U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROGER W. GRIFFITH and DEPARTMENT OF JUSTICE,
U.S. ATTORNEY'S OFFICE, Oklahoma City, OK

*Docket No. 98-1080; Submitted on the Record;*
*Issued May 2, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's cardiac condition is causally related to factors of his federal employment.

On or about March 28, 1996 appellant, a 54-year-old assistant U.S. Attorney, filed claims asserting that he sustained extreme stress, trauma and cardiac impairment as a result of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City and as a result of a demotion.[1] He explained that while he was at work on April 19, 1995 he heard and felt the impact of the explosion, which occurred three and a half blocks to the north. Appellant observed black smoke and debris. He made family calls, then went to check on others. Appellant was informed that many affected employees had left to search for family and loved ones. He went outside to observe the condition of the scene and walked one block toward the bombsite:

> "I observed dark smoke billowing all along Harvey St[reet], flying debris, shattered glass and debris lying on Harvey Street from the windows of the buildings. People were running in all directions, some injured, the scene described generally as complete chaos. *Feeling lightheaded, short of breath and faint,* I sat down on the curb, rested and watched the turmoil for about 10 minutes. Due to my physical condition, rather than travel north on Harvey St[reet] and approach the bombing site any closer I decided to return to our office." (Original emphasis.)

After appellant returned he began the process of closing and evacuating the employing establishment's office for security reasons. He was instructed to leave the building until further

[1] As the psychological aspect of appellant's claim is under development and not ripe for review, the present appeal is limited to the issue of cardiac impairment; *see* 20 U.S.C. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case).

notice and to secure his cell telephone. Appellant kept the Department of Justice (DOJ) informed of current developments and stayed in close contact with the employing establishment personnel. That evening he went to a church that served as the official place for news on missing victims. Appellant supported employees and other close personal friends awaiting information. He went to the home of a former employee and friend to await any word on a missing 14-month-old granddaughter. The next morning he reported to work due to an administrative decision to open the office as soon as possible.

Appellant stated that he experienced episodic bouts of palpitations, tachycardia, shortness of breath and lightheadedness.

Appellant explained that the search and rescue of victims continued for two weeks. As Chief of the Civil Division, his duties included monitoring rescue efforts to keep personnel informed, in particular those most directly affected. He managed emergency monetary assistance and made daily visits to homes to provide any notice of missing victims. Appellant visited the temporary morgue and state medical examiner's office. It took over a week to identify the bodies of two employees' family victims. Appellant facilitated the Civil Division's participation and interaction with the DOJ trauma team counselors. During the days of rescue, appellant became aware that he had close direct professional and personal relationships with 15 of the 168 bombing death victims, as well as many hundreds of the survivors and their families. He attended six funerals from May 5 to 11, 1995. After a previously planned vacation the last two weeks of May, appellant was advised that he was being replaced as Chief of the Civil Division and was asked to return as a line attorney.

Appellant stated that he was unable to operate at the level of self-actualization of achievement he had attained after 15 years at the employing establishment's office; that he experienced a deep personal loss simultaneously with profound grief inherent in the multiple losses of the bombing tragedy; that he woke up on December 7, 1995 with a highly irregular heart beat, premature ventricular contractions, fibrillation and shortness of breath.

In a March 13, 1996 report, Dr. Kent H. Potts, a Board-certified internist specializing in cardiovascular disease, related that he initially saw appellant on December 16, 1995 when he was hospitalized for congestive heart failure and arrythmias. Despite a repaired congenital atrial septal defect and idiopathic cardiomyopathy, appellant got along well and was able to work full time as an attorney until recently. Dr. Potts explained that 1995 was a year fraught with multiple adversities at work: the bombing of the Alfred P. Murrah Federal Building and his demotion. All of this had a profound effect on him personally and he ended up requiring counseling. He also started experiencing episodes of palpitation, tachycardia, shortness of breath, lightheadedness and weakness. Dr. Potts reported that this culminated in appellant's

hospitalization in December 1995. Appellant underwent a cardiac catheterization in January 1996 and had a second hospitalization that month for cardioversion. Dr. Potts continued:

> "Although his condition has improved, I have recommended that he retire from his job. It is clear that the stress of his work, with the unusual occurrences that took place in 1995, precipitated an acute change in his status and led to deterioration of his cardiac condition."

