

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL POUILLARD and DEPARTMENT OF DEFENSE, DEFENSE
COMMISSARY AGENCY, PRESIDIO, San Francisco, Calif.

*Docket No. 96-839; Submitted on the Record;
Issued May 19, 1998*

DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On November 4, 1994 appellant, then a 56-year-old commissary manager, filed an occupational disease claim alleging that he sustained a heart condition which he attributed to job-related stress experienced since May 1, 1979. In written statements appellant attributed his claimed emotional condition to being required to work outside his medical restrictions, being required to take inventory in freezers in which temperatures ranged from subzero to 45 degrees, having his work schedule changed, being told by his supervisor that if he could not perform all of his duties he should either retire or find a less demanding job but that a reduction of duties would probably result in a reduction in grade and an increase in physical requirements, receiving a recommendation from his supervisor that he take a leave of absence because of health problems, receiving a letter from his supervisor in 1987 concerning the need for increased supervision regarding cleaning the meatcutting room, being harassed by his supervisor, having an increased work load, being expected to do manual labor which included heavy lifting, receiving a letter of warning in 1987 from his supervisor regarding declining meat sales, being threatened by his supervisor who told him he had 30 days to file for retirement before downgrading procedures would commence and being restricted in his authority to supervise employees in his section.

In a report dated October 5, 1993, Dr. Irwin Weinreb, a physician specializing in cardiovascular disease, stated that appellant had extensive coronary atherosclerotic occlusive vascular disease which first manifested in May 1979 and for which appellant had undergone coronary artery bypass surgery. He noted that appellant had a myocardial infarction in February 1985 and related that he had been under extreme stress at his job prior to 1979. Dr. Weinreb noted that in 1986 appellant was apparently harassed by his supervisor and continued to have stress, that he underwent further heart surgery in September 1987, and was hospitalized again in September 1989. He noted that appellant had additional problems in 1990 with chest pains and

that apparently throughout this time he was undergoing stress at his job. Dr. Weinreb noted that appellant was again hospitalized in 1992 and underwent heart surgery at that time and was more stable until February 1993 when he was under severe emotional stress at his job. He related that appellant had to work in coolers and freezers and was under stress from his supervisor and from a diminished working staff requiring him to do more work. Dr. Weinreb noted that when appellant was examined in September 1993 he was given a list of restrictions for his work which included no lifting over 10 pounds, standing and walking limited to 2 hours per day, and he was to avoid cold or hot environments including freezers, was to avoid heights and moving machinery, was not to climb any ladders or stairs, and was to have no emotional stress. He indicated that appellant's supervisor did not honor his work restrictions because he was required to work in freezers at the meat market. Dr. Weinreb stated:

“It becomes obvious that [appellant] is under excessive emotional stress and strain at his job. This certainly is not conducive to his severe coronary atherosclerotic artery vascular disease and, in fact, with the anger and hostility that has resulted from this exposure at the commissary over the past several years, this certainly would be a factor for the acceleration and progression of his underlying coronary atherosclerotic disease process. It is certainly related to his increased episodes of angina. When he was not at work, the angina was much less severe, less frequent, and of less duration, but when back at work, this becomes much more severe in intensity, duration and frequency.

“It is, therefore, concluded that there is no question that his work at the [employing establishment] certainly has aggravated and most probably accelerated his underlying coronary atherosclerotic disease process and would be responsible for a decline in his health and for his disability.

By letter dated April 28, 1995, the Office of Workers' Compensation Programs referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Cyrus R. Mancherje, a Board-certified internist specializing in cardiovascular diseases, for an examination and evaluation as to whether appellant had sustained any employment-related medical condition or disability. In the statement of accepted facts dated April 24, 1995, the Office accepted certain incidents as compensable factors of employment which included appellant working outside the medical restrictions prescribed by Dr. Weinreb in September 1993 and being required to go into refrigerated units. The Office found that all of appellant's other allegations were either not compensable factors or not established by the evidence as having occurred.

