

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK A. SISSON and DEPARTMENT OF THE ARMY,
MIDDLE SCHOOL, Heidelberg, Germany

*Docket No. 97-1121; Submitted on the Record;
Issued April 5, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that the work-related aggravation of his coronary artery disease (CAD) continued after September 22, 1987.

On March 26, 1986 appellant, then a 56-year-old mathematics teacher, filed a notice of occupational disease, claiming that his heart condition was caused by the stress of his employment.¹ The Office accepted the claim for temporary aggravation of appellant's underlying coronary artery disease from March 19, 1986 to September 22, 1987.²

Upon appellant's request an oral hearing was held on May 20, 1994 because appellant disagreed with the Office's decision that his ulcer disease and mental stress were not causally related to his employment and that his work-related coronary condition ceased after September 22, 1987. In a decision dated July 6, 1994 the hearing representative remanded the case for further evidentiary development. The hearing representative noted that several inaccuracies in the statement of accepted facts provided to the physicians who examined appellant influenced their conclusions and thereby rendered their opinions nonprobative.

On remand, the Office revised the statement of accepted facts and requested opinions from Dr. David B. Gilbert and Dr. Richard J. Kroeger,³ both Board-certified in internal

¹ Appellant appealed the Office of Workers' Compensation Programs' denial of his claim to the Board, which remanded the case, Docket No. 91-825, on September 18, 1991 and instructed the Office to conduct a merit review of the record. On remand, the Office referred appellant to a cardiologist and a psychiatrist. Based on their reports, the Office denied the claim on August 14, 1992. Appellant requested a hearing, but the hearing representative remanded the case on December 21, 1992 for further evidentiary development.

² In its June 16, 1993 decision, the Office found the medical evidence insufficient to establish further aggravation after September 22, 1987 or a psychiatric condition or a causal relationship between appellant's duodenal ulcer and his employment.

³ Dr. Kroeger stated in a September 12, 1994 report that appellant's digestive problems were in no way related to

medicine, and Dr. Abdulaziz G. Khakee, a Board-certified psychiatrist.⁴ Based on their opinions, the Office again denied the claim. Appellant requested reconsideration, which was denied on February 23, 1995 without merit review.

On May 15, 1995 appellant requested reconsideration on the grounds that many mistakes had been made by the Office in denying his claim. Appellant stated that the Office had failed to consider Dr. Khakee's January 4, 1995 report, that he had no previous history of heart disease prior to 1986, and that his heart problems became worse, not better, after September 22, 1987, as evidenced by the fact that he was forced to retire in July 1989 and underwent quadruple by-pass surgery in September 1989.

On January 23, 1996 the Office denied reconsideration on the grounds that the evidence submitted in support of appellant's request was insufficient to warrant modification of its prior decision. The Office addressed each of appellant's contentions and noted that no new medical evidence had been submitted on the pivotal issue of causal relationship.

Appellant disagreed with the decision and argued that he had never filed a claim for work-related psychiatric disability, which seemed to be the basis of the denials and that the aggravation of his heart condition had not ceased because his second heart attack in September 1987 was found to be related to his previous heart problems by his physicians. The Office denied reconsideration on October 3, 1996 after a merit review.

The Board finds that the medical evidence is insufficient to establish that appellant had any work-related disability resulting from his heart condition after September 1987.

An employee seeking benefits under the Federal Employees' Compensation Act⁵ 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, that the claim was filed within the applicable time limitation of the Act, that an injury⁶ was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential

his employment. Dr. Gilbert stated that upon review of the statement of accepted facts appellant's angina pectoris could have been affected by stress between March 10 and the fall 1987 when he had a myocardial infarction.

⁴ Dr. Khakee stated in an April 5, 1993 report that appellant did not have a psychiatric condition resulting from his employment. In his January 13, 1995 report, Dr. Khakee reiterated this opinion, stating that appellant had no work-related psychiatric disability.

⁵ 5 U.S.C. 8101 *et seq.* (1974).

⁶ Section 8101(5) of the Act defines "injury" in relevant part as follows: "'injury' includes, in addition to injury by accident, disease proximately caused by employment." Section 10.5(a)(14) of Title 20 of the Code of Federal Regulations further defines "injury" in relevant part as follows: "'Injury' means a wound or condition of the body induced by accident or trauma, and includes a disease or illness proximately caused by the employment for which benefits are provided under the Act."

