

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. EASON and DEPARTMENT OF DEFENSE,
DEFENSE COMMUNICATIONS, Washington, DC

*Docket No. 98-1875; Submitted on the Record;
Issued May 18, 2000*

DECISION and ORDER

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

The issue is whether appellant has disability after July 24, 1990 due to his accepted employment injury.

The Board finds that appellant does not have disability after July 24, 1990 due to his accepted employment injury.

This is the third appeal in the present case. In the first appeal, the Board issued a decision and order¹ on November 16, 1993 in which it affirmed the July 10, 1991 and April 16, 1992 decisions of the Office of Workers' Compensation Programs on the grounds that the Office had met its burden of proof to terminate appellant's compensation after July 24, 1990 because appellant had no disability after that date due to his accepted employment injury, temporary aggravation of hypertensive cardiovascular condition, dysthymia and generalized anxiety disorder.² The Board determined that the Office properly based its termination on the April 13, July 7 and 21, 1989 reports of Dr. Martin S. Kanovsky, a physician Board-certified in cardiovascular medicine who served as an impartial medical examiner. In the second appeal, the Board issued a decision and order³ on May 22, 1997 in which it affirmed a September 7, 1994 Office decision on the grounds that appellant did not establish that he had had disability after July 24, 1990 due to his accepted employment injury. The Board found that, due to its limited probative value, a May 10, 1994 report of Dr. Ernesto Africano, an attending Board-certified internist, did not overcome the weight of the medical evidence as represented by the opinion of Dr. Kanovsky or create a new conflict in the medical evidence. The facts and circumstances of

¹ Docket No. 92-1697.

² Appellant stopped work on May 1, 1987 and retired on civil service disability effective October 30, 1987. The Office determined that stress related to appellant's responsibilities as a management information officer contributed to his medical condition.

³ Docket No. 95-717.

the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

After the Board's May 22, 1997 decision, appellant submitted additional medical evidence which he felt established that he had disability after July 24, 1990 due to his accepted employment injury. By decisions dated October 3, 1997 and April 22, 1998, the Office denied modification of its prior decisions on the grounds that appellant had not submitted sufficient medical evidence to establish that he had disability after July 24, 1990 due to his accepted employment injury.⁴

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁵ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁷

The Board notes that, as determined in its earlier decisions, the Office met its burden of proof to terminate appellant's compensation effective July 24, 1990 by determining that the weight of the medical evidence rested with the well-rationalized opinion of the impartial medical examiner, Dr. Kanovsky.

After the Board's May 22, 1997 decision,⁸ appellant submitted additional medical evidence which he felt showed that he was entitled to compensation after July 24, 1990 due to residuals of his employment injury. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Kanovsky, in terminating appellant's compensation effective July 24, 1990, the burden shifts to appellant to establish that he is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that he had residuals of his employment injury after July 24, 1990.

⁴ In its April 22, 1998 decision, the Office indicated it was denying merit review of appellant's claim. However, the Office in fact performed a merit review of the new evidence submitted by appellant in support of his reconsideration request and the April 22, 1998 decision should be considered a denial of modification of the Office's prior decisions.

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Id.*

⁷ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁸ As noted above, the Board had determined that the May 10, 1994 report of Dr. Africano did not establish employment-related disability after July 24, 1990.

In a document dated September 18, 1997, appellant quoted from various medical articles which he felt supported his claim that he had employment-related disability after July 24, 1990. In a notation on the document, Dr. Richard H. Kastner, an attending clinical psychologist, indicated that he agreed with appellant that “the articles do support his position.” This notation of Dr. Kastner’s, however, is of limited probative value on the relevant issue of the present case in that it does not contain adequate medical rationale in support of its conclusion on causal relationship.⁹ Moreover, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.¹⁰

In a report dated October 6, 1997, Dr. Kastner indicated that appellant continued under his treatment and had been placed on pharmacological stabilization and supportive psychotherapy. He noted, “It is concluded that [appellant’s] medical biological condition as well as his emotional psychological condition is due to stress on the job; said stress has caused the disturbances.” Dr. Kastner indicated that it was concluded on a more than reasonable basis that appellant’s myocardial infarction, status post-cardiac surgery, hypertensive cardiovascular disease and anxiety reaction with severe depression totally disabled him from his former position at the employing establishment.

