

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERTON PINGEL and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, TRI-CITY AIRPORT, Freeland, MI

*Docket No. 00-209; Submitted on the Record;
Issued November 1, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 27, 1999 for the accepted condition of permanent aggravation of hypertension.

On August 21, 1974 appellant, then a 46-year-old air traffic control specialist, filed a claim for arteriosclerotic heart disease and hypertension, which he related to stress he experienced in his air traffic control duties. The employing establishment indicated that appellant had stopped working on July 22, 1974. In an October 7, 1974 report, Dr. E.P. Balcueva, an internist, stated that appellant's blood pressure was not under control due to the stress of his job. The Office accepted appellant's claim for permanent aggravation of hypertension. The Office paid compensation for the period January 6 through December 30, 1975 while appellant underwent a second career training program at the employing establishment. Appellant left the program, effective December 30, 1975, received disability retirement from the employing establishment and elected to receive temporary total disability compensation from the Office, effective December 31, 1975.

In a July 7, 1980 report, Dr. Balcueva indicated that appellant had a history of severe essential hypertension which became uncontrollable under stress. He noted that appellant had been placed on total disability since 1974. In a March 22, 1981 memorandum, an Office medical adviser commented that there was no evidence that long-standing stress would cause hypertension or aggravate heart disease. He recommended that appellant undergo additional examination and testing.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. I. Donald Fagin, a Board-certified cardiologist, for an examination. In a June 12, 1981 report, Dr. Fagin diagnosed hypertensive vascular disease with Grade II hypertensive retinopathy, probable atherosclerotic coronary artery disease, partial deafness and a history of degenerative cervical disc disease. He commented that, while the cause of hypertension was

unknown in the vast majority of cases, it was generally accepted that elevated blood pressure was more prevalent in occupations characterized by unusual amounts of stress. Dr. Fagin noted that the incidence of hypertension was higher in air traffic controllers than in the general population. He stated that appellant's employment in this capacity, as well as his predisposing personality, could have been causally related to the hypertension he developed. Dr. Fagin concluded that there were reasonable grounds for the belief that the hypertension was proximately caused or materially aggravated by the stresses of his work as an air traffic controller. He opined that the mechanisms by which such stresses might operate would be by stimulating the sympathetic nervous system with resultant constriction of peripheral blood vessels, increase in peripheral vascular resistance and the development of hypertension. Dr. Fagin stated that the hypertension was permanent but he found little evidence of end-organ damage.

In an August 13, 1983 memorandum, a second Office medical adviser stated that the aggravation of appellant's hypertension was temporary and lasted approximately one month after he stopped working. He concurred that appellant's hypertension was causally related to his employment.

In a series of medical reports, Dr. Balcueva continued to state that appellant was totally disabled due to hypertension. In an April 26, 1996 letter, the Office referred appellant to Dr. John F. Collins, a Board-certified cardiologist, for an examination and second opinion. In a May 15, 1996 report, Dr. Collins stated that appellant had severe labile hypertension, which appeared to have been exacerbated by his emotional stress. He noted that appellant had an anxiety disorder which was a contributing factor. Dr. Collins commented that it was very likely that, with anxiety and hypertension, appellant's blood pressure was aggravated by his work as an air traffic controller. He stated that this would be a persistent problem if appellant was currently working and he, therefore, was disabled. Dr. Collins commented that appellant could likely work at low stressful jobs and did not have any physical limitations. The Office requested clarification from Dr. Collins on whether appellant's employment had caused a temporary or permanent aggravation of his hypertension. In a November 8, 1996 report, he stated that appellant had labile hypertension and was markedly elevated when he was aggravated. Dr. Collins indicated that the increase in blood pressure likely occurred when appellant worked. He commented that he could not say whether the aggravation of appellant's condition was temporary or permanent. Dr. Collins stated that he could not directly attribute appellant's condition to his job. He indicated that it was likely that the elevation in appellant's blood pressure due to stress was temporarily related to his job.

The Office concluded that there existed a conflict in the medical evidence between Drs. Balcueva and Collins. It referred appellant, together with a statement of accepted facts and the case record, to Dr. Leon Friedman, a Board-certified internist specializing in cardiology. In a January 8, 1997 report, Dr. Friedman stated that appellant had essential hypertension, which was an idiopathic condition based on an inherited disposition to develop the disease. He noted that appellant had labile hypertension which indicated that his blood pressure would go up markedly when he was exposed to emotional stress. Dr. Friedman stated that the hypertension would subside once appellant was out of a stressful situation. He commented that, when appellant was exposed to stress in his job as an air traffic controller, his blood pressure would be high quite often since his job was stressful. Dr. Friedman indicated, however, that the job did not cause

appellant's hypertension. He stated that appellant's job would cause severe bouts of hypertension periodically although the job would not likely have changed the course of his hypertension. Dr. Friedman pointed out that appellant continued to have elevated blood pressure even though he stopped working in 1975. He concluded that appellant's hypertension currently was not aggravated by his work environment since he had stopped working in 1975. Dr. Friedman stated that any aggravation of appellant's hypertension was temporary but not permanent.

