

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSIE M. DANIELS, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, N.C.

*Docket No. 97-1232; Submitted on the Record;
Issued March 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained aggravation of his preexisting hypertension resulting in a cerebrovascular accident on July 13, 1994, causally related to factors of his federal employment.

On September 22, 1994 appellant, then a 51-year-old supervisor trainee, filed a claim alleging that for three years his job training to be a supervisor was very stressful, which caused his preexisting hypertension, which had previously been under control with medication, to become seriously aggravated, resulting in a stroke on July 13, 1994 that effected his left side. Appellant was hospitalized on July 14, 1994, and continued receiving in-patient care through August 19, 1994, when he was discharged to his home with continuing therapy in that setting.

Appellant provided a statement noting that on July 8, 1994 while at work he noticed that his right hand and arm were feeling numb, that on July 13, 1994 his left arm began feeling funny, that the next morning he still felt funny and his mouth was twisted, that his balance became poor, that he began bumping into things at work, that his wife took him to the doctor, and that the doctor said he was having a stroke. Appellant stated that he had had high blood pressure since 1980 but that it was under control with medication, but that supervising different types of people will make your blood pressure go up. Appellant stated that when he went to the hospital the doctor said his blood pressure was 200 (ml/Hg) and that this had never happened before.

In a July 26, 1994 admitting history, the physician noted that appellant developed left-sided weakness with left facial droop, on July 13, 1994, that when evaluated 24 hours later a computerized tomography (CT) scan showed a right hemiparetic infarct, and that appellant's bloods pressure was elevated when hospitalized.

Appellant also submitted an undated medical report from Dr. Sanford Vernick, a Board-certified physical medicine and rehabilitation specialist of professorial rank, which noted that appellant was hospitalized following a cerebrovascular accident on July 13, 1994 with left

hemiparesis. Dr. Vernick diagnosed status post cerebrovascular accident with left hemiparesis, hypertension, and adult-onset diabetes, reviewed appellant's post cerebrovascular accident treatment, and opined that appellant was permanently disabled due to the stroke. In a September 20, 1994 narrative report, Dr. Varnick noted that appellant had a history of hypertension, and that CT scanning of appellant's head showed multiple sites of acute ischemic infarction, and he related appellant's subsequent treatment. Dr. Vernick opined that appellant's hypertension may have been aggravated due to the fact that he was supervising 200 or 300 people at his job at the employing establishment, increasing the risk of stroke.

In support of his claim appellant submitted a September 28, 1994 plant manager's statement noting that appellant worked as an acting supervisor for the previous two years, that his duty hours were from 11:00 p.m. until 7:30 a.m., that his duties varied from night to night but that he mainly supervised two sections of the facility involving the movement and control of 35 to 40 employees.

By letter dated November 23, 1994, the Office requested further information including a comprehensive medical report supporting causal relation.

On October 17, 1994 Dr. Vernick stated that appellant was permanently disabled and that his stroke may or may not have been by his high blood pressure. Dr. Vernick stated that strokes may occur due to many factors, not just high blood pressure.

By decision dated January 26, 1995, the Office rejected appellant's claim finding that he had failed to establish that his condition was causally related to his employment. The Office found that the medical evidence of record was speculative on the issue of causal relation.

By report dated February 7, 1995, Dr. Vernick stated that appellant's hypertension may have been aggravated due to the fact he was supervising 200 or 300 people at his job with the employing establishment, increasing the risk of stroke. He opined that stress and/or appellant's adult-onset diabetes may have been contributing factors to his stroke.

By report dated October 3, 1995, Dr. Vernick stated:

"Strokes may be caused by a number of factors. It is possible his responsibility of supervising such a large number of people with the [employing establishment] may have been a contributing factor and increased his risk of stroke. Stress and/or his adult-onset diabetes may or may not have been a contributing factor to his stroke. Strokes may occur due to high blood pressure, however, it is not the only cause. It is not possible to be 100 percent sure of the exact cause."

Appellant requested a hearing, which was held on October 19, 1995. By decision dated February 28, 1996, the hearing representative affirmed the prior denial, finding that the medical evidence of record was speculative and did not affirmatively state that appellant's hypertension was aggravated by his employment which caused his stroke.