In a report dated May 18, 1995, Dr. Mancherje provided a history of appellant's condition and noted that he had reviewed the medical records. He provided physical findings on examination and diagnosed atherosclerotic cardiovascular disease and hypertension. Regarding the history of the condition, he related that appellant stated that he was under significant emotional stress at work over a long period of time dating back to 1979 and that most of his problems were due to harassment from his supervisor. Dr. Mancherje stated that it was unlikely that the diagnosed conditions were directly due to appellant's employment or due to his stress at work as atherosclerotic vascular disease had numerous risk factors including hypertension,

hyperlipidemia and family history, all of which appellant had. He stated his opinion that appellant's condition was aggravated by work-related stress but it was unlikely that it was precipitated by work-related stress. Dr. Mancherje stated:

“In summary, I believe that [appellant's] cardiovascular condition was, to a large degree, preexisting, but it is no doubt aggravated and possibly accelerated by job-related stress, related to his position as a meat cutter at the [employing establishment].”

In a letter dated July 3, 1995, the Office advised Dr. Mancherje that two incidents had been accepted as factors of employment - appellant working outside his medical restrictions and being required to work in refrigerated units. The Office asked Dr. Mancherje whether appellant's condition was aggravated by either of these two compensable factors of employment.

The evidence of record shows that no response was received from Dr. Mancherje.

By decision dated November 3, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that appellant had sustained a medical condition causally related to compensable factors of his employment.

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

To establish his occupational disease claim that he sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.¹

In this case, the Office determined that two of the employment factors cited by appellant in his claim for compensation benefits were compensable factors of employment, working outside of the medical restrictions established by his attending physician and being required to work in refrigerated units.

In a report dated October 5, 1993, Dr. Weinreb, appellant's attending physician, stated that appellant had extensive coronary atherosclerotic occlusive vascular disease. He indicated that appellant's supervisor did not honor his work restrictions because he was required to work

¹ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1989).

in freezers at the meat market. Dr. Weinreb stated that appellant's working conditions were a factor for the acceleration and progression of his underlying coronary atherosclerotic disease process.

The Office referred appellant, along with the statement of accepted facts containing the two employment factors found by the Office to be compensable factors, and copies of medical records, to Dr. Mancherje, a Board-certified internist specializing in cardiovascular diseases, for an evaluation as to whether appellant had sustained any employment-related medical condition or disability.

In a report dated May 18, 1995, Dr. Mancherje provided a history of appellant's condition and noted that he had reviewed the medical records. He provided physical findings on examination and diagnosed atherosclerotic cardiovascular disease and hypertension. Regarding the history of the condition, he related that appellant stated that he was under significant emotional stress at work over a long period of time dating back to 1979 and that most of his problems were due to harassment from his supervisor. Dr. Mancherje stated his opinion that appellant's condition was aggravated by work-related stress but it was unlikely that it was precipitated by work-related stress. It is unclear whether Dr. Mancherje read the statement of accepted facts provided by the Office which contained the two employment factors found by the Office to be compensable. Dr. Mancherje stated that he had reviewed the medical records but did not indicate whether he reviewed the statement of accepted facts. In his report, he did not specifically address the two compensable factors, being required to perform work outside of medical restrictions and being required to work in refrigerated units. Therefore, it is unknown whether he considered these two factors in making his assessment of causal relationship.

The Office asked Dr. Mancherje to provide a supplementary report specifically addressing the two compensable factors of employment but no response was received from him. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.² Appellant's attending physician, Dr. Weinreb, opined that appellant's condition was due, in part, to the compensable factor of having to work in refrigerated units. The Office referred appellant to Dr. Mancherje for a second opinion as to whether his emotional condition was due to any compensable factors of his employment. However, the report of the Office's referral physician failed to resolve this question. When Dr. Mancherje failed to provide an opinion as to whether appellant's emotional condition was causally related to either of the two compensable factors of employment, the Office should have sent appellant to another referral physician for a thorough evaluation and a report containing a rationalized medical opinion as to whether appellant's emotional condition was causally related to either of the two factors of employment found by the Office to be compensable factors of employment. On remand, the Office shall further develop the medical evidence as to whether appellant's emotional condition was causally related to either of the two compensable factors of employment. After such development as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to compensation.

² *Udella Billups*, 40 ECAB 260, 269 (1989).

The November 3, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
May 19, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member