

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAFAYETTE BIRD and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 96-2210; Submitted on the Record;
Issued November 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that appellant had a temporary aggravation of peripheral vascular disease which ceased after he stopped working.

This is the third appeal in this case. In its most recent decision on July 15, 1994, the Board found an unresolved conflict of medical opinion evidence regarding the causal relationship between appellant's bilateral arm condition and factors of his federal employment.¹ The Board remanded the case for the Office to secure a supplemental report from the designated impartial medical examiner, Dr. Dara G. Jamieson, a Board-certified neurologist. The facts and circumstances of the case as set forth in the Board's prior opinions are adopted herein by reference.²

Following the Board's July 15, 1994 decision, the Office attempted to contact Dr. Jamieson. However, the Office was unable to locate her. By letter dated February 7, 1995, the Office referred appellant to Dr. Steven Mandel, a Board-certified neurologist, for an impartial medical evaluation. Appellant's attorney responded on February 16, 1995 and noted that he had previously requested to participate in the selection of the impartial medical examiner. Appellant's attorney again requested to participate because "of an attempt to obtain a truly impartial examination and further, the claimant requests the selection of a minority physician."

In a letter dated March 3, 1995, the Office advised counsel that it had canceled the appointment with Dr. Mandel and would "attempt to comply with [appellant's] request for an examination with a minority physician. We interpreted his request to be for a racial minority physician."

¹ Docket No. 93-1130.

² Docket No. 91-1688 (issued April 30, 1992).

On March 23, 1995 the Office referred appellant, the case record, a statement of accepted facts and a list of questions to Dr. John T. Williams, a Board-certified orthopedic surgeon, for an impartial medical examination. In a memorandum to the file dated March 23, 1995, the district medical director indicated that a minority physician was selected in accordance with appellant's request. The letter to appellant noted that Dr. Johnson was selected to resolve a conflict in medical opinion. A subsequent change of appointment letter dated May 9, 1995 also noted that the examination was rescheduled to resolve the conflict in medical opinion.

By letter dated April 11, 1995, appellant's attorney noted he was in receipt of the Office's March 23, 1995 correspondence scheduling an examination by Dr. Williams. In a subsequent letter of May 23, 1995, counsel noted appellant would attend the examination. No objection to the appointment of Dr. Williams was noted.

In a report dated August 8, 1995, Dr. Williams reviewed appellant's history of injury and the results of his June 29, 1995 physical examination. Dr. Williams noted that appellant's digits were pale on examination, became paler after making a fist and that capillary filling was slow. He noted that appellant had undergone bypass surgery and stated that this surgery was due to atherosclerotic vessel disease. Dr. Williams stated, "This patient may also have arteriosclerotic vessel disease in his extremities." He concluded that appellant had an underlying medical problem which was probably aggravated by his activities of the job as well as his activities of daily living. Dr. Williams reviewed the medical records and stated, "I suspect the possibility, as I stated, the problems may be on the basis of arteriosclerotic peripheral vascular disease." He concluded, however, that the underlying pathology was not caused by appellant's federal employment, but that it may have been aggravated on a temporary and transitory basis. He noted that appellant had not worked for over three years and still had peripheral vascular disease and indicated any aggravation employment would be while appellant was doing his job.

In a report dated April 18, 1996, the district medical director reviewed Dr. Williams' report and found appellant's condition to be peripheral vascular disease. He found that work ceased to be an aggravating factor when appellant stopped work and that the diagnosis would explain appellant's symptoms.

By decision dated April 19, 1996, the Office approved appellant's claim for temporary aggravation of peripheral vascular disease, but denied the claim for disability finding that any disability after he stopped work was due to the underlying peripheral vascular disease condition.

The Board finds the Office properly found that appellant had a temporary aggravation of peripheral vascular disease which ceased after he stopped working.

Due to an existing conflict of medical opinion evidence regarding the causal relationship between appellant's upper extremity condition and his federal employment, the Office referred appellant to Dr. Williams for an impartial examination.³ In situations where there are opposing

³ Section 8123(a) of the Federal Employees' Compensation Act, provides, "If there is 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." 5 U.S.C § 8123(a).

medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴

In his report dated August 8, 1995, Dr. Williams noted that appellant had undergone bypass surgery for atherosclerotic vessel disease and that appellant may also have arteriosclerotic vessel disease in his extremities. He concluded the problems may be on the basis of arteriosclerotic peripheral vascular disease and that this condition was aggravated by his job activities as well as daily living. Dr. Williams concluded that appellant's underlying condition was not caused by his federal employment and was only temporarily aggravated for the period appellant was doing his job.

The Board finds that the August 8, 1995 report is sufficiently well rationalized to constitute the weight of the medical opinion evidence. Dr. Williams provided findings on physical examination, provided a diagnosis of appellant's condition and explained why he found appellant's underlying condition was only temporarily aggravated by his employment activities.

On appeal, appellant's attorney noted that he requested to participate in the selection of an impartial medical examiner and offered the reason that appellant preferred to be examined by a minority physician. He stated that he was not allowed to participate, that appellant was not examined by a minority physician and that appellant was not provided with a formal denial of the request to participate.

Under Office procedures, a claimant who asks to participate in the selection of an impartial medical examiner or who objects to the selected physician, must provide a valid reason. The procedural opportunity of a claimant to participate in the selection process is not an unqualified right as the Office has imposed the requirement that the employee provide a valid reason for any participation request or for any objection proffered against a designated impartial medical examiner.⁵

In this case, appellant, through his attorney requested to participate in the selection of the impartial medical examiner and offered the reason that he preferred to be examined by a minority physician. The Office, based on this request and reason, canceled a scheduled examination with Dr. Mandel and informed appellant that it would "attempt to comply with [appellant's] request for an examination with a minority physician. We interpreted his request to be for a racial minority physician." The Office subsequently provided appellant and his attorney with notice of the examination scheduled with Dr. Williams by letters dated March 23 and May 9, 1995. Appellant's attorney did not object to the selection of Dr. Williams as the impartial medical adviser in his subsequent correspondence with the Office. In a January 25, 1996 letter to the Office, counsel noted that he had expressed objections to the selection of Dr. Mandel and that subsequently a new reference examination was scheduled with

⁴ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁵ *Irene M. Williams*, 47 ECAB ____ (Docket No. 94-1831, issued May 29, 1996).

Dr. Williams. He noted only that he had yet to receive a copy of Dr. Williams' report. As appellant's attorney did not raise a specific objection to the appointment of Dr. Williams, nor provide valid reasons for objecting to the appointment of Dr. Williams, his contentions on appeal are without merit.⁶

The decision of the Office of Workers' Compensation Programs dated April 19, 1996 is hereby affirmed.

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

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ *David Alan Patrick*, 46 ECAB 1020, 1025 (1995).