U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY SHAY and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

Docket No. 99-2097; Submitted on the Record;
Issued November 9, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a left cerebellar infarction causally related to factors of his employment.

On April 24, 1997 appellant, then a 37-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on April 19, 1997 while returning to the employing establishment from his route, he felt dizzy and unstable. Appellant stopped work but returned in a light-duty capacity in August 1997.[1]

In an April 21, 1997 report, Dr. Barbara Rockett noted that appellant reported feeling dizzy while driving his automobile on April 19, 1997. Dr. Rockett referred appellant for a neurological consultation. Appellant subsequently began treatment with Dr. Daniel J. Sax, a Board-certified neurologist, who submitted subsequent treatment notes and reports indicating he was treating appellant for a left cerebellar infarction.

In a report dated August 5, 1997, Dr. Phillip J. Podrid, Board-certified in internal medicine, noted that he was treating appellant for a stroke. Dr. Podrid noted that the only thing abnormally discovered was a very small patent foramen ovale and it is uncertain if this was the cause of his stroke. However, there were no other abnormalities established. He opined that it was his opinion that the stroke was likely precipitated by physical stresses at work. Dr. Podrid opined that a stroke in such a young person is distinctly unusual and in the absence of any clear-cut abnormalities, the only precipitating factor is the physical stress at work.

In a report dated August 25, 1997, Dr. Sax stated that appellant had an infarction of the inferior left cerebellar hemisphere in the territory of the left posterior inferior cerebellar artery. He also stated that, although appellant was found to have a very small patent foramen ovale as a

[1] A letter dated January 12, 1999 was sent to the Office informing them that appellant had moved to Waiaka, Hawaii.

result of an extensive and complete neurologic and cardiac evaluation, it is not certain that this was the cause of his stroke. Dr. Sax stated that it was his opinion that the cause of the stroke was likely precipitated by the physical stresses of his work. He also stated that such infarctions in young persons were unusual and in the absence of any clear-cut other abnormalities or cause, the probable precipitating factor is the physical stress at work. Dr. Sax also noted that appellant indicated that he had been working overtime and also had been doing a great deal of lifting.

By decision dated September 30, 1997, the Office of Workers' Compensation Programs accepted the occurrence of the claimed employment incident but found that the medical evidence was insufficient to establish an injury resulting from the event.

In a report dated October 15, 1997, Dr. Sax noted that appellant's stroke was directly related and caused by exertions at work.

Appellant requested a hearing which was held on May 19, 1998.

In a report dated June 16, 1998, Dr. Sax provided a history of appellant's condition and noted that he had conducted an extended neurologic evaluation. In his findings, he noted that appellant continued to show the residual effects of the left cerebellar infarction that he sustained on April 19, 1997. Dr. Sax noted that appellant's stroke was a direct consequence of the work that he had been carrying out in the prior weeks that he worked. He noted that appellant had worked a lot of overtime and a significant amount of physical exertion was demanded of him in carrying this out. Dr. Sax noted, "[t]his type of activity without a doubt caused him to have the emboli that occurred from his persistent patent foramen ovale." He explained that physical activity affected cardiac rates and blood pressure, which were predisposing factors for causing small blood clots to travel via systemic circulation. Dr. Sax also stated that "without a doubt [appellant's] work was a direct cause of his present neurologic condition and the proximate cause for him to suffer this infarction."

In a decision dated July 28, 1998, the hearing representative set aside the September 30, 1997 decision and remanded the case for further development. He noted that the claim should be considered and adjudicated as an occupational disease claim rather than a traumatic injury claim. The hearing representative instructed the Office that review of the present case by a district medical director was warranted. The hearing representative noted that, if the Office medical adviser provided a reasoned opinion negating causal relationship, the Office should refer appellant for a second opinion evaluation.

