U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY D. CHARTIER and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Los Angeles, CA

Docket No. 98-2165; Submitted on the Record;
Issued March 20, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant has met his burden of proof to establish that his hypertensive stroke was causally related to factors of employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in approving an attorney's fee in the amount of $600.00.

On November 20, 1997 appellant, then a 33-year-old air traffic control specialist, filed an occupational disease claim, alleging that the stroke he sustained on November 6, 1997[1] was caused by employment stress. In supporting statements, appellant generally alleged that his everyday employment duties were stressful, which caused his hypertension, which in turn, caused the November 7, 1997 stroke. He specifically alleged that the stressful work conditions were due to volume, complexity, old and malfunctioning equipment, difficult personalities and insufficient staffing. Appellant also alleged that the employing establishment clinic staff would change cuff sizes when reading blood pressure so that a normal reading would be achieved.

On February 24, 1998 Max Gest, Esquire, of Los Angeles, California, requested approval of a fee in the amount of $600.00 for four hours of legal services at $150.00 per hour, performed in this case before the Office during the period from February 3 to 20, 1998.

Following further development, by decision dated May 6, 1998, the Office denied appellant's claim, finding that he failed to establish that his condition was causally related to

[1] Appellant stopped work on November 6, 1997. He returned to work in January 1998 in a different position.

employment factors. In a second decision that same day, the Office approved an attorney's fee in the amount of $600.00. The instant appeal follows.[2]

Appellant also submitted statements by co-workers Rodney Lewis, Wade E. Powers, Robin Freeman and Hamid Ghaffari who generally discussed the stressful nature of the air traffic controller position, stated that some of the equipment was old and that their employing establishment location was understaffed. In an April 16, 1998 statement, Michael Sullivan, a co-worker, stated that the blood pressure measuring device had been changed from a smaller cuff size to a larger one during his past physical examinations at the employing establishment clinic, which resulted in a lower reading which was the one recorded.

The employing establishment submitted a January 9, 1998 memorandum, in which James R. Miller, appellant's supervisor, stated that appellant's job duties were contained in the position description. He included some additional detail and agreed that the facility was below maximum staffing level but maintained that there was sufficient personnel to staff the positions appropriately. Mr. Miller indicated that the equipment used was designed and maintained so that availability and reliability were extremely high. By letter dated January 23, 1998, he stated that while 55 personnel were authorized for the area in which appellant worked, 46 were employed at the time of his stroke. Mr. Miller further described appellant's job duties, reiterated that the equipment was highly reliable with double and triple backup and stated that appellant worked two hours of overtime in 1997.[3]

The relevant medical evidence includes November 7, 1997 computerized tomography studies of the brain that demonstrated a focal hypertensive hemorrhage in the left basal ganglion. In a November 19, 1997 progress note, Dr. Jeffrey Sy, appellant's treating internist, diagnosed hypertension and a hemorrhagic stroke due to a hypertensive bleed and advised that it was "hard to say" whether the condition was caused by employment, stating, "stressful job condition may elevate blood pressure, that if [it] remains unrecognized [it] may reach critical level to cause ... hypertensive crisis and bleed." In attending physician's reports also dated November 19, 1997, Dr. Sy checked the "yes" box, indicating that appellant's condition was employment related and stated, "stressful work condition could cause high blood pressure like [appellant] had which can cause hemorrhagic stroke." He advised that appellant could not work. In a January 8, 1998 report, Dr. Sy stated:

> "Patient states that his job is highly stressful. This can do a lot of things to people including elevate their blood pressure. Sudden rapid rise in blood pressure to critical levels has been associated with intracranial bleed just like what happened

[2] The Board notes that on May 28, 1998 appellant requested a hearing with the Office. On June 29, 1998 he appealed to the Board. It is well established that the Board and the Office may not exercise concurrent jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990).

[3] Mr. Miller also submitted an undated report received by the Office on April 21, 1998, in which he indicated that appellant's medical certificate had been permanently terminated on November 7, 1997 and that he returned to work in January 1998 to a temporary staff position that did not require a medical certificate. He further stated that appellant could not perform the full range of duties for the temporary position and noted that appellant sustained a second event in April 1998.

to this patient.... Stressful working conditions will contribute to poor control of blood pressure, which is one of the factors that may lead to a recurrence of the hypertensive intracranial bleed."

In a February 27, 1998 report, Dr. Sy stated:

"High blood pressure or hypertension is one of the most common disorders brought on or made worse by stress. The heart beats faster and blood pressure rises in response to stress, but when no physical action is taken the body's systems remain overly active. Repeated experiences of this nature lead to conditions such as high blood pressure. Hypertension has no noticeable symptoms and can lead to stroke. This occurs when blister like bulges develop on the forks of large cerebral arteries on the brain surface. When they rupture they can cause brain damage, due either to the seeping of blood into the brain tissue or the reduced flow of blood to the brain beyond the point of the rupture. [Appellant] and I discussed his occupation [and] the circumstances, in which the hypertensive hemorrhage occurred. The nature of his occupation is inherently stressful. The area in which he works, being short staffed, would increase the likelihood of stressful periods. The hypertension was most likely aggravated by a stressful work environment. The stroke most likely occurred due to an aggravation of the hypertensive condition."

Appellant also submitted a February 26, 1998 report, in which Dr. Ranjiv S. Choudhary, who is Board-certified in internal medicine and cardiology, advised:

"There is little doubt that his hypertension is related to his stressful occupation. Although the patient has a baseline of hypertension, it clearly was worsened by stress at work resulting in a scenario where a hemorrhagic cerebrovascular accident [CVA] could occur and which did occur.... [H]is occupation is clearly extraordinarily stressful with the low staffing level where he works [and] it is quite likely that the increased stress resulted in marked aggravation in blood pressure resulting in his stroke. There is little doubt as far as this conclusion is concerned."

