

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. FIALA and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, New York, N.Y.

*Docket No. 97-307; Submitted on the Record;
Issued February 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability from March 14 to May 30, 1992 causally related to his accepted January 30, 1984 myocardial infarction.

On January 30, 1984 appellant, a 39-year-old criminal investigator/special agent, suffered a heart attack while dressing for work. Appellant was admitted to the hospital on January 30, 1984, where he was diagnosed with an acute inferior wall myocardial infarction. Appellant filed a Form CA-2 claim for benefits based on occupational disease on March 19, 1984, which the Office of Workers' Compensation Programs ultimately accepted for inferior myocardial infarction by letter dated July 9, 1986.¹ Appellant was discharged from the hospital on February 11, 1984 and was released to return to work with the employing establishment on March 12, 1984 on a part-time, limited-duty basis.

On March 14, 1992 appellant suffered a heart attack and was admitted to the hospital on that date. Appellant was treated in the hospital for three days and was discharged on March 17, 1992. The hospital discharge summary, dated March 17, 1992, states that:

“[Appellant] is a 47-year-old white male with cardiac risk factors of smoking, elevated cholesterol and positive family history. He is status post inferior wall [myocardial infarction] MI in 1984 treated medically. He was in his usual state of health until March 14, 1992 when the patient developed substernal chest pain, burning with radiation to the left arm associated with diaphoresis unrelieved by sublingual Nitroglycerin.... [Appellant] is status post cath showing 3 vessel disease... [Appellant] developed no complications thereafter and was discharged on March 17, 1992.”

¹ By decision dated August 6, 1985, the Office initially denied appellant's claim. Appellant requested reconsideration, and on April 24, 1986 the Office vacated its previous decision and remanded for further development. By letter dated July 9, 1986, the Office accepted appellant's claim for inferior myocardial infarction.

On September 28, 1992 appellant filed a CA-7 claim for compensation, seeking to repurchase sick leave for the period March 14 through May 30, 1992. In a statement accompanying the form, appellant indicated that he had experienced a heart attack on March 14, 1992, was hospitalized for five days and was admitted to the hospital on April 21, 1984 for triple bypass surgery.

Appellant subsequently submitted the records from his hospital stay, dated March 14 through 17, 1992. Appellant also submitted a September 24, 1992 Form CA-20 from Dr. William J. Heidenberg, Board-certified in internal medicine, a specialist in cardiology and appellant's treating physician. Dr. Heidenberg noted findings of residual apicallateral ischemia and multi-vessel cardiac artery disease, but checked a box indicating that he did not believe appellant's condition was caused or aggravated by an employment activity.

In a report dated March 15, 1993, Dr. Heidenberg stated that he was treating appellant for arteriosclerotic cardiovascular disease.

By letter dated August 31, 1993, the Office advised appellant that it required additional information regarding his claim for recurrence of disability.² The Office requested that appellant submit a Form CA-2 through his employing establishment, a detailed description of the March 14, 1992 heart attack, and a comprehensive medical report from his treating physician including an opinion, supported by medical rationale, indicating whether and how his current condition was causally related to the January 30, 1984 employment incident. The Office advised appellant that he had 30 days in which to submit the requested information. Appellant never responded to this request.

By decision finalized October 13, 1995, the Office denied appellant's compensation for the period March 12 through May 30, 1992 based on a recurrence of his accepted January 30, 1984 myocardial infarction. In an October 12, 1995 memorandum incorporated by reference into the decision, the Office stated that it had requested additional medical evidence from appellant in support of his claim that the claimed recurrence of disability; *i.e.*, his March 12, 1992 heart attack, was caused or aggravated by his accepted January 30, 1984 myocardial infarction, but that appellant had failed to submit any additional evidence in response to this request. The Office therefore found that the evidence of record was not sufficient to establish that his March 12, 1992 heart attack was caused or aggravated by his accepted January 30, 1984 myocardial infarction.

The Board finds that appellant has not sustained a recurrence of disability from March 12 to May 30, 1992 causally related to his accepted January 30, 1984 myocardial infarction.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is

² Appellant never specifically requested compensation based on a recurrence of disability. The Office, through this letter, adjudicated the claim as one for recurrence of disability.

causally related to the employment injury, and who supports that conclusion with sound medical reasoning.³

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability from March 12 to May 30, 1992 to his accepted January 30, 1984 myocardial infarction. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

The only medical evidence which appellant submitted were hospital records from March 12 through March 17, 1992, and the September 28, 1992 Form CA-20 and the March 15, 1993 progress report from Dr. Heidenberg. The Form CA-20 indicated Dr. Heidenberg's findings pertaining to appellant's heart attack on March 12, 1992 and noted he had sustained a myocardial infarction in January 1984, but did not include a rationalized, probative medical opinion indicating that his current condition was caused or aggravated by the accepted January 30, 1984 employment injury.⁴ In fact, Dr. Heidenberg, who had treated appellant for his cardiac condition since his January 30, 1984 myocardial infarction, indicated on the form that he did not believe appellant's condition was caused by employment factors. Dr. Heidenberg's March 15, 1993 report merely indicated that he was treating appellant for arteriosclerotic cardiovascular disease.

As there is no medical evidence addressing and explaining why the claimed condition and disability from March 12 to May 30, 1992 was caused or aggravated by his January 30, 1984 employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

The October 13, 1995 decision of the Office of Workers' Compensation Programs is therefore affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

³ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

Bradley T. Knott
Alternate Member