U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REN R. SHORES and DEPARTMENT OF THE NAVY, NAVAL BASE, Norfolk, VA

Docket No. 97-194; Submitted on the Record;
Issued October 6, 1999

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that his fall at work on September 23, 1994 was sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act.

On September 26, 1994 appellant's supervisor, Lt. Daniel M. Haughney, filed a notice of traumatic injury on appellant's behalf, alleging that on that day appellant "suffered a possible [aneurysm] and after falling to the pavement causing a deep laceration over the right eye."

In a September 26, 1994 personal injury report, Lt. Haughney stated that "[appellant] was recovering boxes of unsecured government property and he apparently suffered a broken blood vessel or [aneurysm] to the brain and fell striking the right side of his head on the pavement causing a deep laceration over the right eye."

By letter dated October 21, 1994, the Office of Workers' Compensation Programs requested factual and medical evidence from appellant, specifically, a physician's report which included date of examination and treatment, a history of injury as given by appellant, results of x-rays and laboratory tests, a diagnosis and an opinion supported by medical explanation as to how the reported work incident caused or aggravated his claimed injury. By another letter also dated October 21, 1994, the Office requested additional information from the employing establishment.

On November 17, 1994 the record was supplemented to include a September 23, 1994 emergency room report by Dr. Michael J. Bono, Board-certified in emergency medicine, with Sentara Norfolk General Hospital. Dr. Bono gave a history of "[appellant] was found outside of his car, a question of assault."

On December 20, 1994 the record was supplemented to include an attending physician's report (Form CA-20) completed by Dr. Alfred P. Magness, a Board-certified neurosurgeon, who

gave a history of "[appellant] had cerebral hemorrhage while on duty." He reported his finding as "computerized tomography [CT] [scan] and angiogram show cerebral hemorrhage from arteriovenous malformation. Dr. Magness further stated that he believes the condition was caused or materially aggravated by employment activities due to "excitement of job may have caused elevated blood pressure." He also stated that "Patient is permanently disabled."

The record was supplemented with a September 23, 1994 consultation report by Dr. James R. Tomlison, a Board-certified internist and radiologist, who stated that "a CT of the head, as reported by Dr. Magness shows a left intercerebral hemorrhage. They do not feel that this was trauma induced but was spontaneous." Also received was a September 23, 1994 report by Dr. Timothy Schrammer who stated, "[appellant] is a 50-year-old, white male, police officer found unconscious outside his car. He apparently had been struck in the head over the right eye." Dr. Schrammer recommended various x-rays and tests. In a September 23, 1994 consultation report, Dr. Harry Crawford stated, "[appellant] is a 50-year-old policeman with no significant past medical history who was found unconscious beside his car. It was subsequently determined by CT scan that the patient had a large mid-cerebral hemorrhage with a moderate amount of mass effect." In a September 23, 1994 report, Dr. Stephen Kayota stated, "[appellant] is a [n]avy [b]ase police officer and who was found unconscious outside of his car on September 23, 1994. Initially it was felt that this was secondary to an assault injury; however, CT scanning of the head in the emergency department revealed massive left-sided frontoparietal intracerebral hemorrhage." In a September 23, 1994 report, Dr. Magness stated, "[appellant] is a middle-aged policeman who this morning was found unconscious beside his car. He came to the emergency room by emergency squad and initially there was concern whether he may have been assaulted. [Appellant] was initially evaluated by the trauma service and had a CT scan of his head which showed a massive left-sided frontoparietal intracerebral hemorrhage." In an October 19, 1994 report, Dr. Robert Mehrberg stated, "[appellant] was found unconscious outside his car on September 23, 1994. Initially it was thought the patient had been assaulted. The patient was taken to Sentara Norfolk General Hospital emergency room and had a CAT [computerized axial tomography] scan done on admission. This revealed massive left-sided frontoparietal intracerebral hemorrhage." Dr. Mehrberg went on to say, "On review of the patient's old chart the patient had a cerebral angiogram done which showed a left ventricular nucleus atrioventricular malformation as well as a small three millimeter aneurysm in the cavernous portion of the left internal carotid artery." In an October 14, 1994 report, Dr. Robert Given stated, "[appellant] was found to have a spontaneous cerebral hemorrhage on September 23, 1994." In a September 23, 1994 report, a Dr. John Donnal, a Board-certified radiologist, interpreted a CT of the brain as showing "Large hemorrhage left mid-cerebrum, centered at left putamen and most consistent with a hypertensive hemorrhage. A moderate amount of mass effect is present. Discussed in detail with e[mergency] r[oom] physician. No relevant old films for comparison." Dr. Donnal went on to say, "Subsequent history available from family indicates that there is no documented history of hypertension, although apparently hypertensive bleeds can occur in the absence of documented history, this increases likelihood that the left cerebral hemorrhage is due to other than hypertensive disease, for example, vascular malformation. Discussed with Dr. Magness." In a September 29, 1994 report, Dr. Donnal stated that a CT of the head showed, "Deep left cerebral hematoma with mass effect not significantly changed compared with six days ago. The contralateral/lateral ventricle may be slightly more