Dr. Gerald A. Volkman, an employing establishment physician who is Board-certified in family practice, submitted a March 3, 1998 report in which he stated:

"This examiner after consultation with other colleagues in the Office of Aviation Medicine take[s] exception to the proposed causal relationship of the CVA. Dr. Sy would make a case that work caused high blood pressure which caused a stroke. In review of the records there is no evidence of high blood pressure prior to the stroke. [Appellant] also admits to not having high blood pressure. It is well documented in medical texts and journals that a common effect of a stroke is to cause immediate and substantial elevations of blood pressure. A person without a history of high blood pressure arriving at a hospital with a stroke and high blood pressure would more than likely have elevated pressure in response to the stroke. A person arriving with a history of high blood pressure prior to the

> stroke may be able to say the stroke was possibly from the pressure, however, even in that case it could be a flawed argument. Therefore, it is this examiner[']s opinion in this case that the claim of stroke secondary to job stress cannot be applied to this case."

In an April 7, 1998 report, Dr. Volkman stated:

> "The medical file was reviewed. There are no readings on the physical forms, which show hypertension as defined by the standards for Air Traffic Control Specialists. This examiner has spoken with the nurse at the facility. She does not record any number other than what is found at the examination, regardless of the cuff size. She would make a note of the cuff size next to the pressure if she felt the size of the cuff influenced the reading. There are no readings with notations regarding the cuff size. This corresponds to the normal practice in medicine."

Dr. Volkman further stated that appellant's medical file would be sent to the Office upon receipt of a signed release by appellant.

The Board finds that this case is not in posture for decision regarding the merits of appellant's claim.

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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. The medical evidence required establishing a causal relationship 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

[4] 5 U.S.C. §§ 8101-8193.

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Delores C. Ellyett*, 41 ECAB 992 (1990).

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, must be one of reasonable medical certainty 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.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.[8] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[9]

In this case, the Office accepted that the employing establishment was understaffed at the time appellant suffered his stroke. The Board further finds that appellant has implicated the pressure of his general work duties and responsibilities as an air traffic controller and submitted medical evidence which provides some support for his contention that his stroke was related to the claimed employment factors.

Initially, the Board notes that Dr. Volkman did not examine appellant and, while the reports of Drs. Sy and Choudhary are not sufficient to meet appellant's burden of proof in establishing that the November 6, 1997 stroke was caused by factors of employment, taken in their entirety, they raise an inference of causal relationship and are, therefore, sufficient to require further development of the case by the Office.[10] Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement of compensation benefits, the Office shares responsibility in the development of the evidence. It has responsibility to see that justice is done.[11]

Upon remand, the Office should further develop the medical evidence by referring appellant and an updated statement of accepted facts to an appropriate Board-certified specialist

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[7] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[9] *Margaret Krzycki*, 43 ECAB 496 (1992).

[10] *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the Office did not seek advice from an Office medical adviser or refer the case for a second-opinion evaluation.

[11] *Gary L. Fowler*, 45 ECAB 365 (1994).

for a rationalized medical opinion on the issue of whether appellant's hypertension and stroke of November 6, 1997 were causally related to employment factors.

The Board further finds that the Office did not abuse its discretion in approving an attorney's fee in the amount of $600.00.

The criteria governing the approval of fees for representation services are set forth in 20 C.F.R. § 10.145(b), which provides in pertinent part:

> "The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:
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> (1) Usefulness of the representative's services to the claimant.
>
> (2) The nature and complexity of the claim.
>
> (3) The actual time spent on development and presentation of the claim.
>
> (4) The amount of compensation accrued and potential future payments.
>
> (5) Customary local charges for similar services.
>
> (6) Professional qualifications of the representatives."

The record in this case shows that in approving the $600.00 fee, the Office took these criteria into consideration and concluded:

> "The claim is complex, involving a stroke allegedly due to work stress. The medical evidence initially provided with the claim indicated that evaluating causal relationship was difficult. The attorney facilitated obtaining a medical opinion on causal relationship, albeit one insufficient to establish the claimant's entitlement to benefits. The claimant removed the attorney from the claim before adjudication was complete. The attorney is one of a few in the state who frequently handles FECA claims and he brings rare experience to bear on behalf of the claimants he represents. The hourly charge of $150.00 is at the low end of the scale."

There is no provision in the Act or its implementing regulations[12] for payment of a claimant's attorney fees. In fact, section 10.145(f) of the Office's regulations implementing the Act provides that the "Office will not pay ... any representative fee."[13] Thus, regardless of the reasons, which may have necessitated an attorney's services, it is well established that an attorney's fee is the personal obligation of the claimant, subject to prior approval by the Office

[12] 20 C.F.R. § 10.1 *et seq.*; 20 C.F.R. § 501.1 *et seq.*

[13] 20 C.F.R. § 10.145(f).

for legal services performed before it. The Board's sole function is to determine whether the action taken by the Office on the matter of the attorney's fee constituted an abuse of discretion.[14] Generally, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable known facts.[15] In this case, there is no evidence that the Office abused its discretion in approving an attorney's fee in the amount of $600.00.

The decision of the Office of Workers' Compensation Programs dated May 6, 1998, regarding the merits of appellant's claim, is hereby set aside and the case is remanded for further action consistent with this decision of the Board. The decision of the Office dated May 6, 1998, approving an attorney's fee, is hereby affirmed.

Dated, Washington, D.C.
March 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[14] *See Regina G. Jackson*, 41 ECAB 321 (1989).

[15] *Billy Ware Forbess*, 45 ECAB 669 (1994).