

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY R GIPSON and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Portland, OR

*Docket No. 98-1277; Submitted on the Record;
Issued November 26, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that his heart condition is causally related to compensable factors of his employment.

On December 10, 1996 appellant, then a 52-year-old supervisory special agent, filed a claim contending that exposure to stress due to work overload caused his heart disease. In an accompanying statement, appellant indicated that he had a heart attack on October 7, 1994 and had subsequently undergone three angioplasties. He stated that he could not pinpoint the start of his coronary disease. He noted that he had been under tremendous stress at times in his investigative assignments. He related that his most recent assignment as an acting then permanent, supervisor put him through more than average stress due to an over assignment of programs and an under assignment of resources. He stated that on two occasions, his squad was overloaded with work to support the addition of another supervisor. He noted that in the year before his heart attack he was assigned to be a "loaned executive" to the Combined Federal Campaign, which was in addition to not instead of, his employment duties. He pointed out that he did not volunteer for the assignment but was assigned to it. He related that he had informed his superior that the two things he hated most were giving public speeches and fund raising. Appellant indicated that during this period he also was assigned to several administrative inquiries, in which he participated in the termination of the jobs of two employees and the disciplining of several others. He stated that he was assigned to one investigation in the week before his heart attack involving a clerk who was a son of a former coworker. Appellant indicated that his heart attack was on a Friday and noted that the following week he was to have interviewed the former coworker about his son's activities. He also reported that during this period he was also assigned an agent who was noted as a chronic equal employment opportunity complainant to the point of abusing the system, adding time and stress to his work in dealing with past, present and potential future complaints. He indicated that he was on call at all times, even at home.

In a May 26, 1997 decision, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that, while he had established that he had experienced the employment factors he had claimed, the medical evidence did not establish that he had a diagnosed condition related to these factors and, therefore, had not met the requirements to establish that he had sustained an injury as alleged. In a June 25, 1997 letter, appellant submitted additional evidence. In a July 1, 1997 letter, he specifically stated that he was requesting reconsideration of the Office's decision. In a July 16, 1997 merit decision, the Office modified its decision to conclude that appellant had not established that his disability due to coronary artery disease and myocardial infarction was causally related to factors of his employment. In a December 30, 1997 letter, appellant again requested reconsideration. In a March 6, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that evidence submitted was irrelevant and, therefore, insufficient to warrant review of the Office's prior decisions.

The Board finds that appellant has not met his burden of proof in establishing that his heart condition is causally related to compensable factors of his employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant established several compensable factors of employment in his case. He indicated that as a supervisor he worked with inadequate resources to perform his duties. Appellant noted that he was assigned to investigations, which led to the termination of two

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

employees and the disciplining of several others and was soon to lead to the son of a former coworker. He also indicated that he had an employee assigned to him who often filed Equal Employment Opportunity claims. Appellant also was given a special assignment to be a loaned executive to the Combined Federal Campaign. These factors were part of or related to appellant's regular or specially assigned duties and, therefore, constituted compensable factors of employment.

Even though appellant has established that he had compensable factors of employment, he must further show that these factors of employment caused his heart condition. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty,⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ In this case, appellant submitted medical evidence showing he had a heart condition and factual evidence describing the compensable factors of his employment. However, the medical evidence submitted was insufficient to show a causal relationship between the factors of his employment and his heart condition.

Appellant submitted numerous medical reports showing that he had sustained a myocardial infarction on October 7, 1994 and was treated for single vessel coronary atherosclerosis, which included angioplasty. However, few of the reports submitted by appellant addressed the issue of whether his coronary condition was causally related to factors of his employment. In a March 3, 1997 report, Dr. Jeffrey D. Fullman, a Board-certified internist, stated that prior to appellant's infarction, he treated appellant for anxiety and depression which appeared to be related to his work load. He indicated that appellant was under a great deal of

⁴ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁶ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

pressure at work with increased responsibilities and found that he was being affected physically. Dr. Fullman indicated that he thought appellant's condition was related to his work. He noted appellant improved with treatment by antidepressants for several months. The medication was discontinued several months before his heart attack. Dr. Fullman commented that he thought appellant's stress at work could be playing a partial role in the etiology of his coronary disease as well as other conditions such as mild hypercholesterolemia. He noted appellant had been a nonsmoker, did not have diabetes and had not been hypertensive so other risk factors were involved in precipitating his coronary disease. Dr. Fullman's statement that stress could have played a partial role in the etiology of appellant's coronary disease was equivocal and speculative. The report, therefore, had insufficient probative value to establish that appellant's heart condition was causally related to factors of his employment.

In a June 25, 1997 report, Dr. Roger C. Osborn, Jr., a Board-certified cardiologist, reviewed appellant's medical history, discussing appellant's myocardial infarction and subsequent treatment. He related that he did not see an original reference to what activities appellant was performing at the hour of the onset of his heart attack symptoms.¹⁰ Dr. Osborn related that appellant, during his recovery, mentioned the physical and mental stress of his job, including long and irregular work hours. He stated that myocardial infarction was the consequence of long-term cholesterol plaque accumulation in the coronary artery, with sudden, unexpected plaque rupture causing clotting within the artery. Dr. Osborn commented that it was well known that certain risk factors increased the risk of coronary artery disease. He indicated that emotional stress had long been a risk factor thought to be related to heart attack, cautioning, however, that the exact physiology of stress was less well understood than the effects of hypertension, diabetes, smoking and hypercholesterolemia. Dr. Osborn stated that appellant had none of these risk factors so he assumed that emotional stress must have played some role in producing appellant's heart attack and impeding his recovery. He indicated that he was aware of appellant's stable personal life so the majority of his stress, to the extent that it produced his heart attack, was logically employment related. Dr. Osborn concluded, "I, therefore, support [appellant's] claim that his myocardial infarction may have been, at least in part, related to his FBI [Federal Bureau of Investigation] job." Dr. Osborn, in stating that appellant's myocardial infarction may have been related in part to appellant's job, expressed his opinion in an equivocal, speculative manner. His report, therefore, also has limited probative value and is insufficient to satisfy appellant's burden of proof.

¹⁰ In response to questions by the Office, appellant indicated that his symptoms began after he walked up a set of stairs while attending a social event at his church.

The decisions of the Office of Workers' Compensation Programs, dated March 6, 1998, July 16 and May 26, 1997, are hereby affirmed.

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member