dilated. While this is a typical focus for hypertensive hemorrhage, other etiologies of intracerebral hemorrhage.[1]

On November 14, 1994 the record was supplemented to include five incident/complaint reports by the parties who responded to the scene shortly after appellant was found.

By letter dated November 7, 1994, the employing establishment forwarded a memorandum from Lt. Haughney responding to the Office's October 21, 1994 request for information.

By decision dated September 13, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the injury occurred in the performance of duty.

By letter dated April 29, 1996, appellant's representative requested reconsideration of the September 13, 1995 decision. In support of the request, appellant submitted a September 8, 1995 report by Dr. Magness in which he stated that he was responding to the question of whether appellant's injury could have been brought on by an attack by someone else. Dr. Magness stated that appellant's wife indicated that appellant cannot remember this. The doctor went on to say, "I am not sure how much credence I can place in this type of report however. Certainly, the injuries and bruises around his head are consistent with an attack, but would also be consistent with falling down and striking his head after suffering a cerebral hemorrhage." Dr. Magness also opined that appellant's arteriovenous malformation was not caused by an attack and was a congenital problem. He went on to say, "I would say, however, that anything which causes blood pressure to rise, such as an assault or excessive stress on his job, might be consistent with an explanation as to why his hemorrhage could be work related." Also submitted was a February 9, 1996 report by Dr. Magness stating: "[Appellant] has permanently been disabled from working since September 23, 1994;" and a March 25, 1996 report by Dr. Thomas A. Pasquale, who performed a psychological evaluation on appellant. Dr. Pasquale stated that, "Conclusions drawn were based on 10 clinical interviews and psychological testing with [appellant] between October 11, 1995 and February 28, 1996, as well as a review of past medical records and several discussions with [appellant's wife]." Dr. Pasquale went on to say that, "the most difficult factor for [appellant's] post-trauma is the issue of etiology of injury. He insists that he was attacked." Dr. Pasquale diagnosed dysthymia and post-traumatic stress disorder and post-cerebral vascular accident with residuals of dysphasis and paralysis. Investigative reports were furnished by the employing establishment and revealed that it was determined that there was no evidence to support that an assault had occurred.

On June 20, 1996 the record was supplemented to include a May 14, 1996 attending physician's report by Dr. Magness who diagnosed cerebral hemorrhage from arteriovenous malformation and checked "yes" to the question of whether he believed appellant's condition was caused or materially aggravated by his employment activities. Dr. Magness stated, "excitement of job may have caused elevated blood pressure."

[1] None of the reports indicated when they were received by the Office.

By decision dated July 1, 1996, the Office denied appellant's reconsideration request finding that the evidence submitted in support of the request was insufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to meet his burden of proof in establishing that his fall at work on September 23, 1994 was sustained in the performance of duty within the meaning of the Act.

It is a well-settled principle of workers' compensation law, and the Board has so held, that an injury resulting from an idiopathic fall -- where a personal, nonoccupational pathology causes an employee to collapse and suffer injury upon striking the immediate supporting surface and there is no intervention or contribution by any hazard or special condition of employment -- is not within the coverage of the Act. Such an injury does not arise out of a risk connected with or in the course of employment and it, therefore, is not compensable.[2] The question of causal relationship in cases of a fall like that in the present case is a medical one and must be resolved by medical evidence.[3]

It is also well established, and the Board has recognized on numerous occasions, that although a fall is idiopathic, an injury resulting from it is compensable if "some job circumstance or working condition intervenes in contributing to the incident or injury, for example, the employee falls onto, into, or from an instrumentality of the employment,"[4] or where, instead of falling directly to the floor on which he has been standing, the employee strikes a part of his body against a wall, a piece of equipment, furniture or machinery, or some like object.[5] Appellant has the burden of establishing that he struck an object connected with the employment during the course of his idiopathic collapse.[6]

