

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE RALSTON and U.S. POSTAL SERVICE,
TAMPA POST OFFICE, Tampa, FL

*Docket No. 97-1939; Submitted on the Record;
Issued July 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a myocardial infarction in the performance of duty on October 7, 1985 as alleged.

This is appellant's second appeal before the Board in this case. By decision and order issued August 13, 1993, the Board remanded the case to the Office of Workers' Compensation Programs due to an unresolved conflict in medical opinion evidence. The Board found that the opinion of Dr. Robert A. Turkel, a cardiologist and impartial medical examiner, appointed to resolve a conflict of opinion between Dr. Mario L. Canedo and Dr. Federico Pollicina, appellant's attending cardiologists, and Dr. A. Anderson, an Office medical adviser, was insufficiently rationalized to represent the weight of the medical opinion in the case. The Board ordered the Office to select a new impartial medical examiner to resolve the conflict. On remand of the case, the Office selected Dr. Brian M. Beaver, a Board-certified cardiovascular surgeon, as the second impartial medical examiner in the case.

In a November 16, 1993 report, Dr. Beaver reviewed the medical record and noted findings on examination. He noted that appellant retired from federal employment in October 1992, was physically active and smoked a pack of cigarettes a day. Dr. Beaver diagnosed "[t]obaccoism and COPD [chronic obstructive pulmonary disease]," remote history of peptic ulcer disease and coronary heart disease post October 7, 1987 inferior wall myocardial infarction, without current evidence of angina, left ventricular dysfunction or enlargement. He stated that appellant's myocardial infarction "was not caused by, precipitated by, or aggravated by his employment as a postal employee." Dr. Beaver explained that the development of atherosclerotic plaques that rupture and cause thrombosis was accelerated by "male sex, hypertension, hypercholesterolemia, family history, diabetes and tobaccoism. The plaque in the right coronary artery that led to a complete thrombosis of that artery ... had been developing for years. Dr. Beaver noted that appellant had "difficulty in understanding that stress is internal, not external ... that stress is defined as the mismatch between the way we would like to have life and

what life actually gives us. His job demands are not unusual or excessive but his perception and his ability to cope with those usual and reasonable demands are the issue.”

By decision dated December 14, 1993, the Office denied appellant’s claim on the grounds that causal relationship was not established, based on Dr. Beaver’s report. Appellant disagreed with this decision and requested an oral hearing held March 8, 1995. He asserted that Dr. Beaver’s report was based on an incorrect legal standard and therefore could not represent the weight of the medical evidence.

By decision dated and finalized April 24, 1995, an Office hearing representative found that Dr. Beaver’s opinion was deficient in that he applied an incorrect standard by requiring that appellant demonstrate unusual stresses at work. The hearing representative directed that the Office appoint a new impartial medical examiner. On remand of the case, the Office selected Dr. Edgar Abovich, a Board-certified cardiologist, to serve as the third impartial medical examiner.

In a June 16, 1995 report, Dr. Abovich reviewed the record, noted findings on examination, and diagnosed “[c]oronary artery disease status post uncomplicated inferior wall myocardial infarction on October 7, 1985,” “[c]hronic smoking addiction,” “[p]ossible COPD” and “[h]istory of hiatal hernia.” He noted that although appellant claimed that work stress caused his heart attack, appellant denied “any unusual stress on the day of his heart attack.” Dr. Abovich opined that the October 7, 1985 myocardial infarction was not caused by work factors, although “some data” indicated that occupational stress could “exacerbate cardiovascular disease.” He noted appellant’s risk factors of smoking, hypertension and hyperlipidemia were “overwhelmingly ... more important than the stress [appellant] suffered at his work although there is a possibility that work-related stress aggravated or exacerbated cardiovascular problems.”

By decision dated July 21, 1995, the Office denied appellant’s claim on the grounds that causal relationship was not established, based on Dr. Abovich’s opinion.¹ Appellant disagreed with this decision and requested a review of the written record before a representative of the Office’s Branch of Hearings and Review.

