U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL S. KLIMOWSKI and U.S. POSTAL SERVICE, POST OFFICE, Pasco, Wash.

Docket No. 97-1431; Submitted on the Record;
Issued April 19, 1999

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 31, 1996; (2) whether appellant met his burden of proof in establishing that he sustained hypertension or tachycardia causally related to factors of his federal employment; and (3) whether the Office properly denied appellant's request to repurchase leave for the period of December 20, 1990 to December 28, 1995 except for leave used on March 2, 10 and 15 and May 18, 1993.

On October 4, 1991 appellant, then a 36-year-old automotive mechanic, filed an occupational disease claim, alleging that, beginning October 3, 1991, he sustained situational stress, hypertension and tachycardia due to working in an unsafe work environment and management harassment. After further development of his claim, in January 1993, the Office accepted appellant's claim for an adjustment disorder. On September 2, 1993 appellant filed a claim for wage loss in order to repurchase leave used during the period of December 21, 1990 through June 29, 1993. On January 19, 1994 appellant filed a claim for continuing compensation for the purpose of repurchasing leave for the period of July 13 to December 31, 1993.

By decision dated December 28, 1995, the Office denied appellant's claim for compensation for the period of December 21, 1990 to December 28, 1995 on the grounds that the medical evidence of record did not support that the time claimed was in fact related to the accepted employment injury. The Office also found that the issues of whether appellant established that his claimed hypertension and tachycardia were related to factors of his federal employment and whether he continued to have residuals of his accepted injury required further development. After said further development, in a letter dated March 15, 1996, the Office notified appellant that it proposed termination of his medical benefits as he no longer had any residuals of his accepted employment injury. By decision dated April 29, 1996, the Office determined that appellant had not established that he sustained hypertension or tachycardia causally related to factors of his federal employment and also terminated appellant's medical benefits on the grounds that he had no continuing disability or condition that was causally related

to his accepted employment injury. In a decision dated January 17, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to modify the Office's December 28, 1995 decision.

The Board has carefully reviewed the entire case record and finds that the Office properly terminated appellant's medical benefits effective August 31, 1996.

Under the Federal Employees' Compensation Act,[1] once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[2] After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[3]

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.[4] Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after August 31, 1996, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

In the present case, the Office terminated appellant's medical benefits based on the second opinion examination and report of Dr. John P. Moulton, a Board-certified psychiatrist, and the concurring opinion of Dr. David D. Bot, a Board-certified psychiatrist and appellant's treating physician. In a report dated February 23, 1996, Dr. Moulton provided a thorough review of the medical evidence and of his psychiatric examination of appellant and diagnosed adjustment disorder with depression and anxiety which was in remission with possible mild obsessive-compulsive personality. He indicated that appellant had a temporary aggravation of his adjustment disorder which was no longer a clinical problem as it was not generating any symptoms. Dr. Moulton believed that appellant should continue psychiatric treatment for six months. In a letter dated March 18, 1996, in which Dr. Bot responded to the Office's request that he review the report of Dr. Moulton, Dr. Bot indicated that he agreed with the psychiatric examination performed by Dr. Moulton. Dr. Bot also concurred that appellant's adjustment disorder was in remission although he stressed that said condition was work related. As both Drs. Moulton and Bot indicated that appellant's accepted condition was in remission and the Office continued medical treatment for six months as suggested by Dr. Moulton, the Office properly terminated appellant's medical benefits effective August 31, 1996, some six months

[1] 5 U.S.C. §§ 8101-8193 (1974).

[2] *William Kandel*, 43 ECAB 1011 (1992).

[3] *Carl D. Johnson*, 46 ECAB 804 (1995).

[4] *Dawn Sweazey*, 44 ECAB 824 (1993).

[5] *Mary Lou Barragy*, 46 ECAB 781 (1995).

after the February 1996 report. The Office has met its burden of proof in terminating appellant's medical benefits.

