

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE E. COPLEY and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Chillicothe, Ohio

*Docket No. 95-2164; Submitted on the Record;
Issued February 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective April 2, 1995.

On January 5, 1975 appellant, a 51-year-old correctional officer, sustained a myocardial infarction while at home. The Office's District medical adviser reviewed medical records concerning prior treatment for a heart condition, and the factual evidence of record describing the work-related stress and the events which took place while appellant was at home prior to his heart attack.¹ Based on the opinion of the District medical adviser, the Office accepted that appellant's employment-related stress precipitated the myocardial infarction he sustained at home on January 5, 1975 and placed appellant on the periodic rolls. In developing the medical evidence to determine when appellant could return to work, the Office found that the medical evidence indicated that he sustained no permanent aggravation to the underlying coronary arteriosclerosis as a result of the myocardial infarction.² Following an initial termination of benefits by decision dated June 12, 1982, appellant submitted medical records which showed that he required a two-vessel artery bypass in August 1982. Upon review by an Office medical adviser, the Office found by decision dated November 17, 1982 that the new evidence was not sufficient to warrant a review of the denial of benefits.

In July 1984, appellant submitted additional reports, which included a report from Dr. Harry Dreidger, a Board-certified cardiologist, who began to treat him that year. An Office

¹ Two years before the January 5, 1975 work incident, appellant had experienced angina pectoris and was diagnosed with "coronary insufficiency." The record notes cardiac risk factors including a family history and exogenous obesity.

² An Office medical adviser who reviewed the evidence in June 1981 negated a causal relationship between both the previously accepted myocardial infarction and the employment stress, as well as the underlying condition. Dr. Sanford R. Courter, a cardiologist and Office referral physician, opined that appellant was not suffering from further residuals of the myocardial infarction, which he acknowledged was precipitated by the work-related stress. He noted a lack of evidence to show that the underlying arteriosclerotic condition was aggravated and indicated that "[c]oronary artery vasospasm does not necessarily materially aggravate underlying coronary arteriosclerosis."

medical adviser disagreed with Dr. Dreidger's explanation for how a myocardial infarction permanently aggravated appellant's underlying heart condition.³ Dr. Hsiung Chen, a Board-certified cardiologist, was selected to resolve the conflict in medical opinion. While Dr. Chen did not address the natural progression of the coronary artery disease and explain how the myocardial infarction caused a permanent aggravation, he felt that based on the fact that the myocardial infarction was "an irreversible process" that appellant had sustained a permanent aggravation. Based on the opinion of Dr. Chen, the Office accepted appellant's claim for permanent aggravation of coronary artery disease.⁴

The Office sought periodic reports from Dr. Dreidger concerning appellant's continued disability from work. As Dr. Dreidger indicated total disability in reports between 1986 and 1989, the Office referred appellant for a second-opinion evaluation to Dr. Charles I. Cerney, a Board-certified cardiologist. Dr. Cerney negated further disability due to the employment injury. He reviewed appellant's prior smoking history, and noted cardiac-related deaths of two sisters and a mother, as well as appellant's cardiac history. Dr. Ralph Lach, a Board-certified cardiologist selected to resolve the conflict in medical opinion between Drs. Dreidger and Cerney negated a continued causal relationship between appellant's condition and his prior employment injury. Dr. Lach examined appellant in September 1990 and provided a complete review of appellant's history, noting that the prior year he sustained another heart attack. He noted the significance of "coronary insufficiency" found in 1973 prior to the 1975 heart attack and addressed appellant's risk factors of coronary artery disease. Following the review of his report by an Office medical adviser, the Office requested a supplemental report from Dr. Lach. In his April 7, 1992 report, Dr. Lach noted that myocardial infarction was a result or complication of coronary artery disease, and not a cause of any acceleration or aggravation of the underlying condition. He explained that it represented an evolutionary stage and "cannot, *per se*, influence the preexisting coronary artery disease." The Office referred appellant to Dr. Lach for reevaluation during the spring of 1994. Dr. Lach remained consistent with his prior opinion four years earlier, that there was no relationship between appellant's current condition or disability from work and his prior myocardial infarction in 1975. He noted that appellant underwent angioplasty in November 1993 and noted in his report that returning to work was unlikely because of appellant's age of 71. Dr. Lach however, completed a work restriction evaluation form which noted that appellant was able physically to work.

