

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOUIS L. WALDRON and DEPARTMENT OF AGRICULTURE,  
MEAT POULTRY INSPECTION SERVICE, Minneapolis, MN

*Docket No. 99-1365; Submitted on the Record;  
Issued November 20, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained a myocardial infarction and hypertension in the performance of duty, causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a further review of his case on its merits under 5 U.S.C. § 8128(a).

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative dated August 3, 1998 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.<sup>1</sup>

By letter dated December 10, 1998, appellant, through his representative, requested reconsideration of the August 3, 1998 decision. In support of the request, appellant submitted several statements from appellant alleging that he sustained a heart attack at a flea market as a result of stress placed upon him by his job. Particularly, appellant alleged that he was required to testify at a deposition regarding an injury claim brought by another employee against the employing establishment without being furnished counsel or supervisory advice, which caused excessive stress.

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<sup>1</sup> The Office had previously accepted on September 4, 1997 that six of the employment factors implicated by appellant in the development of his condition were compensable factors of his employment, including: (1) appellant's six-month involvement in a coworker's lawsuit, which required that he give depositions and required that he be subpoenaed to appear in court; (2) appellant's reaction to his inability to hear others during conversations at work, due to noise-induced hearing loss; (3) appellant being held responsible for inspections by other inspectors for which he had no input or control; (4) appellant's reaction to lock and tag out performances which he stated were not part of his job duties; (5) appellant's lack of knowledge of chemical components he was forced to work around; and (6) appellant's reaction to having cold storage warehouses operate without inspection, resulting in contamination due to a shortage of inspectors.

Also in support of his claim appellant submitted a new September 11, 1998 medical report from his treating physician, Dr. Gita G. Sprague, a Board-certified internist, which amplified her previously considered report.<sup>2</sup> Dr. Sprague noted:

“[Appellant] was involved in several depositions and was under extreme pressure. He became so agitated that he presented to the hospital 24 hours later with an acute myocardial infarction documented by myocardial enzymes. [Appellant] was seen by a cardiologist, underwent cardiac catheterization the following week. He had no evidence of coronary artery disease. It was speculated -- yes, but reasonable to assume that the stress caused his blood pressure to be extremely elevated and triggered the myocardial infarction....”

The Office submitted to the record an October 26, 1998 letter to appellant’s congressional representatives, which explained: “[Appellant’s] claim was denied by this office on the basis that the medical evidence of record was not sufficient to establish that his heart attack was caused by [the] work factors deemed compensable by the [Office].”

By decision dated March 10, 1999, the Office denied appellant’s request for further review of his case on its merits under 5 U.S.C. § 8128(a). The Office found that Dr. Sprague’s opinion had previously been considered by the hearing representative and was, therefore, cumulative and not sufficient to warrant reopening appellant’s case for further review on its merits.

The Board finds that the Office abused its discretion in denying appellant a further review of his case on its merits.

Section 8128(a) of the Federal Employees’ Compensation Act<sup>3</sup> does not give a claimant the right upon request or impose a requirement upon the Office to review a final decision of the Office awarding or denying compensation.<sup>4</sup> Section 8128(a) of the Act, which pertains to

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<sup>2</sup> In a June 15, 1998 report, Dr. Sprague noted that, according to appellant, the events leading up to the stress-induced heart attack included a lawsuit and his being subpoenaed several times which made him feel vulnerable. Dr. Sprague noted that cardiac catheterization did not show significant artery disease; “therefore, it is reasonable to suspect that the vasospasm that caused the heart attack ... may have been triggered by stress and hypertension.”

<sup>3</sup> 5 U.S.C. § 8101 *et seq*; *see* 5 U.S.C. § 8128(a).

<sup>4</sup> *Compare* 5 U.S.C. § 8124(b)(1), which entitles a claimant to a hearing before an Office hearing representative as a matter of right provided that the request for a hearing is made within 30 days of a final Office decision and provided that the request for a hearing is made prior to a request for reconsideration.

review, vests the Office with the discretionary authority to determine whether it will review a claim following issuance of a final Office decision. Section 8128(a) of the Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation previously awarded; or

(2) award compensation previously refused or discontinued.”<sup>5</sup>

Although it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under 5 U.S.C. § 8128,<sup>6</sup> the Office, through regulations, has placed limitations on the exercise of that discretion with respect to a claimant’s request for reconsideration. By these regulations, the Office has stated that it will reopen a claimant’s case and review the case on the merits under 5 U.S.C. § 8128(a) upon request by the claimant whenever the claimant’s application for review meets the specific requirements set forth in §§ 10.606 through 10.609 of Chapter 20 of the Code of Federal Regulations revised as of April 1, 1999.

The Federal Register dated November 25, 1998 advised that, effective January 4, 1999, certain changes to 20 C.F.R. Parts 1 to 399 would be implemented. The revised Office procedures pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must:

(1) Be submitted in writing;

(2) Set forth arguments and contain evidence that either:

(i) Shows that [the Office] erroneously applied or interpreted a specific point of law;

(ii) Advances a relevant legal argument not previously considered by [Office]; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”<sup>7</sup>

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> See *Charles E. White*, 24 ECAB 85, 86 (1972).

<sup>7</sup> 20 C.F.R. § 10.606(b)(1), (2).

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>8</sup> The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.<sup>9</sup> When a claimant fails to meet one of the above-mentioned standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>10</sup>

In the instant case, however, appellant submitted new relevant and pertinent evidence not previously considered in the form of Dr. Sprague's new amplification of her previous, more abbreviated report. In the September 11, 1998 report, Dr. Sprague identified a specific compensable employment factor, appellant's required participation in several depositions and identified both a temporal (24 hours) and causal (elevated blood pressure from depositions) relationship with appellant's onset of a cardiac event, which required that he seek emergency medical treatment. Dr. Sprague noted appellant's lack of cardiac disease as determined by cardiac catheterization and, in ruling cardiac disease out, concluded, in the alternative, that it was, therefore, "reasonable to assume that the stress caused his blood pressure to be extremely elevated and triggered the myocardial infarction...." However, the Office declined to review Dr. Sprague's amplified report on the basis that Dr. Sprague's opinion had been previously considered and was speculative.

The Board finds that, in accordance with 20 C.F.R. § 10.606(b)(2)(iii), this new amplified report from Dr. Sprague was sufficient to require reopening appellant's case for further review on its merits.<sup>11</sup> As the Office failed to review Dr. Sprague's new, amplified report containing identification of a specific compensable factor and a stronger, less speculative opinion on causal relation, which included identification of the mechanism involved, it abused its discretion in denying appellant's request for merit review.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 3, 1998 is hereby affirmed, but the decision dated March 10, 1999 is reversed.

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<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>10</sup> See *Mohamed Yunis*, *supra* note 9; *Elizabeth Pinero*, 46 ECAB 123 (1994); *Joseph W. Baxter*, 36 ECAB 228 (1984).

<sup>11</sup> Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done. *William J. Cantrell*, 34 ECAB 1223 (1983). In the instant case, although none of appellant's treating physician's reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a myocardial infarction due to the stress of his required participation in employment-related legal proceedings, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship, that is sufficient to require further development of the case record by the Office. *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978). Additionally, there is no opposing medical evidence in the record.

Dated, Washington, DC  
November 20, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member