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁸

In an occupational disease claim such as this, claimant must submit: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

In claims not based on a specific incident, appellant must submit sufficient evidence to identify fully the particular work factors alleged to have caused the disease or condition and to show that he or she was exposed to the factors claimed; thus, appellant bears the burden of proving that work was performed under the specific factors at the time, in the manner and to the extent alleged.¹⁰ While appellant's condition need not be caused by a specific injury or incident, or an unusual amount of stress or exertion,¹¹ appellant must submit medical evidence diagnosing a specific disease or condition and explaining how identified employment factors have inflicted injury.¹²

The medical evidence required is generally rationalized medical opinion evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that the condition was caused by his employment is sufficient to establish a causal relationship.¹⁴

Where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the period of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residual, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors have on the underlying

⁸ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁹ *Jerry D. Osterman*, 46 ECAB 500, 507 (1995).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3 (April 1993).

¹¹ *George A. Johnson*, 43 ECAB 712, 716 (1992).

¹² *Judith A. Peot*, 46 ECAB 1036, 1042 (1995).

¹³ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

condition.¹⁵ Under such circumstances, appellant's inability to work or prophylactic avoidance of work is due to the underlying condition, without any contribution by the employment.¹⁶

In this case, appellant's claim was accepted for temporary aggravation of his CAD. At his May 20, 1994 hearing, appellant testified that his heart pain and weakness continued after September 22, 1987 and that he was hospitalized on September 30, 1987, when physicians found 3 major arteries at least 80 percent blocked. Appellant added that he returned to teaching in October 1987 but that he had an excellent schedule and was excused from many stressful duties. In 1988 he applied for disability retirement but his supervisor "made things as easy as possible" and he was able to finish out the school year.

The medical evidence submitted by appellant included a March 25, 1995 report from Dr. Vasant B. Khachane, a Board-certified thoracic surgeon, who stated that appellant's symptoms of dyspnea upon exertion increased in June 1989, requiring quadruple by-pass surgery in September 1989. He offered no opinion on the cause of the increased symptoms. Therefore, Dr. Khachane's report has no probative value regarding whether appellant's teaching duties in 1987 through 1989 aggravated his CAD.

A disability report dated June 13, 1989 from Dr. Klaus B. Jade, Board-certified in internal medicine, stated that appellant's condition was stable between 1986 and early 1988 but that his ischemic heart disease was poorly controlled. He recommended that appellant's work be restricted to avoid stress and physical exertion, but he provided no opinion on the causal relationship between appellant's heart condition and employment factors.¹⁷ Also, the articles on mental stress and the development of heart disease that appellant submitted have no probative value in this case.¹⁸

The May 24, 1993 and September 15, 1994 letters from Dr. Gilbert simply confirmed that stress had aggravated appellant's underlying condition from March 1986 until the fall 1987, and the Office had accepted a temporary aggravation during this time.

Appellant has submitted insufficient medical evidence that work factors further aggravated his heart condition following his hospitalization in September 1987 and his return to teaching the next month. The fact that appellant experienced pain and weakness during the 1987 through 1989 school years does not establish that these symptoms were work related.¹⁹ The fact

¹⁵ *Richard T. Devito*, 39 ECAB 668, 673 (1988); *Ann E. Kernander*, 37 ECAB 305, 310 (1986).

¹⁶ *See Larry Warner*, 43 ECAB 1027, (1992).

¹⁷ *See John Watkins*, 47 ECAB 597, 602 (1996) (finding that a medical opinion that failed to discuss how appellant's duties aggravated his degenerative disc disease was insufficient to establish any residuals of his accepted back condition).

¹⁸ The Board notes that the article on heart disease, lacks probative value in establishing that appellant's condition was caused by work factors because the article concerns the general application of its principles and concepts rather than addressing the particular circumstances of appellant's claim; *see Nathan L. Harrell*, 41 ECAB 402, 408 (1990), citing *William J. Murray*, 35 ECAB 606, 608 (1984).

¹⁹ *See William A. Kandel*, 43 ECAB 1011, 1022 (1992) (finding that a physician's warning that appellant's return

that he was not cured of his heart condition and had to undergo by-pass surgery does not establish the requisite causal relationship between work factors and disability.²⁰ As appellant himself testified, his teaching schedule and extracurricular duties were substantially curtailed in deference to his heart condition.

Inasmuch as appellant has failed to meet his burden of proof in establishing that the work-related aggravation of his heart condition continued after September 22, 1987, the Board finds that the Office properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated October 3, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 5, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

to work could cause increased cardiac problems was not evidence of present disability).

²⁰ Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540, 551 (1993). As used in the Act, the term disability means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. The general test in determining loss of wage-earning capacity is whether the employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured. *Frazier V. Nichol*, 37 ECAB 528, 540 (1986).