

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PEGGY A. DAY and DEPARTMENT OF VETERANS AFFAIRS,  
SAM RAYBURN MEMORIAL CENTER, Bonham, TX

*Docket No. 97-2280; Submitted on the Record;  
Issued September 8, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that the temporary aggravation of appellant's underlying heart condition had ceased.

This case has previously been before the Board. On August 10, 1990 the Board remanded the case for the Office to develop the evidentiary record, noting that appellant's physicians had identified increasing stress at work as contributing to appellant's chest pain, coronary artery disease (CAD) and angina.<sup>1</sup> Following referral to a second opinion specialist on remand, the Office accepted a temporary aggravation of preexisting coronary artery disease.

On April 2, 1993 the Office denied wage-loss compensation on the grounds that the weight of the medical evidence established that the aggravation of appellant's coronary condition ceased when she stopped work in August 1989. Appellant sought review by the Board, which on July 19, 1995 remanded the case for referral to an impartial medical examiner to resolve a conflict in the medical opinion evidence.<sup>2</sup> The Board adopts by reference the findings and conclusions of its previous two decisions.

On remand, the Office referred appellant to Dr. Richard R. Constant, a cardiologist who is Board-eligible in internal medicine, along with a statement of accepted facts, the medical records and a list of questions. Based on his February 20, 1997 report and April 25, 1997 addendum, the Office denied the claim on the grounds that the work-related aggravation of appellant's heart condition had resolved. The Office noted that special weight was accorded to

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<sup>1</sup> Docket No. 90-1184 (issued August 10, 1990).

<sup>2</sup> Docket No. 93-2460 (issued July 19, 1995). Subsequently, the Board granted the Director's Petition for Reconsideration on November 7, 1996 and found the conflict in the medical opinion evidence to be between the Office's referral physician, Dr. Gerald F. Bulloch, Board-certified in internal medicine and Dr. Zafar I. Malik, a practitioner in internal medicine.

Dr. Constant's opinion as an impartial medical examiner regarding the duration of the accepted aggravation of appellant's CAD.

The Board finds that the weight of the medical evidence<sup>3</sup> establishes that the temporary aggravation of appellant's CAD ceased in August 1989.

Under the Federal Employees' Compensation Act,<sup>4</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>5</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>6</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>7</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

Where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the period of disability related to the aggravation.<sup>9</sup> When the aggravation is temporary and leaves no permanent residual, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors have on the underlying condition.<sup>10</sup>

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<sup>3</sup> Because Dr. Constant is not Board-certified, the Office erred in according his opinion special weight as an impartial medical examiner; *see Charles M. David*, 48 ECAB \_\_\_ (Docket No. 95-1239, issued June 12, 1997) (finding that where the selected physician was not Board-certified, he could not be an impartial medical examiner and his opinion was insufficient to justify terminating appellant's compensation); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1)(March 1994). However, in this case the error is harmless inasmuch as the medical evidence clearly establishes that appellant's CAD was not permanently aggravated by employment factors.

<sup>4</sup> 5 U.S.C § 8101 *et seq.*

<sup>5</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

<sup>6</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>7</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

<sup>8</sup> *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

<sup>9</sup> *Richard T. Devito*, 39 ECAB 668, 673 (1988).

<sup>10</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986).

In this case, the physicians who examined appellant agreed that her coronary condition was aggravated, but not caused, by work factors. They differed, however, on the extent and duration of the work-related aggravation. Dr. Malik stated on January 9, 1992 that appellant was disabled from any gainful employment and that her condition continued to be aggravated with work and with stress. In response to the Office's inquiry, Dr. Malik stated that job stress resulting from appellant's "vigorous duties as a nursing assistant" worsened her underlying heart condition. He added that she was now stable enough to return to light duty, but he could not exclude further symptoms if she did.<sup>11</sup>

By contrast, Dr. Bulloch concluded in his February 17, 1993 report that the work-related aggravation of appellant's CAD ceased when she stopped work, that the extent of her disease was "carefully documented in September 1989" by cardiac catheterization and coronary angiography and that there was "no reason" to infer that "occupational stresses had any anatomical impact" on her underlying condition. He advised that appellant would be able to return to her duties as a nursing assistant.