By decision dated and finalized November 29, 1995, an Office hearing representative found that the case was not in posture for decision, as Dr. Abovich’s opinion required further clarification as it was speculative on the critical issue of causal relationship. The hearing representative directed that the Office resubmit the record and statement of accepted facts to Dr. Abovich, and request a supplemental report. The hearing representative noted that if the supplemental report was vague or speculative, the Office should appoint a new impartial medical specialist. On remand of the case, by December 12, 1995 letter, the Office requested that Dr. Abovich provide a rationalized report addressing causal relationship. In a January 15, 1996 report, Dr. Abovich attributed the myocardial infarction to “smoking, hypertension and

¹ The Office noted that while Dr. Abovich stated that there was a “possibility” that the work-related stress aggravated or exacerbated cardiology problems, the issue here is not cardiology problems, but whether the factors of [appellant’s] job caused or contributed to his myocardial infarction.

hyperlipidemia ... stress at work is a different issue altogether.” Following receipt of this report, the Office appointed Dr. Peter Alagona, Jr., a Board-certified cardiologist, as the case’s fourth impartial medical examiner.²

In an April 2, 1996 report, Dr. Alagona noted that “[r]ather than rehash the voluminous records which have already been quite comprehensively and competently reviewed by Drs. Beaver and Abovich,” he would answer the questions posed. He opined that the factors described in the statement of accepted facts “were not significant contributors to the acute myocardial infarction [appellant] sustained on October 7, 1985.” Dr. Alagona attributed the myocardial infarction to risk factors of gender, family history, smoking and coronary artery disease over “many years,” particularly affecting the right coronary artery, with development of a blood clot “due to instability of the underlying atherosclerotic plaque. This has never been shown conclusively to be due to external factors.” Dr. Alagona attributed appellant’s myocardial infarction to nonoccupational factors because appellant’s “employment status did not appear to be excessive with regard to either physical or emotional demands or concerns.”

By decision dated April 23, 1996, the Office denied appellant’s claim on the grounds that causal relationship was not established, based on Dr. Alagona’s opinion. Appellant disagreed with this decision and requested a hearing before a representative of the Office’s Branch of Hearings and Review.³

At the hearing, held February 5, 1997, appellant asserted that Dr. Alagona based his opinion negating causal relationship on an incorrect standard, in that he stated that because appellant’s job demands were not physically or emotionally excessive, the myocardial infarction was not related to work factors. He asserted that Board precedent clearly stated that a claimant’s job demands need not be excessive for a condition to be work related. Appellant noted that Dr. Beaver, the second impartial medical examiner, also based his opinion on this incorrect standard and that this deficiency led the Office, in its April 24, 1995 decision, to remand the case for appointment of a new impartial medical examiner and a *de novo* decision. He requested that the case be remanded for appointment of a new impartial medical specialist and that the reports

² The Office forwarded the medical record, statement of accepted facts and questions to be resolved to Dr. Alagona.

³ In a July 15, 1996 letter, appellant, through his authorized representative, requested that Dr. Alagona’s report and the Office’s April 23, 1996 decision be removed from the record as they were based on an incorrect legal standard, because Dr. Alagona found appellant’s myocardial infarction nonoccupational as his job demands were not excessive. Appellant’s representative noted that Dr. Beaver, the second impartial medical examiner, based his opinion on the same incorrect standard and that the Office thus remanded the case for appointment of a new impartial medical examiner. Appellant therefore requested that the case be remanded for selection of a new impartial medical examiner and a *de novo decision*. His representative also requested that the reports of Drs. Turkel, Beaver and Abovich be removed from the record as their deficiencies could “unduly influence the opinion of the new specialist.” In an August 27, 1996 letter, the chief of the Office’s Branch of Hearings and Review advised appellant’s representative that there was insufficient reason to exclude Dr. Alagona’s report from the record or set aside the Office’s April 23, 1996 decision. The Office noted that while Dr. Alagona referred to appellant’s job demands as not appearing to be excessive, “it is not clear that this was the standard upon which Dr. Alagona based his medical opinions.” The Office concluded that appellant’s case was in posture for a hearing.

of Drs. Turkel, Beaver, Abovich and Alagona be removed from the record “since the incorrect standard could be derived from these reports rather than the statement of accepted facts.”