In a report dated December 7, 1998, the Office medical adviser noted that an infarction could occur by either occlusion of the supplying vessel or by embolization into the vessel supplying the area. A congenital malformation of the posterior inferior cerebella vessel could have been the causative factor or it could have been a paradoxical embolism through a patent foramen ovale in the heart. The medical adviser noted that if the cerebellar accident was caused by lifting or hypertension then one would find evidence of bleeding. He also noted that this was not the case in this instance. The medical adviser noted that it appeared that appellant had a spontaneous infarction either due to a congenitally altered blood vessel or a paroxysmal embolism. The medical adviser also noted that none of these causes was related to the work situation and that the recurring symptoms of dizziness, three days prior to the hospitalization,

represented an ischemic phenomena. He opined that the recurrent scenario favored the slow occlusion of a defective blood vessel, most probably congenital in origin. The medical adviser noted that symptoms of an embolism would be sudden in onset and not give recurrent symptoms. He also noted that, based upon this, the cerebral infarction was due to a defective blood vessel, a condition neither related to nor aggravated by factors of employment.

The Office referred appellant for a second opinion evaluation on March 23, 1999 with Dr. Edward L. Chesne, Board-certified in cardiovascular disease and internal medicine, who reviewed appellant's medical history and conducted a physical examination. He listed his physical findings and stated that, "what is clear is that appellant had a significant and neurologic incident on April 19, 1997 causing cerebellar dysfunction and probably the result of an obstruction of the posterior inferior cerebellar artery." Dr. Chesne speculated on why the posterior inferior cerebellar artery (PICA) was obstructed and noted that it may have been that the artery was thrombosed at its origin because there was plaque in that area. He opined that it was possible that the artery was congenitally abnormal and closed as a result. Dr. Chesne also noted that it may have been that the artery was embolized by a clot, causing it to be closed. He noted that the indicator crossed from the right to the left atrium when an echocardiogram (ECHO) was done back in 1997. Dr. Chesne speculated that appellant had a clot in the right atrium that crossed the patent foramen ovale, went into the ischemic circulation and eventually found the PICA and obstructed it. He noted that there was no real evidence that this was the mechanism of appellant's problem except for the fact that the right to left motion of bubbles was seen on ECHO and this sequence of events may explain why the PICA was closed off.

Dr. Chesne also pointed out that on the day the illness began, appellant was doing his usual work, which was strenuous, but no different than other days. He noted that, when appellant had the ECHO test, the bubbles went from the right to the left side, when he was resting quietly, having an ECHO done. Dr. Chesne opined that exertion was not a necessary feature to make the bubbles, or the speculated clot, go from the right to the left side of the heart and onto the brain. Because of this, he indicated it was his belief that appellant suffered an unfortunate and unusual brain infarct. Dr. Chesne also indicated that he did not believe the illness was work related, either by causation or by aggravation.

In a decision dated April 9, 1999, the Office denied appellant's claim on the grounds that he did not establish that his condition was causally related to his employment.

The Board finds that this case is not in a posture for decision as a conflict in the medical evidence exists.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3]

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

The record contains conflicting medical reports regarding whether appellant's neurological condition is employment related. Appellant's physicians, Drs. Podrid and Sax, supported causal relationship based upon appellant's employment factors and his young age with no previous history of stroke. On the other hand, the Office medical adviser found that the cerebral infarction was due to a defective blood vessel, a condition neither aggravated nor caused by factors of employment. The second opinion physician, Dr. Chesne, also found no causal relationship. Drs. Podrid, Sax, Chesne and the Office medical adviser have submitted rationalized reports based upon a complete background, which the Board finds are in conflict on the issue of causal relationship between the incident and appellant's condition.

When there are opposing medical opinions of virtually equal weight and rationale, the case must be referred to an impartial specialist pursuant to 5 U.S.C. § 8123(a) for resolution of the conflict.[5]

To resolve this conflict, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate Board-certified specialist for an impartial evaluation, diagnosis and rationalized medical opinion pursuant to 5 U.S.C. § 8123(a). After such further development as it deems necessary, the Office shall issue an appropriate decision.

[4] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[5] Section 8123(a) of the Act, provides, "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." *See William C. Bush*, 40 ECAB 1064 (1989).

The decision of the Office of Workers' Compensation Programs dated April 9, 1999 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
November 9, 2000

Michael J. Walsh
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member