

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLINTON L. COOK and DEPARTMENT OF JUSTICE,  
DRUG ENFORCEMENT ADMINISTRATION, Washington, DC

*Docket No. 99-34; Submitted on the Record;  
Issued May 24, 2000*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective April 29, 1994 on the grounds that he had no residuals of an employment-related cardiovascular condition after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective April 29, 1994 on the grounds that he had no residuals of an employment-related cardiovascular condition after that date.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</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>4</sup>

In June 1996 appellant, then a 57-year-old retired special agent, filed a claim alleging that beginning in 1991 he sustained hypertension due to work stress and that this condition caused him to sustain a subarachnoid aneurysm on February 24, 1995.<sup>5</sup> By decision dated April 9, 1997, the Office found that appellant sustained a temporary aggravation of preexisting

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> Appellant stopped working for the employing establishment on October 29, 1993.

hypertension which ceased six months after October 29, 1993, *i.e.*, April 29, 1994. The Office determined that the weight of the medical evidence rested with the opinion of Dr. Sanjay Chauhan, a Board-certified neurologist to whom the Office referred appellant for a second opinion.<sup>6</sup> The Office noted that the opinion of Dr. Kevin Wingert, an attending physician Board-certified in emergency medicine, was of limited probative value due to its lack of medical rationale and did not show that appellant had an employment-related cardiovascular condition after April 29, 1994.<sup>7</sup>

Appellant requested a review of the written record and, by decision dated October 14, 1997 and finalized October 16, 1997, an Office hearing representative set aside the Office's April 9, 1997 decision and remanded the case to the Office for further development. The Office hearing representative determined that there was a conflict in the medical evidence between Drs. Chauhan and Wingert regarding the nature and extent of appellant's cardiovascular condition and that it was necessary to refer appellant and the case record to an impartial medical examiner in order to resolve the conflict.

On remand, the Office referred appellant and the case record to Dr. Desmond Erasmus, a Board-certified neurosurgeon, for an impartial medical examination and an opinion regarding the nature and extent of appellant's cardiovascular condition. By decision dated February 4, 1998, the Office determined that appellant sustained a temporary aggravation of preexisting hypertension which ceased after he stopped working on October 29, 1993. The Office found therefore that the February 24, 1995 aneurysm was not employment related. The Office accepted that the temporary aggravation of appellant's preexisting hypertension was caused by work stress related to working overtime, working late, traveling long distances for extended periods, carrying a weapon for law enforcement purposes, initiating investigations and being exposed to hazardous chemicals.<sup>8</sup> By decision dated and finalized June 18, 1998, an Office hearing representative affirmed the Office's February 4, 1998 decision.

In the present case, the Office properly determined that there was a conflict in the medical opinion between appellant's attending physician, Dr. Wingert, and the Office referral physician, Dr. Chauhan, regarding the nature and extent of appellant's cardiovascular condition. In order to

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<sup>6</sup> In reports dated February 11 and March 14, 1997, Dr. Chauhan determined that stress at work was sufficient to cause appellant to sustain a temporary aggravation of preexisting hypertension which ceased six months after he stopped work on October 29, 1993. He indicated that employment factors were not sufficient to cause residuals after that date and therefore appellant's February 24, 1995 subarachnoid aneurysm was not employment related.

<sup>7</sup> In reports dated June 10 and September 10, 1996 and an undated report received by the Office in November 1996, Dr. Wingert posited that appellant's work stress was sufficient to cause a hypertensive condition which led to the February 24, 1995 aneurysm.

<sup>8</sup> The effect of the Office's February 4, 1998 decision was to find that appellant sustained a temporary aggravation of preexisting hypertension which ceased six months after October 29, 1993, *i.e.*, April 29, 1994. By accepting appellant's employment-related condition for such a limited period, the Office effectively terminated appellant's compensation after April 29, 1994.

resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Erasmus for an impartial medical examination and an opinion on the matter.<sup>9</sup>

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>10</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Erasmus, the impartial medical specialist selected to resolve the conflict in the medical opinion. The January 20, 1998 report of Dr. Erasmus establishes that appellant had no residuals of an employment-related cardiovascular condition after April 19, 1994.

In his January 20, 1998 report, Dr. Erasmus noted that the employment-related aggravation of appellant's preexisting hypertension only occurred while he was under stress at work. He noted that after a stressful situation has ceased, catecholamines are rapidly metabolized, a condition which allows the blood pressure to return to its usual baseline level within a few minutes or hours. Therefore, the employment-related aggravation of appellant's hypertension ceased when his exposure to work stresses ended after he stopped work in late October 1993. Dr. Erasmus discussed the history of appellant's hypertension since the mid 1980s and noted that medication failed to control his condition even after retirement. He noted that because appellant's underlying hypertension was poorly controlled the condition naturally progressed and appellant sustained the February 24, 1995 aneurysm due to his underlying hypertension condition.

The Board has carefully reviewed the opinion of Dr. Erasmus and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. His opinion is based on a proper factual and medical history in that, he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Erasmus provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>11</sup> He provided medical rationale for his opinion by explaining that the type of employment factors to which appellant was exposed and the condition which was aggravated by them were not sufficient to cause employment-related cardiovascular problems for an extended period after appellant stopped work on October 29, 1993. Dr. Erasmus noted that appellant's June 24, 1995 aneurysm was caused by his underlying cardiovascular condition which was poorly controlled.

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<sup>9</sup> Section 8123(a) of the Act provides in pertinent 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." 5 U.S.C. § 8123(a).

<sup>10</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

<sup>11</sup> *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

The decisions of the Office of Workers' Compensation Programs dated and finalized June 18, 1998 and dated February 4, 1998 are affirmed.

Dated, Washington, D.C.  
May 24, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member