In a March 27, 1996 report, Dr. Gene A. Hawkins, appellant's clinical psychologist, related that he had seen appellant since July 22, 1994 with symptoms of depression and stress concerning his feelings of job insecurity. Dr. Hawkins reported that after the bombing on April 19, 1995 appellant suffered increased stress due to his having to deal with deaths of several coworkers and the disruption of his work. After learning that he had been demoted, appellant became increasingly depressed and expressed self-deprecating thoughts concerning his job and future with the employing establishment's office. Appellant reported a great deal of stress in returning to the courtroom as a trial lawyer. He expressed anger and a sense of betrayal in his demotion. For the next several months he experienced difficulties medically, culminating in hospitalization in December 1995, which coincided with the date that his caseload was to be reviewed and evaluated by the new Chief of the Civil Division. Dr. Hawkins expressed the following opinion:

> "From the beginning of [appellant's] counseling, job[-]related stresses and the sense of losing control over his vocational future were major issues in his psychological treatment. As his work stress and disappointments increased, his stress level also correspondingly increased. It is this [p]sychologist's opinion that [appellant's] work[-]related issues directly affected his overall health and exasperated and accentuated his cardiological problems. It is this [p]sychologist's opinion that to continue in his previous capacities as a trial lawyer would be deleterious to his health."

On May 29, 1996 the employing establishment[2] confirmed that, following the bombing, the acting U.S. Attorney for the Western District of Oklahoma assigned special duties to each member of the management staff to enable the office to staff a command center, coordinate with various investigative agencies and respond to immediate departmental informational needs. Appellant was assigned to the DOJ command center with the responsibilities of acting as the information liaison for the DOJ. During the two weeks following the bombing, appellant's duties required daily contacts with the bombing site, temporary morgue, victim support center, rescue command centers and investigative command centers. His duties as Chief of the Civil Division required evaluation and referral to the DOJ Employee Assistance Program for the two employees of the employing establishment's office who suffered loss of immediate family members. The employing establishment explained that the manner in which appellant was to perform his duties to serve as liaison to the DOJ and to make direct supervisory referrals to the

[2] The Executive Assistant U.S. Attorney for the Western District of Oklahoma advised that he was assigned the duty of responding to the Office of Workers' Compensation Programs' request for information regarding the duties assigned to appellant immediately after the Oklahoma City bombing of April 19, 1995.

Employee Assistance Program was not defined. Appellant was expected to use his professional judgment. After reviewing specific examples of support rendered by appellant -- including his activities at a gathering place where the families of victims awaited word, visiting the homes of these families, providing emergency monetary assistance, ensuring that these families had food, toiletries and other sundry items while they awaited word, and attending six funerals between May 5 and 11, 1995 -- the employing establishment confirmed that these tasks were generally consistent with the responsibilities of the Chief of the Civil Division.

On June 12, 1996 the Office prepared a statement of accepted facts. The Office related appellant's duties as Chief of the Civil Division and subsequently as a line attorney. The Office accepted the following factors of employment as compensable: (1) During the two weeks following the bombing, appellant made daily contacts with the bombing site, temporary morgue, victim support center, rescue command centers and investigative command centers; (2) Appellant acted as the information liaison for the DOJ after the bombing; (3) Appellant was required to refer two of his employees who lost immediate family members as a result of the bombing to the DOJ Employee Assistance Program. The Office found that appellant's demotion to line attorney was not a compensable factor of employment. The Office further found that appellant's allegation concerning the assignment of a criminal attorney to the position of Deputy Chief of the Civil Division, that he was not qualified for the position and had a history of dysfunctional conduct, was not established.

The Office referred appellant, together with the statement of accepted facts and a copy of the medical record, to Dr. Ronald R. Hope, a Board-certified cardiologist, for a second opinion. In a report dated August 19, 1996, Dr. Hope related appellant's history, findings on examination and results of x-ray and electrocardiogram. Responding to questions posed by the Office, Dr. Hope reported that appellant was status post large atrial septal defect repair at the age of 26; that he had some cardiac dysfunction related to this defect; that he was documented to have a hypertensive cardiomyopathy thought to be on the basis of previous hypertension. On the issue of causal relationship, Dr. Hope stated that appellant had heart disease related to a previous atrial septal defect, although repaired. He stated that appellant had a cardiomyopathy probably related to previous hypertension. "[Appellant's] cardiac status relates to the ongoing disease of cardiomyopathy and atrial septal defect repair but is also, in my opinion, exacerbated by emotional stress occurring in the last two years." On the issue of whether appellant's condition was considered to be related to any of the accepted factors of employment, including his duties as Chief of the Civil Division following the bombing, Dr. Potts reported as follows:

