

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM FARLEY and U.S. POSTAL SERVICE,
POST OFFICE, Providence, R.I.

*Docket No. 97-730; Oral Argument Held June 10, 1998;
Issued July 22, 1998*

Appearances: *John D. Riordan, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

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

The issues are: (1) whether appellant had any employment-related disability on or after June 30, 1987; and (2) whether appellant has established that he has a psychiatric condition causally related to factors of his federal employment.

This is the second appeal of this case. In the prior appeal, by decision dated February 10, 1995 the Board adopted and affirmed a decision of an Office of Workers' Compensation Programs' hearing representative dated August 13, 1993. In the August 13, 1993 decision, the Office hearing representative found that the Office had met its burden of proof in establishing that appellant had not sustained an employment-related myocardial infarction as a result of a May 10, 1973 employment incident and that appellant had no continuing physical disability causally related to the May 10, 1973 incident of chest pain. The hearing representative also found that the medical evidence of record failed to establish that appellant sustained a psychiatric condition as the result of the episode of chest pain he sustained in the performance of duty on May 10, 1973, his May 28, 1973 hospitalization for chest pain, or other factors of his federal employment.

On September 1, 1995 appellant, through his representative, again requested that the Office reconsider his case. Appellant submitted a new medical report to the record, dated August 9, 1995 from Dr. Elliot L. Sagall, appellant's treating physician. The record indicates that Dr. Sagall had been appellant's treating physician since October 5, 1973 and had continually reported since that time that appellant sustained an acute myocardial infarction on May 10, 1973 and that he continued to be disabled for work due to the resulting cardiac impairment. Dr. Sagall had numerous reports of record at the time that the Office determined a conflict existed in the medical evidence as to the nature of appellant's cardiac condition and continuing disability.

In his August 9, 1995 report, Dr. Sagall concluded that subsequent to appellant's work-related myocardial infarction of May 1973, he was permanently disabled for gainful employment because of anginal symptoms and a severe post-myocardial infarction cardiac neurosis which resulted in a chronic anxiety state with severe depression, as well as chronic disabled bronchial asthma. The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.¹ To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value. As Dr. Sagall's report contained no medical rationale, but merely stated the same conclusions which he had reiterated throughout his years as appellant's physician, his opinion regarding appellant's cardiac and psychiatric diagnoses was of limited probative value. This report was not sufficient to overcome the weight of the impartial medical specialist's report regarding the issue of appellant's continuing cardiac disability and entitlement to disability benefits after June 30, 1987; and was not sufficient to establish appellant's entitlement to benefits for a psychiatric diagnosis.

Also in support of his request for reconsideration, appellant's representative alleged that the Office's second opinion physician, Dr. Lurie, had not reviewed appellant's treating physician Dr. Donegan's August 13, 1991 report, and that therefore Dr. Lurie's October 31, 1991 report, which concluded that appellant's psychiatric condition was not employment related, was flawed and could not constitute the weight of the medical evidence. Appellant's representative noted that he had sent Dr. Lurie a copy of Dr. Donegan's August 13, 1991 report as well as nursing notes from May 28, 1973 so that Dr. Lurie could determine appellant's diagnosis as of May 28, 1973 and could determine exactly what appellant was told of his condition on May 28, 1973.

In the August 13, 1991 report, Dr. Donegan noted that appellant initially developed chest pain on May 10, 1973 while delivering mail, he was treated at home by Dr. Estabrooks on three occasions over the next 18 days, with episodes of chest pain and chest pressure. On the evening of May 28, 1973, appellant developed substernal chest discomfort with nausea and diaphoreses, he was then brought to the emergency room of St. Luke's Hospital and admitted. Appellant's pain subsided after admission with the help of medication, his serial electrocardiograms (EKG) over the initial days of hospitalization showed significant acute changes and were read by the electrocardiographer as an acute posterior myocardial infarction. Dr. Donegan noted that Dr. McCullough had stated that the EKG changes were not classical evolutionary changes, but that she did not question that there were acute changes. Dr. Donegan also noted that appellant's enzyme levels did rise, but not significantly. Appellant was discharged in stable condition with discharge diagnoses of coronary artery disease and probable acute myocardial infarction. Dr. Donegan stated "[Appellant] was of course, made fully aware of these findings both from Dr. Estabrooks and myself. It was also our opinion that the pain which started on May 10, 1973 was all part of the same syndrome namely preinfarction angina. During his hospitalization [appellant] was made aware of all of these findings by Dr. Estabrooks and myself and in fact became very upset and distressed when told, to the point of requiring sedation."

¹ See *Michael Stockert*, 39 ECAB 1186 (1988).

While the record does indicate that Dr. Lurie did not review Dr. Donegan's August 13, 1991 report prior to his preparation of the October 31, 1991 report, the Board finds that this is harmless error as Dr. Lurie in fact assumed that appellant had sustained a myocardial infarction in May 1973 and was told by Dr. Donegan of such. In his October 31, 1991 report, Dr. Lurie in fact indicated that he had reviewed the medical reports of record as of June 20, 1991, as well as material sent directly by appellant's representative including discharge summary, lab reports and doctor's' and nurses' notes of hospitalization of May 28 through June 14, 1973; report of Dr. Kosowsky dated October 21, 1986; and report of Dr. Estabrook dated July 9, 1973. Essentially, appellant's representative continues to allege that Dr. Lurie's October 31, 1991 report is of limited probative value because Dr. Lurie was not fully aware of appellant's May 28, 1973 diagnosis of probable myocardial infarction and that appellant had been informed of his condition by his treating physicians. Dr. Lurie, however, in fact did indicate knowledge of such. Dr. Lurie stated as follows:

"The nurses' notes described the claimant's reaction to his being told of his condition by his physician. What exactly he was told was not described. However, as the dates correlate with EKG's that were read as positive for myocardial infarction, a reasonable presumption is that he was told that he had a "heart attack." His initial reaction was denial, with threats to pull out his IV's and leave the hospital against medical advice. He did not do this. Instead, in a gradual way, with apprehension interspersed, as reported in the notes, he began to adjust to his condition -- which he must have believed to be that of a heart attack."

Dr. Donegan indicated in his August 13, 1991 report that appellant's enzyme levels were not significantly elevated, however, that appellant's serial EKG's were interpreted as revealing acute changes and that appellant was as a result given a diagnosis of probable myocardial infarction. As Dr. Lurie indicated awareness of appellant's EKG findings and Dr. Lurie actually presumed that appellant had been told he had a myocardial infarction based upon the EKG findings, the Board must conclude that Dr. Lurie was aware of the relevant facts of this case, even absent Dr. Donegan's August 13, 1991 report. The Board thus affirms its prior finding that Dr. Lurie's October 31, 1991 report constitutes the weight of the medical evidence regarding the issue of appellant's psychiatric condition. The evidence establishes that appellant's psychiatric condition was not causally related to appellant's employment-related cardiac injury or other factors of his federal employment.

Finally, the Board notes appellant's representative's argument that the Office failed to conduct a merit review in its last decision dated September 17, 1996, although the Office did grant appellant appeal rights consistent with a merit review. The Board finds that this issue is moot. As the Office did afford appellant full appeal rights, which appellant pursued by appeal to the Board, the Board's current *de novo* review of the case takes precedence over the analysis presented by the Office in the decision dated September 17, 1996.

The decision of the Office of Workers' Compensation Programs dated September 17, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 22, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member