

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL J. PETERLIN and U.S. POSTAL SERVICE,
POST OFFICE, Kingston, PA

*Docket No. 98-611; Submitted on the Record;
Issued October 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing a recurrence of disability on or after April 12, 1995 causally related to his accepted September 27, 1991 employment injury.

On September 27, 1991 appellant, then a 53-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his heart attack was due to overwork and stress due to his employment. The Office of Workers' Compensation Programs accepted the claim for myocardial infarction and angina pectoris. Appellant returned to light-duty work on January 21, 1992.

Appellant filed a claim for a recurrence of disability from November 17 to December 6, 1993, which the Office accepted on October 19, 1994.

Appellant filed a claim for a recurrence of disability commencing April 12, 1995. The employing establishment controverted the claim arguing that appellant's open heart surgery was unrelated to his accepted employment injury.

In a June 26, 1995 report, Dr. Robert D.J. Potorski, appellant's attending Board-certified cardiologist and internist, noted that appellant had been doing well until March 1995 when he started to have "increased symptoms with a strongly positive stress test" and that appellant had undergone a coronary artery bypass graft in April 1995. The physician noted that appellant's "initial episode was precipitated by the stress of his work" which resulted in myocardial infarction. Dr. Potorski further opined that "the stress of the job, no doubt, does precipitate his anginal symptoms and probably, at this point, based on known history of stress, be it work related or emotionally related, may precipitate acute infarctions."

By letter dated September 21, 1995, the Office requested appellant to submit additional medical evidence in order to evaluate his recurrence claim.

In an October 9, 1995 report, Dr. Stanley A. Lobutz, an attending physician, noted that appellant had developed venous thrombophlebitis due to his bypass surgery “which was related to his initial disability.”

In a report dated October 11, 1995, Dr. Potorski noted appellant’s past medical history, which included “numerous prior MI’s and coronary artery disease with previous anterioseptal wall infarction,” angioplasties, restenosis and bypass surgery. He further opined that appellant’s “initiating event occurred back in September, 1991.”

By letter dated February 8, 1996, the Office referred appellant, together with a statement of accepted facts, medical records and list of questions, to Dr. Kevin H. Olsen, a Board-certified cardiologist and internist, to determine the cause and extent of any residuals due to his accepted employment injury.

In a report dated March 7, 1996, Dr. Olsen opined, based upon a physical examination, statement of accepted facts and review of the medical evidence, that he agreed “with Dr. Potorski’s assessment that the patient’s work environment at the time of the initial myocardial infarction could have precipitated the event.” Regarding appellant’s coronary artery bypass graft surgery in April 1995, Dr. Olsen opined that it was a “continuation and appropriate treatment for his known atherosclerotic coronary artery disease which began to become evidence in September of 1991.”

By letter dated April 2, 1996, the Office requested Dr. Olsen to clarify whether appellant’s open heart surgery was causally related to appellant’s accepted employment injury. The Office also requested information on whether the accepted September 27, 1991, myocardial infarction and December 7, 1993, catheterization contributed to appellant’s underlying coronary artery disease.

By letter dated June 11, 1996, the Office again requested Dr. Olsen to provide a supplemental report supported by medical rationale.

In a letter dated June 20, 1996, Dr. Olsen opined that appellant’s myocardial infarction was caused by his employment duties.

By decision dated August 20, 1996, the Office denied appellant’s claim for a recurrence of disability on and after April 12, 1995, finding that appellant had not submitted sufficient medical evidence in support of his claim.

In a letter dated October 14, 1996, appellant requested reconsideration and submitted a September 18, 1996 report from Dr. Potorski.

In a report dated September 18, 1996, Dr. Potorski diagnosed coronary artery disease and opined that appellant’s “initiating event occurred back in September, 1991.”

By decision dated January 16, 1997, the Office denied modification of the August 20, 1996 decision. In the attached memorandum, the Office noted that the evidence established that appellant’s bypass surgery was due to his coronary artery disease and not due to factors of his

federal employment. The Office determined that appellant had failed to submit any medical evidence supporting a causal relationship between his bypass surgery and his federal employment.

In a letter dated March 7, 1997, appellant requested reconsideration and pointed out the discrepancies in records which he believed were used in denying his claim.

In a nonmerit decision dated September 11, 1997, the Office denied appellant's request for reconsideration on the basis that the evidence presented was immaterial.

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

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹ The burden of showing a change in the nature and extent of the injury-related condition includes the necessity of 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 causally related to the employment injury and supports that conclusion with sound medical reasoning.² Causal relationship is a medical issue and can be established only by medical evidence.³ However, proceedings under the Federal Employees' Compensation 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.⁴

In the instant case, appellant has submitted several reports from Dr. Potorski and a report from Dr. Lobutz which related appellant's bypass surgery to his accepted employment condition. Neither Dr. Lobutz nor Dr. Potorski adequately explained why appellant's bypass surgery was due to his accepted employment condition.

The Board notes that the Office referred appellant to Dr. Olsen for a second opinion on the causal relationship, if any, between appellant's bypass surgery and his accepted employment injury. The Office found Dr. Olsen's March 7, 1997, opinion to be speculative and requested that he provide a supplemental opinion, supported by medical rationale, on whether appellant's

¹ *Gus N. Rodes*, 46 ECAB 518 (1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

³ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

bypass surgery was causally related to his accepted employment injury. Dr. Olsen, in a one-sentence June 20, 1996 report, opined that appellant's myocardial infarction was due to his employment duties, but failed to provide an opinion on whether appellant's bypass surgery was causally related to the accepted employment injury. The Board finds that as Dr. Olsen was unable to provide a fully rationalized medical opinion on the issue of causal relationship, the Office should have referred appellant for examination by another specialist.

Therefore, upon return of the case record the Office should refer appellant, together with a statement of accepted facts, questions to be answered and the complete case record, to an appropriate medical specialist for an evaluation and rationalized opinion on whether appellant's claimed bypass surgery was in any way causally related to his accepted employment injury. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated September 11 and January 16, 1997, are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
October 8, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member