The Board also finds that appellant has not established that his hypertension or tachycardia are causally related to factors of his federal employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[6] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[7] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated his condition is sufficient to establish causal relationship.[8] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[9] neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[10]

Appellant submitted a form medical report dated October 4, 1991 from Dr. Everet W. Witzel, a Board-certified family practitioner, to substantiate his contention that his hypertension and tachycardia were causally related to his federal employment. Dr. Witzel recommended that appellant remain off work for 45 days due to chronic back pain, situational stress and tachycardia and hypertension related to his work environment. In a report dated October 22, 1991, Dr. Terrence D. Rempel, a Board-certified internist and appellant's then treating physician, initially diagnosed adjustment disorder and indicated that appellant's hypertension problem would probably be ongoing since it predated the industrial injury. He also noted that no work-up for the tachycardia had been undertaken. On April 14, 1993 appellant was treated in an emergency room for heart palpitations. Although his history of hypertension was noted, no cause for the diagnosed condition or hypertension was provided. There is no further medical evidence of record with respect to these claimed conditions until the February 23, 1996 medical report of Dr. Richard J. Lambert, a Board-certified internist and Office referral physician, who indicated that appellant had a history of borderline hypertension and palpitations with premature ventricular contractions but was currently asymptomatic. He found that, in view of the fact that appellant's symptoms had abated in spite of stress in the workplace, it was unlikely there was any direct cause and effect relationship between the minimal and trivial cardiac abnormality and stress in the workplace. Dr. Lambert concluded that appellant did not develop any medical

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

[7] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[8] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[9] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[10] *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

condition as a result of his federal employment. The report by Dr. Lambert is well reasoned and rationalized and constitutes the weight of the medical evidence as the report by Dr. Witzel, the only other report addressing causal relationship, provides a conclusion that appellant has hypertension and tachycardia related to his employment without further explanation for either the diagnosis of the claimed conditions or the conclusion that there was a causal relationship. Appellant has not met his burden of proof in establishing that he sustained tachycardia or hypertension that was causally related to factors of his federal employment.

However, the Board further finds that the issue of whether the Office properly denied appellant's request to repurchase leave for the period of December 20, 1990 to December 28, 1995 is not in posture for review.

Section 10.310 of the regulations provides the following in pertinent part:

> "(a) An employee who sustains a job-related disability or annual leave or both to avoid interruption of income. If the employee uses leave during a period of disability caused by an occupational disease or illness and a claim for compensation is approved, the employee may, with the approval of the employing agency, 'buy back' the used leave and have it recredited to the employee's account….
>
> "(b) If the employing agency does not approve a repurchase of leave, then no compensation may be paid for the period leave was used…."[11]

The procedure to be followed in requests for reinstatement of leave is set forth in the Federal Procedure Manual which states:

> "(a) When an employee is injured and elects to use sick or annual leave during the period of disability, the employee may at a later date, with the concurrence of the employing agency, claim compensation for the period of disability and buy back the leave [sic] used. This procedure was reviewed by the Comptroller General in 1953 and considered permissible. The determining factor is whether the employing agency is willing and able to change the leave records from leave-with-pay to leave-without-pay."[12]

In the present case, the Office was presented with a typical leave buy back situation wherein an injured employee had used sick or annual leave to prevent wage loss following an employment injury. In this situation if appellant's claim is accepted and the absences from work would otherwise be acceptable under the Act, the employee may request that he be allowed to repurchase his leave. In the instant case, if the employing establishment had agreed to allow the repurchase, absences previously covered by sick or annual leave would be recorded as leave

[11] 20 C.F.R. § 10.310; *see* 5 U.S.C. § 8118.

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900.13(a) (January 1991).

without pay, creating a wage loss for which the employee may claim compensation.[13] However, the employing establishment controverted appellant's September 2, 1993 request for leave repurchase for the time period of December 21, 1990 to June 29, 1993. By letter dated September 30, 1993, the employing establishment challenged appellant's request based on the following grounds: the leave between December 21, 1990 and October 1991 was prior to the date of injury; the leave use between October 4, 1991 and February 18, 1992 was related to another on-the-job injury, Case No. A14 265359; and only the treatment dates of March 10, 15, 24 and April 10, May 18 and June 10, 1993 are supported by medical evidence of treatment for the accepted injury. While the Office properly denied all leave repurchase requested for the period through June 29, 1993 based on the controversion of the employing establishment as required by the regulations, that controversion letter dated September 30, 1993 does not address any time requested after June 29, 1993. A review of the record indicates that appellant submitted evidence relevant to his January 19, 1994 request for leave repurchase for the period of July 13 to December 31, 1993 and to the Office's denial of leave repurchase up to December 28, 1995 which does not appear to have been reviewed by the Office nor submitted to the employing establishment for comment. Thus, the case must be remanded to the Office for further development of the evidence relevant to appellant's request for leave repurchase after June 29, 1993.

The decision of the Office of Workers' Compensation Programs dated January 17, 1997 is affirmed in part, set aside in part and the case is remanded for further proceedings consistent with this decision of the Board. The decision of the Office dated April 29, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 19, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] *Id.; Cf. Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995).