> "The answer … is, by its nature, important but difficult to answer precisely. There are two emotional problems and events that seem to have occurred in recent years. The first began in 1994 with the appointment of the assistant chief. It seems the patient's need for counseling for stress (incurred at his own expense and initiation) did begin at that time. The letter contained in the records as written by Gene A. Hawkins, Ph.D., lends support to symptoms of depression and stress, related to the appointment of an assistant chief. The same letter goes on to document stress associated with the second traumatic event in [appellant's] subsequent employment, *i.e.*, the bombing of the Murrah Building. I believe both traumatic events have led to permanent aggravation of [appellant's] preexisting

> cardiovascular status. I cannot say which event has provided more or less aggravation or to what degree the aggravation has occurred. Neither can I say in all honesty that gradual deterioration in the cardiovascular status may not have occurred in the absence of these events. However, the causal and time relationships of the traumatic events in the patient's employment, the appointment of an assistant chief, and the Murrah Building bombing clearly resulted in a deterioration of the patient's cardiovascular status as manifest in his progressive shortness of breath in the latter part of 1995 culminating in congestive heart failure and pulmonary edema and admission to Mercy Hospital about seven months after the Murrah Building bombing. Questioning of the patient about this time period (June/July 1995) indicates cessation of golf games and other recreational events, and deterioration in physical activity which, in turn, was restricted by shortness of breath and increasing palpitations.
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> "In the Questions for Determination, a distinction between aggravations and acceleration is unclear to me, but I feel both aggravation and acceleration of the patient's symptoms did occur following events in 1994 and the Murrah Building bombing in 1995."

The Office held a conference with the DOJ on September 6, 1996 to obtain additional information. The acting U.S. Attorney for the Western District of Oklahoma advised that in the aftermath of the blast she assigned appellant the task of handling communication with two employees who had missing relatives, giving them support, letting the Executive Office of the U.S. Attorneys know about their needs, and distributing funds. She stated that she did not recall whether appellant was involved in setting up a group meeting for all of the employees.

The Office revised its statement of accepted facts on September 20, 1996. The Office accepted the following as compensable factors of employment: (1) From 10:30 a.m. on April 19, 1995 through May 11, 1995 appellant acted as the information liaison for the DOJ in Washington, D.C., after the bombing. During the two weeks following the bombing, appellant communicated with two employees who each had a relative missing. He made daily contacts with the bombing site, temporary morgue, victim support center, rescue command centers and investigative command centers. He disbursed funds to these two employees; (2) He was required to refer two of his employees who lost immediate family members to the DOJ Employee Assistance Program. The Office found that the following were not considered factors of employment: (1) In December 1993 many attorneys filed grievances to protest the creation of the position of Deputy Civil Chief and the person who was appointed; (2) In May 1994 appellant and other attorneys filed a grievance to protest that the new Deputy Chief would do performance evaluations. They were overruled and she did the evaluations; (3) As a result of the bombing, 15 people died who were either friends or professional acquaintances of appellant. From May 5 to 11, 1995 he attended six funerals for bombing victims, including two for relatives of his employees; (4) On May 8, 1995 there was a change in appellant's immediate superior; (5) Appellant's demotion to line attorney on May 30, 1995; (6) In late 1995 appellant spent time helping two employees cope with their first holiday season since losing relatives in the bombing. The Office again found that appellant's allegations concerning the Deputy Chief were not established.

The Office requested a supplemental report from Dr. Hope clarifying how appellant's job aggravated his underlying cardiac condition. The Office asked Dr. Hope to provide his rationale and to explain what events in the revised statement of accepted facts were responsible. The Office also asked Dr. Hope to explain the time lag between the events and the onset of cardiac symptoms in December 1995, and to report whether there was any evidence that the functional capacity of appellant's heart had not returned to the level it was immediately prior to April 19, 1995.