By decision dated March 25, 1997 and finalized March 26, 1997, an Office hearing representative affirmed the Office’s April 23, 1996 decision, finding that Dr. Alagona’s report was sufficiently rationalized to represent the weight of the medical evidence. The hearing representative found that Dr. Alagona did not rely on an improper standard when he opined that because appellant’s job demands were not excessive, the myocardial infarction was not work related.

On appeal appellant asserts that in stating that appellant’s “employment status did not appear to be excessive with regard to either physical or emotional demands or concerns,” Dr. Alagona “violated a long established standard that is exemplified by the Board in *Lloyd C. Wiggs*.”⁴ Appellant noted that in *Wiggs*, the Board held that an appellant did not have to demonstrate an “unusual condition or event in the employment as a prerequisite for compensability. All that is required is that the disease be caused or aggravated by the employment and the employee’s ordinary and normal working conditions, if they cause or aggravate the condition, are sufficient to meet the causal relationship requirement.”

The Board finds that the case is not in posture for a decision due to an unresolved conflict of medical opinion evidence.

The Federal Employees’ Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “If there is a 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.” In this case, the Office selected Dr. Alagona, a Board-certified cardiologist, as an impartial medical examiner to resolve an outstanding conflict of medical opinion between an Office medical adviser and appellant’s attending cardiologists, Drs. Canedo and Pollicina. The Board has held that where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of the specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵ However, Dr. Alagona’s opinion is seriously deficient as it is based upon an incorrect standard of proof as to what constitutes causal relationship and therefore cannot represent the weight of the medical evidence.

The Board has long held that in cases of disease, the Act does not require the showing of the occurrence of some unusual condition or event in the employment as a prerequisite for compensability. All that is required is that the disease be caused or aggravated by the employment and the employee’s ordinary and normal working conditions, if they cause or aggravate the condition, are sufficient to meet the causal relation requirement.⁶

⁴ 32 ECAB 1023 (1981).

⁵ *Roger Dingess*, 47 ECAB 123 (1995); *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

⁶ *Harold D. McFeely*, 34 ECAB 1643 (1983); *David Paul Proulx*, 33 ECAB 1265 (1982); *Lloyd C. Wiggs*, *supra* note 4. The Board notes that each of the three precedents concerned causal relationship between work factors and a

However, Dr. Alagona's opinion is based on the same incorrect legal standard articulated by Drs. Beaver and Abovich, that appellant had to show excessive work demands in order to establish causal relationship. He stated explicitly in his April 2, 1996 report, upon which the Office based its most recent denial, that he would not "rehash the voluminous records which have already been quite comprehensively reviewed by Drs. Beaver and Abovich." Thus, Dr. Alagona did not give his own review of the record, but instead relied on two physicians whose opinions were previously disqualified. He then repeats the incorrect standard of proof, stating that appellant's myocardial infarction was not due to work factors as his "employment status did not appear to be excessive with regard to either physical or emotional demands or concerns." Thus, Dr. Alagona's opinion is of diminished probative value and cannot represent the weight of the medical evidence.

The case will be remanded to the Office for further development, including the appointment of a new impartial medical examiner. The new impartial medical examiner should be instructed to provide an opinion, based on the statement of accepted facts and his or her independent review of the medical record, as to whether appellant's normal, customary job duties caused, precipitated or aggravated the October 7, 1985 myocardial infarction. Following receipt and analysis of this report and any other development the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated and finalized March 25, 1997 is hereby set aside and the case remanded to the Office for further development consistent with this decision and order.

Dated, Washington, D.C.
July 21, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

myocardial infarction, and an Office-appointed physician who negated causal relationship due to a lack of unusual or excessive work stress. In each case, the Board set aside the Office's decisions based on these opinions and remanded the case for further development.

Bradley T. Knott
Alternate Member