Appellant, through his representative, requested reconsideration on May 14, 1996 and referenced new medical evidence which supported appellant's claim.

By report dated April 24, 1996, Dr. Vernick stated that appellant had a cerebrovascular accident and noted:

“I feel that the duties that he performed as a supervisor, such as working overtime on heavy mail days and being responsible for the supervision of 30 to 40 employees to process mail in a timely manner contributed to or aggravated his preexisting condition of hypertension, resulting in the stroke that he suffered on July 13, 1994. It is well known that hypertension, which is the cause of most strokes, can be exacerbated, aggravated or worsened by job-related stress such as was experienced by [appellant].”

By decision dated May 23, 1996, the Office denied modification of the prior denial, finding that the evidence submitted was insufficient. The Office stated that Dr. Vernick’s recent report contradicted his earlier reports, that he changed the history of injury from supervising 200 to 300 people to supervising 30 to 40 people, that he did not explain why his first report was in error, and that he did not explain why he had a change of opinion.

Appellant, through his representative again requested reconsideration on June 26, 1996, and in support he resubmitted Dr. Vernick’s April 24, 1996 report. The representative argued that Dr. Vernick had not changed his opinion but was now basing it on an accurate factual history.

By decision dated September 26, 1996, the Office denied appellant’s application for review under 5 U.S.C. § 8128, finding that the evidence submitted was repetitious, irrelevant and immaterial.

On December 16, 1996 appellant again requested reconsideration and in support he submitted a December 4, 1996 report from Dr. Vernick which stated that appellant had first informed him that he supervised 300 to 400 people, but then later realized that he had given incorrect information, and revised it to 30 to 40 people, hence the new report. Dr. Vernick stated that despite the discrepancy in the figures, his medical opinion regarding appellant’s condition had not changed.

On January 28, 1997 the Office denied appellant’s request for review of the case on its merits, finding that the evidence submitted was cumulative, repetitious, and not sufficient to warrant review. The Office stated that Dr. Vernick’s December 1996 report was cumulative with respect to a rationalized opinion on causal relation.

The Board finds that this case is not in posture for decision.

The Board notes that Dr. Vernick’s April 24, 1996 report identified a discreet diagnosed condition, cerebrovascular accident (stroke). Dr. Vernick then explained that the duties appellant performed as a supervisor, such as working overtime on heavy mail days and being responsible for the supervision of 30 to 40 employees to process the mail in a timely manner contributed to or aggravated his preexisting condition of hypertension, resulting in his stroke on July 13, 1994. The Board notes that this explanation supports causal relation with specifically identifiable factors of appellant’s employment. Dr. Vernick even tried to present some medical

rationale, noting that it was well known that hypertension, which was the cause of most strokes, could be exacerbated, aggravated or worsened by job-related stress such as that which was experienced by appellant. This statement further supports appellant's claim.

Additionally, the Board notes that the Office failed to refer the record to an Office medical adviser for evaluation of the medical evidence, or to otherwise seek any medical opinion on the substance and weight of Dr. Vernick's report, and that there is no contradictory medical evidence of record.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹ This holds true in occupational disease claims as well as in initial traumatic injury claims. In the instant case, although appellant's treating physician's report does not contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that his hypertension was aggravated by specific factors of his employment, causing a stroke on July 13, 1994, it constitutes substantial, uncontradicted evidence in support of appellant's claim and raises an uncontroverted inference of causal relationship between his employment-related duties, aggravation of his preexisting hypertension, and his cerebrovascular accident, that is sufficient to require further development of the case record by the Office.² Additionally, there is no opposing medical evidence in the record.

Therefore, this case must be remanded to the Office for the creation of a statement of accepted facts, for development of specific questions to be answered, and for referral of appellant to an appropriate second opinion specialist for a rationalized medical opinion addressing causal relation.

¹ *William J. Cantrell*, 34 ECAB 1223 (1983).

² *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 28, 1997, and September 26, May 23, and February 28, 1996 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
March 26, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member