In a supplemental report dated October 23, 1996, Dr. Hope responded to the Office's questions as follows:

> "I most emphatically believe that [appellant] suffered exacerbation of his underlying cardiac condition by stress that occurred during two periods of time. This has been set forth in my previous letter. The etiology of stress as a cardiac risk factor has been debated throughout the literature for years but is widely accepted by cardiologists who are experienced dealing with patients. This man has poor cardiac function as documented in my previous letter and in the records from treating physicians. Heart function has been poor but physical abilities have been compensated until the emotional stresses of 1994 and until the second stressful events which occurred during and after the Murrah Building bombing in April 1995. I reviewed the amended statement of accepted facts. It [i]s important to point out what may be the 'accepted facts,' 'not accepted facts' or which may be seen as 'incidents alleged,' 'incidents that occurred but not considered to be factors of,' 'incidents that occurred while in the performance of,' *etc.*, are all somewhat arbitrary and based on various subjective and objective viewpoints. There is no question this man has suffered stress, from his viewpoint. He went into counseling (all documented in my previous report as based on information given to me and in discussion with him). Whether all his grievances are "accepted' or 'not accepted' or even totally fictitious and only in his mind, I still believe he has suffered stress that was clearly work related, correctly or incorrectly, and associated with the appointment of an assistant director. There is no possible way for me to provide retrospective documentary evidence about when his underlying cardiac condition changed on any particular date or day or how it changed. He was hemodynamically compensated in such that he was working and active but a few months later was suffering shortness of breath and unable to play golf and finally was hospitalized. Documentation of heart function prior to those events were not detailed and have not been provided. I am unable to provide retroactive documentation when it has not been made available to me.
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> "You have indicated … that my prior reference to the 'bombing of the Murrah Building' as a singular event is too broad. I in no way tried to imply the bombing of the Murrah Building was a singular event in terms of stress for this patient. I am not sure why you would make this reference. I spoke of the bombing of the Murrah Building as an event merely to abbreviate the sequence of events in which this man was involved and which have been accepted as part of the Murrah Building tragedy. This man was involved in visiting the morgue and had friends

and associates who died. As a matter of fact, your 'revised statement of accepted facts' includes your statement (No. 3) of 15 people who died who were either friends or professional acquaintances of [appellant]. I note this comes under a sub-setting of incidents which are 'not considered to be factors of employment.' This seems totally ludicrous. It was a factor of his employment that appellant was present and was involved with those persons, got to know them in his capacity as Civil Chief and would not have known them had it not been for his employment nor would he have been involved with their deaths and morgue visits, *etc.* had it not been a factor of his employment. How it can be stated these events were not considered as factors of employment is beyond credulity.

"Please consider my reference to 'the bombing of the Murrah Building' as being a broad statement referable to the patient's stress associated with the events beginning at the time of the Murrah Building bombing and continuing until his cardiac catheterization in late 1995."

Addressing the Office's question whether the functional capacity of appellant's heart had returned to its prebombing level, Dr. Hope explained that his only reference to appellant's cardiac function was in the records provided. In 1978 appellant's cardiac ejection fraction was 73 percent. The only other assessment of cardiac function was a January 1996 ejection fraction of 31 percent. Dr. Hope observed that increasing shortness of breath with exertion was coincident with a period of chronic stress involved from May 1994 to April 1995 and with a second period of stress occurring after the Murrah Building bombing in April 1995. Dr. Hope concluded his report as follows:

"In summary, my supplemental report and review of the questions provided and of the revised Statement of Accepted Facts leads me to believe that [appellant] had a diagnosis of repaired atrial septal defect surgery in 1968. He was left with normal cardiac function (documentation per Dr. Pirtle 1978). He has been diagnosed and treated for hypertension. Records from his private cardiologist attest to the diagnosis of hypertensive cardiomyopathy. I have no reason to disbelieve his diagnosis. I have subsequently documented (in two visits now) the patient has suffered real and/or perceived stress in two time periods beginning approximately in mid-1994 extending through the end of that year until April 1995. Specifically this related to employment factors concerned with a deputy appointed directly beneath his position.

"A second period of stress involved the Murrah Building bombing on April 19, 1995 further exacerbating the patient's stress involved with multiple work duties and other factors, some work related and other factors accepted or 'incidents that occurred' or 'incidents that occurred but not considered to be factors of employment.' Stress was ongoing, activity was less, culminating in congestive heart failure, heart catheterization and documentation of poor left ventricular function at the end of 1995 and 1996. The causal and contemporaneous sequence of events seems particularly clear to this observer. I would most emphatically state I believe [appellant's] job over the period of 1994 through 1995 aggravated

his cardiac condition. I apologize if I [ha]ve not been able to make it any clearer how this aggravation has occurred. I feel it is self-explanatory."