Dr. Constant, who is a cardiologist and Board-eligible in internal medicine, examined appellant on February 13, 1997 and reviewed her medical and work history. He stated that essentially appellant's heart condition was the same today as it would have been had she not worked at the employing establishment. Prior to 1989 she had CAD because the procedures done in September 1989 showed total blockage of the right coronary artery and a 40 percent blockage of two other arteries. While her disease had normally progressed over time, her employment in 1989 would not have increased that progression.

Dr. Constant indicated that while it was "impossible" to say exactly when appellant's condition returned to baseline, she apparently had no further angina symptoms after August 1989 when she stopped work. Based on her normal stress test results in 1993, appellant was back to baseline at that time and the normal progression of CAD ensued. Dr. Constant added that no work-related aggravation of appellant's condition persisted and that she could return to light duty with no heavy lifting or pushing/pulling.

In response to the Office's inquiry, Dr. Constant clarified his opinion: While "impossible to determine with absolute certainty" when appellant's condition returned to preinjury status, more likely than not appellant was at baseline sometime in 1989 because she had no further angina symptoms. Dr. Constant added that the reason he had stated that the condition persisted until 1993 was that the record contained no objective medical data in the interim to show otherwise until the normal stress test in 1993.

Dr. Constant's opinion is clear, logical and consistent with the facts of this case. He explained with medical rationale why the work-related aggravation of appellant's heart condition was only temporary and supported his conclusion with objective testing results.

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<sup>11</sup> Appellant accepted a light-duty position with the employing establishment on July 20, 1989 but stopped work on August 8, 1989.

In addition, Dr. Bulloch stated in his February 17, 1993 report that appellant's underlying CAD "was not materially worsened by her employment" and the temporary aggravation of her coronary condition ceased when she stopped working. He added that, based on the coronary anatomy demonstrated in the 1989 heart catheterization and the absence of symptoms on her present anti-anginal regimen, appellant should be able to return to her nursing duties.

The Board finds that these two opinions represent the weight of the medical evidence on the duration of the work-related aggravation of appellant's heart condition and are sufficient to meet the Office's burden of proof in terminating appellant's compensation.<sup>12</sup>

Appellant's attorney argues on appeal that there was no conflict in the medical opinion evidence because all physicians agreed that if appellant returned to work the aggravation would most likely recur. The Board has long held that fear of future injury is not a basis for disability compensation.<sup>13</sup> As stated previously, the conflict arose because Dr. Malik opined that appellant's condition continued to be aggravated by her employment after she returned to work in July 1989 and Dr. Bulloch found that appellant's underlying CAD was not permanently aggravated by her work duties.

Appellant's attorney also quarrels with Dr. Constant's conclusions, stating that far from resolving the conflict, his opinion reinforces the fact that appellant was unable to work without adverse results in 1989 and was thus disabled then and continues to be disabled to the present.

The basis for accepting a claim for a specific injury or condition is that medical evidence demonstrates that the condition is work related, that is, that the injury or condition was caused or aggravated by work factors. Appellant established this element of her claim with the January 15, 1991 report of Dr. John G. Casey, Board-certified in internal medicine, to whom the Office had referred her for a second opinion evaluation and the January 24, 1990 report of Dr. Ibrahim Abu Sarris, her treating cardiologist.

However, the accepted condition was a temporary aggravation of appellant's heart condition, for which the Office paid appropriate compensation. The Office stated that the change in appellant's hours and duties in June and July 1989, which resulted in a change of the medication controlling her heart disease, caused stress, as evidenced by chest pains (angina). Appellant returned to light duty but stopped work on August 7, 1989 and underwent coronary procedures in September 1989.

Based on Dr. Bulloch's conclusion that the work-related aggravation of appellant's CAD ceased when she stopped work in August 1989 and Dr. Constant's opinion that if appellant "did no further work or exertion of a significant nature, then her preexisting coronary artery condition

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<sup>12</sup> See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

<sup>13</sup> See *Mary A. Geary*, 43 ECAB 300, 309 (1991) (finding that fear of future injury is not compensable under the Act); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

was basically stable when she left work in 1989,” the Board finds that the medical evidence establishes that the temporary aggravation of appellant’s heart condition had ceased when she left her light-duty position on August 7, 1989.<sup>14</sup>

The April 29, 1997 decision of the Office of Workers’ Compensation Programs is affirmed.

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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<sup>14</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480, 488 (1996) (finding that the reports of the Office referral physician established that appellant’s degenerative pathology was not work related and were sufficient to meet the Office’s burden of proof in terminating disability compensation).