relationship between his cardiac condition and factors of his federal employment. The Office affirmed the prior decision as modified to reflect that appellant had established fact of injury.[1]

In a letter received by the Office on January 8, 2003, appellant again requested reconsideration. By decision dated February 10, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant a merit review of his claim.

The Board finds that appellant has not established that he sustained a heart condition caused or aggravated by factors of his federal employment.

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 that the diagnosed condition is causally related to the employment factors identified by the claimant.[2] The medical opinion must be one of reasonable medical certainty and must be supported by

[1] The Board notes that the Office inaccurately determined that appellant established fact of injury. In order to establish fact of injury, an appellant must establish that he has a physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions of employment. *See Elaine Pendleton*, 40 ECAB 1143 (1989). In this case, appellant has not established any condition resulting from employment factors and thus has not established fact of injury.

[2] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[3]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[4] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

Appellant attributed his stress, in part, to substituting on other routes, sometimes after completing his own route, and to working as a mail sorter when the clerk and postmaster were absent. The Board has held that overwork may be a compensable factor of employment.[6] The evidence in this case, however, does not establish that appellant was overworked. The postmaster stated that appellant worked additional hours at his own request and at no time worked over seven hours per day. Therefore, appellant has not established a compensable factor of employment in this regard.

Appellant further maintained that he experienced stress in the performance of his day-to-day and specially assigned duties, which included receiving instructions from the postmaster regarding his work duties in the postmaster's absence and assuming additional responsibilities while the postmaster was on vacation.[7] As appellant has attributed his stress, at least in part, to his regular or specially assigned work duties, he has alleged compensable employment factors.[8] The issue, therefore, is whether the medical evidence establishes that the compensable factors of employment caused or contributed to his heart condition.

Appellant has not submitted sufficient rationalized medical evidence to establish a causal relationship between his heart condition and any of the implicated employment factors. In hospital reports dated October 9, December 15 and 22, 2001, and March 21, 2002, Dr. Richard W. Phelps, a Board-certified internist and appellant's attending physician, and

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[3] *See Morris Scanlon*, 11 ECAB 384-85 (1960); *Williams E. Enright*, 31 ECAB 426, 430 (1980).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *Robert W. Wisenberger*, 47 ECAB 406 (1996).

[7] The employing establishment did not respond to the Office's request for further information regarding appellant's allegations accompanying his claim, which included appellant's contention that the postmaster discussed with him daily his duties while the postmaster was on his vacation. Thus this allegation may be accepted as factual. 20 C.F.R. § 10.117.

[8] *Lillian Cutler*, *supra* note 5.

Dr. John R. Blake, who is Board-certified in family practice, diagnosed dilated cardiomyopathy and congestive heart failure but did not address the cause of the diagnosed conditions or attribute any condition to work factors. Therefore, these hospital reports are of little probative value.[9]

In office visit notes dated July 5, October 5 and December 7, 2001, Dr. Phelps treated appellant for cardiomyopathy. In an office visit note dated February 26, 2002, Dr. Phelps diagnosed cardiomyopathy "probably due to [appellant's] high blood pressure and diabetes."[10] As Dr. Phelps did not relate appellant's condition to factors of his federal employment, his opinion is insufficient to meet appellant's burden of proof.

In a report dated August 13, 2002, Dr. Phelps indicated that appellant "has had a recent episode of [c]ongestive [h]eart [f]ailure. Undue stress or pressure at his place of employment may have aggravated this condition." Dr. Phelps' opinion that stress at the employing establishment "may have aggravated" appellant's congestive heart failure is speculative in nature and thus insufficient to meet his burden of proof.[11] Further, Dr. Phelps did not discuss any of the employment factors identified by appellant as causing his condition.

In a report dated August 19, 2002, Dr. Jeffrey M. Baerman, a Board-certified internist, diagnosed dilated cardiomyopathy with congestive heart failure and recommended "disability on a cardiac basis." As Dr. Baerman did not address the cause of appellant's condition or resulting disability, his report is of little probative value.[12]

An award of compensation may not be based upon surmise, conjecture or speculation, or upon appellant's belief that there is a causal relationship between his condition and his employment.[13] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings on examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[14] Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

The Board further finds that the Office properly denied appellant's request for reconsideration under section 8128.

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[9] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[10] The record indicates that Dr. Phelps treated appellant on April 17, 2001 for a cough and on August 6, 2001 for knee pain.

[11] *Jennifer L. Sharp*, 48 ECAB 209 (1996) (medical opinions which are speculative or equivocal in character have little probative value).

[12] *See Linda I. Sprague*, *supra* note 9.

[13] *William S. Wright*, 45 ECAB 498 (1993).

[14] *Id*.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[15] Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[16]

In his request for reconsideration, appellant again described the stress resulting from his work duties and also argued that he was "forced to record wrong times on my time card to keep the postmaster's budget in line."[17] Appellant's argument, however, is not relevant to the issue at hand, which is whether the medical evidence establishes that compensable employment factors caused or aggravated appellant's heart condition. Causal relationship is a medical issue[18] and, as a layperson, appellant is not competent to provide a reasoned medical opinion necessary to establish critical elements of causal relationship.[19]

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute new and relevant evidence with respect to her occupational disease claim. Accordingly, the Office properly refused to reopen the claim for merit review.

[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.608(b).

[17] Appellant has submitted no evidence in support of his allegation that the postmaster forced him to falsify his time card.

[18] *Mary J. Briggs*, 37 ECAB 578 (1986).

[19] *See James A. Long*, 40 ECAB 538 (1989) (where the Board held that the statement of a layperson is not competent evidence on the issue of causal relationship).

The decision of the Office of Workers' Compensation Programs dated February 10, 2003 is affirmed, the December 9, 2002 decision is affirmed as modified and the August 6, 2002 decision is affirmed.[20]

Dated, Washington, DC
July 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[20] The December 9, 2002 decision is affirmed as modified to reflect that appellant has not established fact of injury.