The Office referred the medical record and the statement of accepted facts to Dr. Peter Louis, a Board-certified internist and consulting physician, for review. In a report dated December 19, 1996, Dr. Louis stated that a review of the available medical record revealed that appellant had a serious lipid condition, which was a major risk factor for the development and acceleration of heart disease. He stated that a review of the medical literature, specifically the Framingham studies, strongly documented hypertension, diabetes and hyperlipidemia as major risk factors for the premature development, acceleration and deterioration of heart disease, congestive heart failure, arrhythmia and in many cases sudden death. Dr. Louis noted that arrythmias are a hallmark and natural course in chronic heart failure or congestive cardiomyopathy. He added:

"Many social and demographic analyses have so far failed to reach any agreement about the etiologic relationships of occupational stress and similar situational factors and the incidence of heart disease. Therefore, one may medically reason, [appellant's] present medical condition represents the natural history of the heart disease, accelerated by the presence of long standing hypertension, diabetes, and hyperlipidemia, further complicated and/or aggravated by the natural history of the occurrence of an arrhythmia in chronic congestive heart failure or cardiomyopathy."

Dr. Louis reported that he was of the opinion that emotional stress was not an aggravating factor in appellant's underlying heart disease. The aggravation, he stated, was the result of the complication of the natural history of hypertensive heart disease. Dr. Louis reported that the two work factors of stress outlined by Dr. Hope did not cause or contribute to the permanent aggravation of the underlying heart condition. Based on the medical record, he concluded that the deterioration or aggravation of the heart disease was the result of the natural history of the underlying heart condition.

The Office found a conflict in medical opinion between Dr. Hope, the Office second opinion physician, and Dr. Louis, the Office medical consultant. To resolve this conflict, the Office referred appellant, together with the medical record and the statement of accepted facts, to Dr. William A. Collazo, a Board-certified cardiologist. In a report dated February 13, 1997, Dr. Collazo stated that appellant's cardiac diagnosis was very complex and included both well defined and ill-defined origins that had contributed to its current condition. He stated that appellant's primary diagnosis of severe, dilated, "congestive" cardiomyopathy was probably due to a combination of the direct results of his repaired but congenitally severe atrial septal defect as well as the acquired medical effects of chronic hypertension, chronic diabetes, chronic severe dyslipidemia and even possible cardiac toxicity from previous alcohol use as reported in the medical records. Dr. Collazo further reported as follows:

"In my opinion, [appellant's] condition in December, 1995, appears to be the result of the natural progression of his cardiac disease rather than an aggravation or an acceleration of his disease due to the events that were noted in the factors of his employment between April 19 and May 11, 1995. During the dates mentioned

above, I have no doubt that the emotional and physically stressful activities which were performed would have lead to a temporary aggravation of his cardiac condition if it had existed to the degree noted in December, 1995, as well as subsequently in 1996. He clearly makes a case that he was suffering active cardiac symptoms at that time. I gathered this in my initial interview as well as in the review of his chronology of symptoms and medical problems which he provided to me separate from the records. My initial impression following his interview and examination appeared to correlate with his additional report of symptoms. Initially, this led me to believe that there was in fact some potential for at least a temporary aggravation of his cardiac condition during the dates in question. Nevertheless, in review of his detailed medical records, I was unable to find any medical corroboration of his symptoms as described to me between April through November 1995."

Dr. Collazo related appellant's medical care between April 25 and November 14, 1995 and observed no mention of cardiac symptoms or complaints. He stated that, while the bombing would no doubt leave an indelible mark on appellant's emotional psyche, there were several significant predisposing factors that made him believe that appellant's current cardiac condition and his cardiac decompensation in December 1995, were a reflection of a progressive cardiac disease. These factors included a very large congenital atrioseptal defect that was not repaired until the age of 26. Postoperatively appellant was found to have paroxysms of atrial tachycardia rhythm requiring medical treatment. Ten years later appellant developed his apparent first bout of congestive heart failure with a documented enlargement of the left ventricle. Appellant's cardiac risk factor profile included chronic smoking, chronic obesity, a sedentary lifestyle and elevated triglyceride levels. In 1981 appellant developed at least borderline diabetes and abnormal liver function tests with reference to increased alcohol intake. Appellant's diabetes was noted under poor control, and he continued to note intermittent angina. Subsequent records again showed poorly controlled diabetes and markedly elevated lipid tests. It was not until November 1994 when he began insulin that appellant's diabetes finally became under better but not ideal control. Dr. Collazo concluded his report as follows:

