

**United States Department of Labor
Employees' Compensation Appeals Board**

S.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Waterloo, IA, Employer**

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**Docket No. 07-2387
Issued: May 20, 2008**

Appearances:
Thomas Verhulst, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 21, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 26, 2007, denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established an injury in the performance of duty on August 3, 2005.

FACTUAL HISTORY

On August 11, 2005, appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained a heat stroke as a result of his job as a mail carrier on August 3, 2005. In a narrative statement, appellant alleged that on August 3, 2005 he performed his mail route in high heat and humidity. Appellant stated that on August 4, 2005 he reported for work and soon felt dizziness. He indicated he was taken by ambulance to the local hospital.

In a report dated August 17, 2005, Dr. Clay Hallberg, an osteopath, stated appellant's medical history included hypertension, chronic obstructive pulmonary disease and congestive heart failure. Dr. Hallberg stated that two weeks earlier during a hot summer afternoon appellant succumbed to fever, sweats, chills and prostration. He opined that, with the multiple medications and health problems, appellant should no longer deliver mail.

By decision dated November 4, 2005, the Office denied the claim for compensation. It found the medical evidence was insufficient to establish an injury causally related to employment on August 3, 2005.

Appellant requested reconsideration and submitted medical evidence regarding his hospital treatment on August 4, 2005. In a discharge report dated August 8, 2005, Dr. Pratibha Dua noted appellant was admitted on August 4, 2005 with systolic blood pressure in the 60's. He indicated that on August 3, 2005 appellant had walked approximately nine miles in his job, had seen his physician and received an antibiotic for weakness, fatigue and leg cramps. The discharge diagnosis was severe shock secondary to severe dehydration.

In a decision dated February 1, 2006, the Office denied modification of the November 4, 2005 decision.

Appellant requested reconsideration and submitted a February 22, 2006 report from Dr. Hallberg, who stated that appellant was "treated for severe shock and severe dehydration as a direct result of his employment." Dr. Hallberg stated that, given the air temperature that day, "the only logical conclusion is that his "shock and dehydration" (a.k.a. heat stroke) not only aggravated his preexisting conditions and made them worse, but also heralded the onset of new conditions such as his diabetes which is luckily in control." He concluded that appellant's ongoing conditions were related to his work environment and the events that occurred on the day he was hospitalized.

By decision dated June 12, 2006, the Office denied modification of the February 1, 2006 decision. Appellant requested reconsideration and submitted reports from Dr. Ehab Suleiman, an internist. In a report dated August 4, 2005, Dr. Suleiman provided a history and results on examination. He stated, "I think his most reasonable diagnosis is severe dehydration secondary to heat shock and possibly acute tubular necrosis from prolonged, untreated dehydration secondary to his 'staying in the sun for delivery mail.'"

In a report dated April 11, 2007, Dr. Suleiman stated that at the time appellant was admitted to the hospital, his symptoms included hypertension, body aches and chest pain, which was suggestive of a cardiac event. He indicated cardiac testing ruled out a cardiac event and, in talking to appellant, Dr. Suleiman discovered he had walked 9 to 10 miles as a mail carrier the previous day. Dr. Suleiman indicated that appellant was not on diuretics and he did not have an underlying disease to justify his situation. He concluded, "I diagnosed this patient with severe hypotension with renal insufficiency secondary to a severe heat stroke resulting from his severe exposure to the sun for a prolonged period of time as a consequence of working as a mail carrier."

The Office referred the medical evidence to an Office medical adviser for evaluation. In a report dated June 17, 2007, the medical adviser stated that appellant was taking numerous

medications on hospital admission that could be implicated with hypotension. The medical adviser opined that heat strokes do not occur a day after working in high heat and humidity, but occur contemporaneous with the exposure. He concluded that the hypotension that led to appellant's hospitalization was not causally related to work activity. The medical adviser also found that other conditions such as diabetes were not causally related to the employment.

By decision dated June 26, 2007, the Office reviewed the case on its merits. The Office found that the medical evidence did not establish an employment-related injury on August 3, 2005.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.³

The Act provides that, 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 the examination.⁴ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁵

ANALYSIS

The medical evidence contains opinions that disagree on the issue of whether appellant has a diagnosed condition causally related to his work on August 3, 2005. Dr. Suleiman, who treated appellant on August 4, 2005, opined that appellant's work on August 3, 2005 in hot and

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ 5 U.S.C. § 8123(a).

⁵ 20 C.F.R. § 10.321 (1999).

humid conditions contributed to heat shock and dehydration.⁶ An Office medical adviser opined that appellant's hospitalization was caused by his preexisting medical conditions and medications, not the work activity on August 3, 2005.

When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to a referee physician, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁷ Accordingly, the case will be remanded to the Office to properly resolve the conflict in the medical evidence. The referee physician should provide a rationalized opinion as to whether appellant sustained heat stroke or any other condition causally related to his employment on August 3, 2005. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The medical evidence is in conflict on the issue of whether appellant sustained an injury causally related to his employment and the case will be remanded to resolve the conflict pursuant to 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 26, 2007 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 20, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁶ Dr. Hallberg also opined that heat stroke was causally related to the August 3, 2005 employment, but his reports are of diminished probative value as he appeared to believe appellant was hospitalized on August 3, 2005. He stated that appellant succumbed on a hot afternoon and opined appellant's conditions were related to events on the day he was hospitalized.

⁷ *William C. Bush*, 40 ECAB 1064 (1989).