

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL BIASTRE and DEPARTMENT OF THE NAVY,
NAVAL SUBMARINE BASE NEW LONDON, Groton, Conn.

*Docket No. 95-2996; Submitted on the Record;
Issued May 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on February 10, 1994, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision and must be remanded for further development of the evidence.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, and that the claim was filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty,⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that the incident, shoveling snow, occurred as alleged. The Office of Workers' Compensation Programs, found, however, that the evidence was insufficient to

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

establish that an injury resulted from the incident.⁷ Appellant, an HVAC mechanic, claimed that he sustained a heart attack on February 10, 1994, while shoveling snow in a fatigued state and in a hurried manner to free his truck so he could respond to an emergency heat call.

To support the claim, appellant submitted various documents including a February 10, 1994 report by Dr. Richard S. Shulman, a Board-certified internist; a February 19, 1994 discharge summary by Dr. Robert Schwengel, a Board-certified internist who specializes in cardiology; a February 22, 1994 report by Dr. Schwengel; a March 23, 199[4]⁸ report by Dr. Schwengel; a March 28, 1994 report by Dr. Schwengel; an April 8, 1994 report by Dr. David F. Cunningham, a Board-certified internist; treatment notes from the Newport Naval hospital dated February 10, 1994, the date of the alleged heart attack, by a doctor whose signature is illegible. The notes included a history of the injury, a diagnosis of rule out myocardial infarction, and plans to transfer appellant to the Newport hospital emergency room; February 10, 1994 emergency room records from Newport hospital by Dr. Steven P. Sbardella whose diagnostic impression was inferior myocardial infarction; a February 12, 1994 Newport hospital discharge summary by Dr. Cunningham; and an April 10, 1995 report by Dr. Cunningham.

In a February 10, 1994 report, Dr. Shulman stated that appellant had a recent onset of ischemic chest pain and that he has a long history of mildly decreased platelet counts for which he has been followed by Dr. James Smythe who felt that this represented a chronic form of ITP (idiopathic thrombocytopenic purpura). Dr. Schulman noted appellant's history of hypercholesterolemia and a family history of hypercholesterolemia and cardiovascular disease. He also noted that appellant smokes. Dr. Shulman stated that appellant had no history of cardiovascular symptoms "until the day before yesterday." He diagnosed acute ischemic heart disease with unstable angina and noted that the results of the electrocardiogram (EKG) taken at the Newport naval hospital were consistent with a myocardial infarction, although he doubted that it was a substantial one. Dr. Shulman recommended an echocardiogram to determine the extent of myocardial damage.

In a February 19, 1994 discharge summary, Dr. Schwengel stated that the results of an EKG were consistent with an inferior myocardial infarction, that appellant underwent coronary angiography and on discharge diagnosed appellant with unstable angina and coronary artery disease.

In a February 22, 1994 report, Dr. Schwengel noted that "[appellant] underwent coronary angiography on February 14, 1994, which revealed an 80 [percent] right coronary artery mid-lesion with some evidence of ulceration which we think is his culprit vessel."

⁷ The Board notes that the Office discussed traumatic injury versus occupational disease due to appellant's references to symptoms occurring over more than one day or work shift. However, appellant's representative stated that appellant is claiming that his heart attack was a direct result of shoveling snow while in the performance of duty on February 10, 1994.

⁸ Dr. Schwengel's report is dated March 23, 1993; however, the employment-related incident of shoveling snow occurred on February 10, 1994. Dr. Schwengel initially saw appellant on February 19, 1994. In a February 22, 1994 report, the doctor stated that in three and a half weeks appellant was to have a stress thallium test and in a March 23, 1994 report Dr. Schwengel related that he performed the test on March 22, 1994.

In a March 23, 199[4] report, Dr. Schwengel stated that he performed an exercise thallium on appellant yesterday which revealed evidence of his inferior non Q-wave myocardial infarction with some residual viable myocardium in the inferior wall.

In a March 28, 1994 report, Dr. Schwengel stated that:

“[Appellant] on February 10, 1994, suffered an inferior wall myocardial infarction when symptoms of chest pain, shortness of breath, sweatiness, and overall weakness developed while he was shoveling snow at 0700 the morning of date of injury.

“[Appellant] had no history of coronary disease before this time. [Appellant] was documented in the hospital to suffer from an acute inferior wall myocardial infarction.

“It is my opinion that the physical exertion [appellant] was undertaking the morning of his injury could have contributed to him developing an acute inferior wall myocardial infarction due to plaque rupture and clot formation. It is well documented that physical exertion on top of a preexisting unstable or ulcerated coronary plaque can exacerbate an acute myocardial infarction.”

