

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH M. DeFELICE and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, San Diego, Calif.

*Docket No. 97-431; Submitted on the Record;
Issued November 27, 1998*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating medical benefits for appellant's cardiac condition on the grounds that work-related aggravation had ceased.

On October 28, 1989 appellant, then a 35-year-old air traffic controller, filed a notice of occupational disease, claiming that his paroxysmal atrial tachycardia¹ (PAT) resulted from the heavy mental stress of his work and caused dizzy spells, light-headedness, and disorientation. The Office accepted the claim for permanent aggravation of supraventricular tachycardia, based on the March 7, 1990 report of Dr. Arthur S. Cummins, Board-certified in internal medicine, to whom the Office had referred appellant for a second opinion evaluation. Appropriate compensation was paid.

Appellant was removed from his controller position and worked intermittently at light duty until June 1990. Following vocational rehabilitation efforts and appellant's relocation, the Office requested medical evidence of appellant's continuing disability on November 25, 1994. In response to reports from Dr. Nancy V. McTigue, a Board-certified psychiatrist, and Dr. Sameh G. Sawires, an internal medicine practitioner, finding that appellant was still totally disabled, the Office referred appellant, along with the medical records, a statement of accepted facts, and a list of questions to Dr. Arnold Yalam, Board-certified in internal medicine, and Dr. Jay Cohen, a psychiatrist, for a second opinion evaluation.

On November 21, 1995 the Office accepted two additional conditions based on Dr. Cohen's report -- aggravation of social phobia and depressive disorder. On November 29, 1995 the Office terminated medical benefits for the accepted tachycardia condition on the grounds that the medical evidence established that appellant was no longer physically disabled.

¹ Paroxysmal atrial tachycardia is defined as excessive rapidity in the action of the heart, usually between 160 and 190 beats per minute, originating from an atrial locus -- the attacks have a sudden onset and cessation. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

The Office relied on the opinion of Dr. Yalam that any work-related aggravation of appellant's tachycardia condition had resolved and that appellant could function in a low-stress occupation.

Appellant requested reconsideration on the grounds that the Office had "shopped" for a medical opinion and that Dr. Yalam was not a cardiac specialist but rather an allergist. Subsequently, appellant requested an oral hearing, which the Office denied on February 13, 1996 as untimely filed.

On April 18, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that the January 25, 1996 report from Dr. Frederick Wood, Board-certified in internal medicine, was not rationalized and therefore insufficient to outweigh Dr. Yalam's opinion.

Appellant again requested reconsideration on the grounds that his cardiac condition was permanently aggravated by his employment and therefore a permanent and irreversible change in his underlying heart disease had occurred, which could not have ceased. On October 10, 1996 the Office denied appellant's request on the grounds that his legal argument was insufficient to warrant modification of its prior decision.

The Board also finds that the Office failed to comply with its procedures in terminating medical benefits for appellant's tachycardia condition.

The Office's procedure manual formerly provided that a notice of proposed termination or reduction of compensation must be provided when the Office intends to terminate medical benefits by a formal decision and the "medical service at issue has been paid for by the Office (thereby connoting acceptance and authorization by the Office) and such service has been ... received on a fairly regular and recurring basis for 60 days or more (thereby giving the claimant the expectation of continued payment for such service by the Office)." The manual adds that in questionable cases pretermination notice should be provided.²

The updated version of the procedure manual notes two exceptions to a pretermination notice -- when a physician indicates that further treatment is not necessary or has ended and when the Office denies payment for a particular charge on an exception basis.³

In this case, the Office accepted permanent aggravation of appellant's tachycardia condition and paid for medical treatment as needed. In November 1994, the Office requested medical evidence that such treatment was still necessary and work related. In response to a December 23, 1994 report from Dr. Sawires, appellant's treating physician, that appellant had recently been hospitalized with an episode of supraventricular tachycardia and hypertension, the Office referred appellant to Dr. Yalam to determine if the work-induced aggravation of his heart condition continued.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400 6.a.(5) (July 1993).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400 6.(b)(4) (March 1997).

After reviewing the medical records and examining appellant, Dr. Yalam diagnosed episodic tachycardia and atrial instability, along with obesity and hypertension. He concluded that appellant's underlying tachycardia was not work related but was aggravated by stress. Dr. Yalam stated that although appellant had not worked in five years, he continued to have episodic tachycardia, which indicated that his current condition did not result from a permanent aggravation of the condition due to work. Dr. Yalam reasoned that the work-related aggravation due to appellant's former stressful position had resolved and that appellant's current heart condition would have existed absent his previous employment as an air traffic controller.

Based on Dr. Yalam's June 15, 1995 report, the Office terminated appellant's medical benefits for his PAT condition on November 29, 1995. The Office had paid medical benefits for this condition since its acceptance on April 20, 1990. Until he was examined by Dr. Yalam in June 1995, appellant was treated for his heart condition at Office expense.

The Board finds that under the Office's procedures a notice of proposed termination should have been sent to appellant allowing him 30 days to respond. Inasmuch as the record contains no evidence that such a notice was sent, the Board finds that this procedural failure invalidates the Office's termination of appellant's medical benefits.⁴ Further, the medical evidence of record demonstrates a conflict of medical opinion between Dr. Sawires, appellant's physician, and Dr. Yalam, the Office referral physician, as to appellant's residual disability due to his accepted tachycardia condition.

The October 10 and April 18, 1996 and November 29, 1995 decisions of the Office of Workers' Compensation Programs are reversed.

Dated, Washington, D.C.
November 27, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁴ See *Marsha K. Stanowski*, 48 ECAB ____ (Docket No. 95-1931, issued August 1, 1997).