This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain adequate medical rationale in support of its opinion on causal relationship.¹¹ Dr. Kastner did not explain the process through which appellant’s employment injury, temporary aggravation of hypertensive cardiovascular condition, dysthymia and generalized anxiety disorder, would continue to cause disability for such an extended period. Such medical rationale is especially necessary because appellant had not been exposed to the employment factors which contributed to the accepted employment injury, *i.e.*, stress due to responsibilities at work, since he last worked in May 1987.¹² He did not explain why appellant’s current condition was not solely due to the nonwork-related progression of his underlying medical conditions. Dr. Kastner’s opinion is not based on a complete factual and medical

⁹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁰ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

¹² Dr. Kastner suggested that employment factors caused appellant’s hypertensive cardiovascular disease, myocardial infarction and bypass surgery in 1984, but appellant’s cardiac condition was only accepted for temporary aggravation of hypertensive cardiovascular condition. He did not provide support for a greater employment-related involvement in appellant’s cardiac condition. The record also contains other reports of Dr. Kastner’s, including part of an October 11, 1997 report and an undated report received by the Office in December 1997, but these reports do not contain an opinion on the cause of appellant’s condition.

history in that he provided limited discussion of the implicated employment factors and the progression of appellant's cardiac and emotional conditions.¹³

In a report dated October 10, 1997, Dr. Jerry F. Meyer, an attending physician Board-certified in cardiovascular medicine, briefly described appellant's medical history, including his hypertension since 1973, angina pectoris since 1984, bypass surgery, anxiety reaction and severe depression. He noted that appellant continued to be totally disabled and stated, "As per my previous letters it is quite apparent that these conditions developed during his work as deputy assistant director for resource management and it is quite reasonable to conclude that they were a result of the stress on the job." Dr. Meyer did not, however, provide adequate medical rationale in support of his opinion on causal relationship. He suggested that appellant sustained permanent cardiac conditions due to employment factors but he did not explain the medical process through which such conditions would have developed. Dr. Meyer did not otherwise explain why appellant would have employment-related residuals for such an extended period after being exposed to employment factors. Moreover, he also provided only a limited discussion of the implicated employment factors and the progression of appellant's cardiac and emotional conditions.

In a report dated February 16, 1998, Dr. Africano stated that he had determined there was a direct causal relationship between the stress of appellant's job and his cardiovascular disability. He briefly described appellant's medical condition and noted that he had reviewed various articles identifying stress as a cause of cardiovascular disease. Dr. Africano stated:

"Based on my review of these scientific articles and on [appellant's] clinical history, it is my contention that chronic job stress predisposed [appellant] to maintain an elevated blood pressure and to accelerate the development of coronary atherosclerosis through long-term exposure to mediators such as fibrinogen, cortisol, alpha adrenergic activation, catecholamines, beta endorphins, dyslipidemia, endothelial dysfunction and other neuroendocrine factors known to participate in the atherogenic process. (Please see enclosed references). This resulted in angina pectoris and myocardial infarction from occlusive coronary artery disease."¹⁴

As previously noted, it has not been accepted that employment-related stress caused a permanent cardiac condition with continuing disability and Dr. Africano did not provide adequate medical rationale to support this position. His opinion is not based on a complete factual and medical history in that he provided limited discussion of the implicated employment factors and the progression of appellant's medical condition. Dr. Africano's opinion on causal relationship is essentially general in nature in that it appears to be based more on medical articles of general application than the specifics of appellant's case. He did explain why appellant's continuing disability would not be solely due to some nonwork-related cause.

¹³ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

¹⁴ Dr. Africano attached various articles identifying stress as a cause of cardiovascular disease.

The decisions of the Office of Workers' Compensation Programs dated April 22, 1998 and October 3, 1997 are affirmed.

Dated, Washington, D.C.
May 18, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member