In a May 19, 1997 decision, the Office terminated appellant's compensation effective May 24, 1997 on the grounds that the weight of the medical evidence established that appellant's accepted work-related condition of permanent aggravation of hypertension had ceased.

Appellant requested a review of the written record by an Office hearing representative. In a September 22, 1997 decision, the Office hearing representative found that Dr. Collins' reports were speculative, contradictory and unrationalized. He concluded that this report had little probative value. He stated that Dr. Friedman, therefore, did not serve as an impartial medical specialist and his report was not entitled to special weight. He indicated that Dr. Friedman's report was sufficient to cause a conflict in the medical evidence. He, therefore, set aside the Office's May 19, 1997 decision and remanded the case for referral of appellant to an appropriate impartial medical specialist to resolve the issue of whether the stress of appellant's job caused or permanently aggravated his hypertension.

On remand, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Russell J. DiPonio, an internist. In a June 22, 1998 report, Dr. DiPonio diagnosed severe uncontrolled essential hypertension, although he suggested a possible alternative diagnosis of pheochromocytoma. Dr. DiPonio commented that essential hypertension was idiopathic and had no known cause. He declared that there was no occupation that caused essential hypertension. Dr. DiPonio indicated that essential hypertension was a predisposed inherent condition that could be aggravated by a stressful occupation or any stressful condition. He pointed out that appellant had not worked since 1974 and, therefore, had not been exposed to the occupational stresses but he still continued to have severe, uncontrolled essential hypertension. Dr. DiPonio concluded that the most logical explanation for appellant's hypertension was not caused by his work.

The Office requested clarification from Dr. DiPonio on the issue of whether appellant's job caused or materially aggravated his hypertension. In a May 22, 1998 report, he repeated his statement that appellant's hypertension was not caused by his employment. Dr. DiPonio commented that he would agree with Dr. Fagin that appellant's hypertension would have been aggravated by the stresses of his work. He stated that the underlying disease process continued to cause hypertension after appellant stopped working for the employing establishment. Dr. DiPonio indicated that this disease process would continue no matter what job appellant held. He concluded, therefore, appellant's essential hypertension was temporarily aggravated during his federal employment but the underlying disease process would not have been altered permanently and most likely would not have been altered even on a temporary basis. In a September 3, 1998 report, Dr. DiPonio stated that the temporary work-related aggravation of appellant's hypertension ceased after August 21, 1974, the date after appellant was apparently

terminated from his job as an air traffic controller and, therefore, was no longer exposed to the stresses of his work. He noted that it had been 24 years since appellant had worked as an air traffic controller but he continued to have hypertension. Dr. DiPonio concluded that it would be highly irrational to assume or conclude that appellant's ongoing persistent hypertension was remotely or indirectly aggravated by his previous employment as an air traffic controller.

In a February 24, 1999 decision, the Office terminated appellant's compensation effective February 27, 1999 on the grounds that the weight of the medical evidence established that the employment-related aggravation of hypertension had ceased. Appellant requested a written review of the record by an Office hearing representative. In a June 9, 1999 decision, a second Office hearing representative found that the weight of the medical evidence established that appellant's ongoing hypertension and disability was not causally related to factors of appellant's employment. He, therefore, affirmed the Office's February 24, 1999 decision.

The Board finds that the Office has not met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

The medical reports, of Drs. Balcueva and Friedman created a conflict in the medical evidence on whether appellant's employment caused a permanent aggravation of his essential hypertension. The Office, therefore, referred appellant to Dr. DiPonio to resolve the conflict. However, the Office's procedures require that a physician selected as an impartial medical specialist to resolve a conflict in the medical evidence must be a Board-certified specialist in the appropriate field. If the impartial medical specialist is not Board-certified, the Office must describe the reasons for selecting that particular physician to serve as an impartial specialist.² Dr. DiPonio is not a Board-certified specialist and the Office did not specifically describe the reasons for selecting a physician who is not Board certified to act as an impartial medical specialist in this case. As Dr. DiPonio did not meet the requirements to serve as an impartial medical specialist, his report cannot be used to resolve the conflict in the medical evidence.³ The Office, therefore, has failed to properly resolve the conflict in the medical evidence and, as a result, has not met its burden of proof in terminating appellant's compensation.

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (October 1995).

³ *Charles M. David*, 48 ECAB 543 (1997).

The decision of the Office of Workers' Compensation Programs, dated June 9 and February 24, 1999, is hereby reversed.

Dated, Washington, DC
November 1, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member