"The natural history of a congestive type of cardiomyopathy is quite variable. The etiology is usually not determined and often viral infections are implicated commonly as well as effects of chronic hypertension and/or diabetes. [Appellant] has demonstrated all of the risk factors that have been noted for the development of congestive heart failure with the factors as I have outlined in the previous paragraphs. In my opinion, it seems more likely that his acquired medical diseases such as the hypertension, diabetes and dyslipidemia as well as even previous viral infections have been coupled with his congenital heart defect and its sequelae. It would seem more scientifically rational to explain his present cardiac state as well as the decompensation with rhythm disorder noted in December of 1995 and January of 1996, as that of a consequence of the natural progression of his cardiac disease. His employment circumstances as described, while they will have an everlasting effect on his psyche, appear to have played only a limited role with regards to his organic cardiac disease. This is not to say that his emotional health will have no effect on the potential for cardiac

> decompensation and even an early demise. It would be just as important to continue to treat his emotional health as that of his other medical problems in hopes of allowing the best possible chance of long-term survival."

In a decision dated March 27, 1997, the Office found that the weight of the medical evidence, the weight of the medical evidence establishes a natural deterioration in the underlying disease was responsible for the episode of congestive heart failure in December 1995 without any contribution, even temporarily, by the claimant's employment.

Appellant requested a hearing before an Office hearing representative, which was held on October 21, 1997. Appellant submitted additional reports from Dr. Potts and Dr. Hawkins. In a November 13, 1997 report, Dr. Potts stated with reasonable medical certainty that a series of events associated with appellant's job triggered, or at least hastened, the deterioration of his health, including bombing in April 1995. "It is well known," Dr. Potts reported, "that emotional stress can aggravate a preexisting heart condition."[3] Addressing Dr. Collazo's opinion that the events associated with the Murrah Building bombing may have had a temporary effect on appellant but nothing lasting, Dr. Potts reported as follows:

> "The bombing and its aftermath was unique and had detrimental consequences of a long[-]term nature. Although, scientifically a precise 'cause and effect' relation cannot be fully explained in terms of present day scientific knowledge, I believe that the additional work load chronic stress could place on an already weakened heart could lead to decompensation. This would be especially true if there were multiple stressful circumstances in a relatively short duration of time, as was the case with [appellant] in 1995. The way his condition has stabilized since he resigned from his job provides further evidence that his work and the stress associated with it was aggravating his heart condition."

In a report dated November 19, 1997, Dr. Hawkins stated that it had been several years since appellant had to function in the court and that appellant was feeling a great amount of stress, after his demotion to line attorney, anticipating having to prepare for trial and execute his duties. Appellant had left private practice because of the stress of regularly having to appear in court. Dr. Hawkins noted that appellant's records indicated that his hospitalization, due to increased cardiological problems, occurred at the time that he was preparing for his court cases. "It is this psychologist's opinion," Dr. Potts reported, "that the deterioration was due to increased stress from his assigned duties following the bombing as well as his being demoted, which required him to change his duties to that of an Assistant U.S. Line Attorney."

In a decision dated December 31, 1997, the hearing representative affirmed the Office's decision as it related to appellant's cardiac condition, finding that the opinion of the impartial

[3] Dr. Potts referenced "Hurst, The Heart," edition 8, page 2470: "A single, isolated, identified physical or emotional stress in individuals rendered susceptible to harm therefrom by reason of preexistent heart disease, whether or not previously known or symptomatic, if of sufficient intensity and duration, is capable of eliciting adverse cardiac responses that, in turn, can 'trigger' or hasten certain cardiac lesions and dysfunctions such as an acute attack of angina pectoris or myocardial infarction, a sudden cardiac dysrhythmia (including sudden death therefrom), and a bout of acute congestive heart failure."

medical specialist, Dr. Collazo, represented the weight of the medical evidence. The hearing representative remanded the case, however, for further medical development and a decision on appellant's emotional condition.