By notice of proposed termination dated February 11, 1995, the Office advised appellant that his compensation benefits would be terminated because the evidence established that he was no longer suffering from residuals of his myocardial infarction, or totally disabled due to the employment injury.

³ Dr. Dreidger cited a myocardial infarction as both a result of arteriosclerosis and as cause for permanent damage, in that the damaged heart muscle from a myocardial infarction contracts with less force, leading to both increased angina and decreased overall functioning of the heart. The Office medical adviser disagreed that a myocardial infarction lead to increased angina.

⁴ Due to appellant's failure to report earnings from employment for 2 years from 1983 until 1985, the Office determined the existence of an overpayment and forfeiture for the period of compensation paid between August 12, 1982 to October 13, 1985, which equaled \$62,498.79. A portion of appellant's continuing compensation payments were withheld in order to recover the forfeited amount.

Appellant submitted a February 25, 1995 report from Dr. Dreidger who addressed his physical complaints of occasional lightheadedness and dizziness, with symptoms of mild bradycardia and atrial fibrillation. He noted that on one occasion appellant blacked out approximately one year ago. Dr. Dreidger noted that while appellant's myocardial infarction was 20 years ago, he still remained totally and permanently disabled, with one vein graft continuing to remain open and chronic angina. In his letter accompanying the report of Dr. Dreidger, appellant indicated that he was 72 years old with mandatory retirement in his former position at 55 years old.

By decision dated March 13, 1995, the Office terminated appellant's compensation benefits effective April 2, 1995.⁵

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 2, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted disability had ceased or that it is no longer related to the employment.⁶

In the present case, the Office accepted appellant's claim for an employment-related myocardial infarction in 1975. Following the determination that he ceased to have residuals from the myocardial infarction, appellant submitted reports from Dr. Dreidger, a Board-certified cardiologist who had treated him since July 1984, to establish that he sustained permanent residuals of the myocardial infarction and that he continued to be disabled from work. The Office accepted appellant's claim for a permanent aggravation of his underlying heart condition from the myocardial infarction, based on a report from Dr. Chen, a Board-certified cardiologist who served as the impartial medical specialist chosen to resolve a conflict in medical opinion. Following the receipt of periodic reports from Dr. Dreidger, who continued to support total disability from work, the Office obtained a second-opinion evaluation from Dr. Cerney, who negated a causal relationship between the prior myocardial attack and further disability or residuals.

Section 8123(a) of the Federal Employees' Compensation Act provides in part:

"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 an examination."⁷

Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist is entitled to

⁵ In view of a \$9,972.42 balance on unrecovered compensation from the prior declared forfeiture, the Office advised appellant in a May 1995 letter, that he was responsible for \$202.99 per month until the original amount and interest was recovered.

⁶ *Patricia A. Keller*, 45 ECAB 278 (1993); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁷ 5 U.S.C. § 8123(a).

special weight if sufficiently well rationalized and based upon a proper factual review of the case.⁸

Dr. Lach, a Board-certified cardiologist, who was chosen to resolve a conflict between Drs. Dreidger and Cerney, reported during the spring of 1992 that the myocardial infarction was a result or complication of coronary artery disease and not a cause of any acceleration or aggravation of the underlying condition. Upon request by the Office for an updated report two years later, he noted that he remained consistent with his prior opinion on the lack of a causal relationship between appellant's current condition or disability from work and his myocardial infarction in 1975. While he noted that it was unlikely appellant would return to work at age 71 with a recent history of angioplasty the previous year, Dr. Lach remained consistent with his opinion that a myocardial infarction represented a certain stage of coronary artery disease and did not have an influencing effect on the disease itself. The Board finds Dr. Lach provided a complete review of appellant's history of injury and his medical condition since the date of his myocardial infarction. He also provided rationale for his opinion negating a causal relationship, namely the lack of effect on the underlying heart condition from a myocardial infarction. Accordingly, the weight of the medical evidence rests with the complete and well-rationalized report of Dr. Lach and establishes that appellant no longer continued to suffer from residuals of his myocardial infarction, precipitated by work-related stress in 1975.

The decision of the Office of Workers' Compensation Programs dated March 13, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 2, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ *Glenn C. Chasteen*, 42 ECAB 493 (1991).