In the present case, the medical evidence consists of a September 23, 1994 report by Dr. Bono, Board-certified in emergency medicine, who saw appellant in the emergency room of Sentara Norfolk General Hospital who noted a "question of assault;" September 23, 1994 reports by Dr. Tomlison, a Board-certified internist and radiologist, Dr. Schrammer, Dr. Crawford and Dr. Kaytoa who all determined based on a CT scan that appellant suffered a spontaneous left intracerebral hemorrhage, not a trauma. In a September 23, 1994 report, Dr. Donnal, a Board-certified radiologist, interpreted the CT scan of the brain and an angiogram to show a cerebral hemorrhage due to either hypertensive bleeding or vascular malformation. Also in a September 23, 1994 report, Dr. Magness, a Board-certified neurosurgeon, determined that based on the CT scan appellant suffered an intracerebral hemorrhage. In an October 14, 1994 report,

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[2] *Martha G. List*, 26 ECAB 200 (1974); *Gertrude E. Evans*, 26 ECAB 195 (1974); *Rebecca C. Daily*, 9 ECAB 255 (1956); *see also Larson*, The Law of Workers' Compensation §§ 12.00, 12.11.

[3] *Robert J. Choate*, 39 ECAB 103 (1987); *John D. Williams*, 37 ECAB 238 (1985).

[4] *Rebecca C. Daily*, *supra* note 2.

[5] *Chunny Wong*, 31 ECAB 579 (1980); *Pauline Finley*, 19 ECAB 481 (1968); *Wilford M. Smith*, 9 ECAB 259 (1957).

[6] *Gertrude E. Evans*, *supra* note 2.

Dr. Given diagnosed a spontaneous cerebral hemorrhage. In an October 19, 1994 report, Dr. Mehrberg stated that a CAT scan and angiogram revealed an intracerebral hemorrhage and left ventricular nucleus atrioventricular malformation as well as a small three millimeter aneurysm. In his September 8, 1995 report, Dr. Magness stated that there could be two possibilities for appellant's injuries, a fall after having a cerebral hemorrhage or an attack by someone else. Dr. Magness noted that appellant's wife stated appellant remembers an attack, but the doctor questioned how much he would rely on that. Dr. Magness speculated that when blood pressure rises whether due to an assault or excessive stress on a job, might explain a work connection between appellant's employment and his hemorrhage. Dr. Magness' opinions were equivocal. In previous reports, Dr. Magness opined, after reviewing the results of medical tests, that appellant's injuries were caused by an arteriovenous malformation. Dr. Magness' September 8, 1995 report failed to establish that appellant's fall at work on September 23, 1994 was sustained in the performance of duty. In the March 25, 1996 report, Dr. Pasquale performed a psychological evaluation on appellant and diagnosed dysthymia and post-traumatic stress disorder and post-cerebral vascular accident with residuals of dysphasis and paralysis. The March 25, 1996 report does not establish that appellant's fall at work on September 23, 1994 was sustained in the performance of duty. Dr. Magness' opinion in the May 14, 1996 attending physician's report is speculative and, therefore, of no probative value. None of the medical reports submitted causally related appellant's diagnosed condition to any identified employment factors. Moreover, the factual evidence, investigative reports, support that appellant was not the victim of an assault.[7] There is no evidence indicating that appellant's fall was caused by intervention of or contribution by any employment-related factors, *i.e.*, he did not strike any object, other than the ground, during the course of his fall at work on September 23, 1994.[8]

[7] Appellant has stated that he has regained his memory of the events on September 23, 1994 and that he was assaulted. However, the evidence of record reveals that appellant was still having difficulty in communicating and was greatly assisted by his family (wife) when trying to recall what happened. This casts doubt on appellant's independent recollection and ability to describe the events of September 23, 1994.

[8] The record contains one undated investigative report by Detective Howard M. Stearn who stated that approximately six feet from appellant's open car door was a bicycle rack with pipes extending along the ground. He went on to say that utilizing the best evidence on hand, the writer and Detective Gonzales determined the probable chain of events were that appellant may have tripped over the bike rack, falling to the ground. He may have also struck a metal bar with his head as he fell. Detective Stearn's opinion is based simply on the fact that the bike rack was there, as he did not contend that there was any evidence to support such an opinion. Detective Stearn's opinion is totally speculative and, therefore, of no probative value. In addition, Detective Gonzales' report gave no such opinion.

The decision of the Office of Workers' Compensation Programs dated July 1, 1996 is affirmed.

Dated, Washington, D.C.
October 6, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member