The Board finds that this case is not in posture for a determination of whether appellant's cardiac condition is causally related to factors of his federal employment. Further development of the medical evidence is warranted.

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[4]

The Office found a conflict in medical opinion between its second opinion physician, Dr. Hope, and its medical consultant, Dr. Louis. As both are physicians "making the examination for the United States," section 8123(a) provides no authority for the appointment of a third physician to resolve the matter. In truth, a conflict existed between Dr. Louis, who reported that emotional stress was not an aggravating factor in appellant's underlying heart disease, and appellant's attending physician, Dr. Potts, who reported that the stress of his work, with the unusual occurrences that took place in 1995, precipitated an acute change in his status and led to deterioration of his cardiac condition. As the record on this basis supports the appointment of an impartial medical specialist under section 8123(a), the Board will consider the opinion of Dr. Collazo accordingly.

In his February 13, 1997 report, Dr. Collazo, a Board-certified cardiologist, stated that appellant's condition in December 1995 appeared to be the result of the natural progression of his cardiac disease rather than an aggravation or an acceleration of his disease due to the events that were noted in the factors of his employment between April 19 and May 11, 1995. He expressed no doubt that emotional and physically stressful activities during that time would have led to a temporary aggravation of appellant's cardiac condition, and clearly appellant was suffering active cardiac symptoms at that time; however, he was unable to find any medical corroboration of these symptoms from April through November 1995. Dr. Collazo concluded that it seemed more scientifically rational to explain appellant's current cardiac state, and the decompensation with rhythm disorder noted in December 1995 and January 1996, as a consequence of the natural progression of cardiac disease.

Dr. Collazo reported, however, that appellant's employment circumstances appeared to play "a limited role with regards to his organic cardiac disease." This is important to the resolution of the issue in this case as any contribution of employment factors is sufficient to establish the element of causal relationship.[5] Because Dr. Collazo did not explain the limited role that employment circumstances appeared to play in appellant's organic cardiac disease, further development of the medical evidence is warranted to clarify the matter. Unlike

[4] 5 U.S.C. § 8123(a).

[5] *Beth P. Chaput*, 37 ECAB 158 (1985).

Dr. Louis, Dr. Collazo supported the potential for at least a temporary aggravation of appellant's cardiac condition, and he made clear that he did not want to report that appellant's emotional health would have no effect on the potential for cardiac decompensation and even an early demise. While he appeared to draw no connection between appellant's cardiac condition in December 1995 and the events surrounding the bombing in April 1995 given the absence of reported cardiac symptoms or complaints during the intervening months, Dr. Collazo did not discuss whether these events had any shorter-term, contemporaneous effect on appellant's cardiac condition. He reported that appellant had clearly made the case that he was suffering active cardiac symptoms in the aftermath of the bombing. Dr. Collazo must address whether the events of April 1995 had any effect whatsoever on appellant's cardiac condition, the nature of that effect and its apparent duration.

Dr. Collazo must also explain how the absence of reported cardiac symptoms or complaints between April and December 1995 is consistent with the natural progression of the cardiac disease to which he attributed appellant's condition in December 1995, and if it is not, whether it remains medically reasonable to view this absence as negating any contribution by the events of April 1995.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[6] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[7]

The Board will set aside the Office's December 31, 1997 decision and remand the case for a supplemental report from Dr. Collazo clarifying the matters noted. Prior to requesting this supplemental report, the Office shall make findings on whether appellant experienced emotional stress in carrying out his employment duties as a line attorney, or had fear or anxiety regarding his ability to carry out such duties, and shall amend the factors of employment in the statement of accepted facts accordingly. The Office shall also include as compensable established factors of employment all tasks confirmed by the Executive Assistant U.S. Attorney for the Western District of Oklahoma on May 29, 1996 as being generally consistent with the responsibilities of the Chief of the Civil Division and not specifically refuted by the acting U.S. Attorney for the Western District of Oklahoma during the conference of September 6, 1996. Following such further development of the evidence as may be necessary, the Office shall issue an appropriate

[6] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[7] *Harold Travis*, 30 ECAB 1071 (1979).

final decision on whether appellant's cardiac condition is causally related to factors of his federal employment.

The December 31, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
May 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member