In an April 8, 1994 report, Dr. Cunningham stated:

“[Appellant’s] only previous cardiac history was a history of proximal supraventricular tac[h]ycardia which was diagnosed in 1988 by a doctor in Jacksonville, Florida. The details of which are unavailable to me. I cannot substantiate the diagnosis of proximal supraventricular tac[h]ycardia. The patient has a very infrequent history of having palpitations which have been treated with Verapamil in the past. However, the last episode was in 1992. Prior to his recent [myocardial infarction], he had never been diagnosed with having coronary artery disease.

“It is my opinion as well as the opinion of Dr. Robert Schwengel, [appellant’s] cardiologist, that the work that [appellant] was doing on the morning of his [myocardial infarction] could have contributed to this.”

In a February 12, 1994 Newport hospital discharge summary, Dr. Cunningham stated:

“On the morning of admission [appellant] returned to work, and while shoveling snow again felt the discomfort across his chest, as well as discomfort in his arm. He was brought to the Naval hospital where he was evaluated, and an [EKG] was done which showed changes consistent with an acute inferior wall myocardial infarction with ST elevations in the inferior leads.

“[Appellant] was then transferred to the Newport hospital emergency room where repeat [EKG] showed that his ST segments were down to normal, however, he now had T wave inversions in the inferior leads.”

Dr. Cunningham diagnosed unstable angina, hypercholesterolemia and ITP.

In an April 10, 1995 report, Dr. Cunningham stated:

“[Appellant] suffered an inferior wall [myocardial infarction] when shoveling snow at approx[imately] 0700 hours on Feb[ruary] 10, 1994. Of note, the patient had worked late into the night of Feb[ruary] 9, 1994 and into the early morning hours of Feb[ruary] 10, 1994. Prior to this, [appellant] had no known history of coronary artery disease nor had he ever complained of any symptoms such as exertional chest pain or shortness of breath on any of the multiple visits he had had to my office.”

Dr. Cunningham went on to explain that appellant was treated at Newport hospital and then transferred to Miriam hospital. He opined that:

“Clearly, in order for [appellant] to suffer a [myocardial infarction], there needs to be a nearly complete obstruction to blood flow in the artery. It was thought at the time of the catheterization that most likely this previously present nonsignificant plaque must have ulcerated causing a transient complete occlusion of the artery leading to his [myocardial infarction]. It is well known that heavy exertion such as shoveling snow can lead to ulceration and complete occlusion of previous nonsignificant plaques in the coronary arteries.

“In summary, I believe [appellant’s] heavy exertion on the morning of his [myocardial infarction] was directly related in causing a previous nonsignificant blockage in his right coronary artery to become completely occluded thus resulting in the inferior wall [myocardial infarction] that [appellant] suffered.”

The Board finds that this case is not in posture for decision.

In the medical reports submitted, the doctors’ based their opinion’s, in part, on the fact that appellant had no previous history of a cardiac condition. However, Dr. Cunningham, in his April 8, 1994 report, stated that appellant had a history of proximal supraventricular tachycardia, which was diagnosed in 1988 by a doctor in Florida, although he was unable to substantiate the diagnosis. Dr. Cunningham also stated that he treated appellant for palpitations as late as 1992.⁹

⁹ See *Kathy Marshall*, 45 ECAB 827 (1994) (where the Board found that the opinion of the physician must be

The April 10, 1995 report of Dr. Cunningham expressed the belief that appellant's shoveling snow activities on February 10, 1994 was directly related to causing the myocardial infarction appellant sustained. This report, coupled with the remaining evidence, is sufficient to require the Office to further develop this claim.

When a case contains evidence of the existence of a preexisting condition, it is essential that the record reflect a full and accurate history of that condition. Therefore, the Board finds that in this case, the Office should have further developed the medical evidence concerning appellant's history of tachycardia.

On remand the Office should either request that appellant furnish a comprehensive medical report from the doctor in Florida, who treated him in 1988 for the condition or obtain the doctor's name and contact him directly. In addition, the Office should obtain appellant's military medical records since he indicated that he was diagnosed with tachycardia in the military and "was checked at the Veterans Administration Hospital in Providence." Thereafter, the Office should forward a statement of accepted facts and the medical evidence concerning appellant's preexisting condition, to an Office medical adviser or second opinion physician to directly address the question of whether shoveling snow on February 10, 1994 aggravated a preexisting cardiac leading to the acute inferior myocardial infarction or whether such shoveling activity by itself was sufficient to precipitate the myocardial infarction.

The July 25, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
May 26, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

based on a complete factual and medical background of the claimant.) This would include knowledge of any preexisting condition.