

¹ See 20 C.F.R. §§ 501.2(c), 501.3.

FACTUAL HISTORY

On July 2, 2001 appellant, then 52-year-old real estate specialist, filed an occupational disease claim alleging that he sustained a heart attack and heart condition due to stress at work. He attributed his June 6, 2001 heart attack to stress caused by the performance of his job duties. Appellant noted that he recently began working as a real estate specialist and previously worked as a contract specialist in federal employment. He stated: "On both jobs time pressures are an inherent part of the job. Sometimes, as recently, the pressure is simply to learn new material within a certain period of time or to solve a problem requiring a creative solution." Appellant further related: "One week prior to the attack I had been under a great deal of stress because even though I had been working since May 6, 2001, I had not been paid due to a delay in the processing of my payroll documents." Additionally, the employing establishment listed him as a GS-11, Step 1 instead of a GS-11, Step 8. At the time of his June 6, 2001 heart attack, appellant was on travel status in Oregon. He stated: "Immediately before the heart attack we had been studying the condition of a marina in Oregon and walking up and down the dock taking notes. I was still on [t]emporary [d]uty and after lunch we were preparing to go to another government owned facility when the heart attack occurred."

By decision dated September 14, 2001, the Office denied appellant's claim after finding that he did not establish fact of injury. The Office determined that the employing establishment's administrative error in failing to timely pay appellant and paying him at an inaccurate rate constituted compensable employment factors. The Office noted, however, that appellant had not submitted any medical evidence establishing that he sustained a cardiac condition.

On September 10, 2002 appellant requested reconsideration. He submitted June 2001 hospital reports describing his hospitalization and treatment for a heart attack. Appellant contended that he sustained increased heart damage because he was working in a remote location three hours from a hospital at the time of his heart attack.

In a report dated August 31, 2002, Dr. Mowbray P. Hagan, a Board-certified internist, opined that appellant's job stresses, including his failure to receive timely and sufficient pay, "contributed in a significant way to [the] heart attack that he suffered on June 6, 2001."

The Office referred appellant to Dr. Satinder Swaroop, a Board-certified internist, for a second opinion examination. The Office listed as compensable employment factors that the employing establishment failed to timely issue appellant's pay check and paid him at an inaccurate rate. The Office indicated that appellant began working May 6, 2001 and was eligible for a paycheck on May 31, 2001. Appellant received his first paycheck, at an inaccurate rate, on June 4, 2001.

On December 12, 2002 Dr. Swaroop diagnosed status post old posterior wall myocardial infarction. He opined that it was "quite unclear" whether appellant's myocardial infarction was caused or aggravated by employment factors. Dr. Swaroop also found that it was unclear whether traveling to Oregon caused his heart attack. In a supplemental report dated July 14, 2003, he opined that he was unsure whether a four-day delay in paying appellant "would have caused such a severe stress to cause a heart attack."

By decision dated August 8, 2003, the Office denied modification of its September 12, 2001 decision. The Office noted that the hospital reports contained conflicting reports of whether appellant sustained chest pain prior to his heart attack. The Office further did not accept as factual that he was in a remote location at the time of injury. The Office noted that appellant was in Astoria, Oregon, at the time of his myocardial infarction. The Office utilized MapQuest, an internet-based service and found that Astoria, Oregon had emergency personnel and facilities. The Office additionally determined that Astoria, Oregon was only 2 hours and 16 minutes from appellant's hotel in Clackamas, Oregon.

On July 24, 2004 appellant requested reconsideration. He asserted that his first paycheck was more than one pay period late rather than a few days late. Appellant further noted that he experienced his heart attack while on a bus in a remote and unfamiliar location. He related: "[F]or much of the time immediately after the onset of the severe and excruciating pain from the heart attack, my sole objective was to stay alive until the pain subsided sufficiently for me to take stock of things or we arrive[d] back in Clackamas where I knew there was a hospital." Appellant maintained that at the time of his heart attack he did not know the location of the nearest hospital, did not have access to a computer and "was in no position to make critical decisions." He submitted an electronic mail message from Christina M. Baysinger, a travel companion, who asserted that appellant experienced problems on a bus ride to the Oregon coast for a training field trip. Ms. Baysinger believed that "they were driving back to the hotel because the closest hospital anyone knew of was somewhere in the vicinity of the hotel." Other travel companions submitted similar electronic mail messages.

In a decision dated August 6, 2004, the Office denied modification of its July 8, 2003 decision. The Office accepted that it was reasonable for him to return to Clackamas, Oregon for medical treatment. The Office also accepted that appellant's paycheck was delayed two to three weeks rather than four days. The Office found, however, that the medical evidence was insufficient to establish a causal relationship between the accepted employment factor and his medical condition.

On June 19, 2005 appellant requested reconsideration. By decision dated November 18, 2005, the Office denied modification of its August 6, 2004 decision.

Appellant again requested reconsideration on October 14, 2006.² He submitted a report dated September 26, 2006 from Dr. Jerome Pierson, a Board-certified internist, who interviewed appellant and reviewed his medical records. Dr. Pierson stated :

"The increased stress caused by the loss of pay and work-related disputes, had to have contributed to the biological and biochemical changes [which] contribute to and can in fact cause increased coagulation and plaque disruption and lead to myocardial infarction.

"Although there were other risk factors present, the only new and progressive factor identified was the work[-]related stress. [Appellant] clearly felt he was

² He noted that he had recently sustained a second myocardial infarction on February 20, 2006, while studying for the state bar examination.

treated unfairly and the lack of appropriate pay, through no fault of his own, placed additional psychological and physical stress on him. The timing of his cardiac event had to be impacted by the work[-]related stress suffered by [him].”

Dr. Pierson concluded: “For the above reasons, in my opinion, job-related stress was a substantial cause for the myocardial infarction [appellant] suffered on June 6, 2001 as well as the consequential symptoms stated above.”

By decision dated January 16, 2007, the Office denied appellant’s request for reconsideration after finding that the evidence submitted was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,³ the Office’s regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his burden of proof.⁷ The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁸ If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.⁹

³ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.”

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *Donald T. Pippin*, 53 ECAB 631 (2003).

⁸ *Id.*

⁹ *See Annette Louise*, 53 ECAB 783 (2003).

ANALYSIS

The Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a heart attack causally related to the compensable employment factor of an administrative error in timely receiving his proper pay. With his request for reconsideration, appellant submitted a report from Dr. Pierson, who reviewed the evidence and determined that the compensable employment factors contributed to his heart attack. In its January 16, 2007 decision, the Office found that appellant did not submit medical sufficient to warrant a merit review of his claim. Dr. Pierson's report, however, pertained directly to the issue of whether appellant sustained a myocardial infarction due to stress arising from his employment. As this evidence was not previously of record and directly addressed the relevant issue, it is sufficient to reopen his case for further review of the merits.

In order to require merit review, it is not necessary that the new evidence be sufficient to discharge appellant's burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.¹⁰ As Dr. Pierson's September 26, 2006 report constituted pertinent new and relevant medical evidence, the Board finds that the Office improperly denied his request for review of the merits of the claim. The case will be remanded to the Office to conduct an appropriate merit review of the claim. Following this and such other development as deemed necessary, the Office shall issue a merit decision on the claim.

CONCLUSION

The Board finds that the Office improperly refused to reopen appellant's case for further merit review of his claim under 5 U.S.C. § 8128.

¹⁰ See Donald T. Pippin, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 16, 2007 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board