

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS M. JACKSON and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Philadelphia, PA

*Docket No. 00-771; Submitted on the Record;
Issued February 26, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof to establish that his cardiovascular disease is related to his employment.

On October 2, 1998 appellant, then a 61-year-old manual distribution clerk, filed a traumatic injury claim alleging that he had congestive heart failure while at work on July 30, 1998.

By letter dated October 20, 1998, the Office of Workers' Compensation Programs requested further information from appellant including a comprehensive medical report from his physician explaining the role that appellant's employment may have played in his heart attack and whether employment factors were the cause of the heart attack.

In response, appellant submitted electrocardiogram (EKG) results dated August 5 and 6, 1998, blood test results dated August 7, 1998 and a narrative summary dated September 3, 1998 in which Dr. Euna Lee, a cardiologist, diagnosed coronary artery disease, congestive heart failure, diabetes and questionable chronic obstructive pulmonary disease. Dr. Lee noted that appellant arrived at the hospital on August 5, 1998 complaining of chest pain and shortness of breath and advised that upon release he was to conduct activities "as tolerated."

Appellant also submitted a cardiac catheterization report dated August 7, 1998 in which Dr. Steven A. Levi, a Board-certified internist, and Dr. Michael Savage, a Board-certified cardiologist and internist, diagnosed coronary artery disease, left ventricular dysfunction as manifested by global hypokinesia, mild pulmonary hypertension and 1+ regurgitation. Appellant advised that on July 30, 1998, while walking, he fell and was put on oxygen and taken by ambulance to the hospital.

By decision dated December 3, 1998, the Office denied appellant's claim on the grounds that he did not establish that his cardiovascular condition was caused by employment-related

factors. The Office found that appellant did not submit any evidence providing details of what work activities he believed caused the condition.

In an undated letter, appellant requested an oral hearing and submitted additional medical evidence including an operative report dated February 19, 1999, detailing a coronary artery bypass graft procedure performed by Dr. Michael D. Strong, III, a Board-certified surgeon and thoracic surgeon. In a discharge summary dated March 15, 1999, Mary Druding, a certified registered nurse practitioner, addressed appellant's coronary artery disease, insulin-dependent diabetes, left ventricular dysfunction, congestive heart failure, elevated cholesterol, chronic obstructive pulmonary disease, question of hepatitis C, degenerative joint disease and renal insufficiency. Appellant also submitted EKG results dated February 20, 1999 and a cardiac catheterization report dated February 23, 1999 from Dr. Stanley Berger, a Board-certified cardiologist and internist.

In a June 22, 1999 report, Dr. Berger noted:

“The patient is able to ambulate short distances. However, he has an activity limitation in light of his coronary disease. Although his employment was not a direct cause of his clinical disease, it certainly can exacerbate his symptoms. The patient should be restricted from heavy exertion.”

Appellant also submitted evidence pertaining to a grievance filed against the employing establishment in which he claimed that on July 24, 1998 he was notified by his supervisor, Denise Roane, that it would no longer provide him with transportation to and from work. He stated that he had been provided with transportation due to his inability to use public transportation as a result of a prior employment-related knee injury.

At the oral hearing held on June 28, 1999, appellant alleged that he was subject to disparate treatment and harassment by Ms. Roane. He stated that he had been out of work for seven years due to an employment-related knee injury and, upon his return to work in 1997, the employing establishment agreed to provide him with transportation to and from work. Appellant reiterated that, in July 1998, Ms. Roane notified him that the employing establishment would no longer provide transportation, made derogatory remarks to him and ordered him to perform duties beyond his physical restrictions. He alleged that this treatment caused him additional stress and ultimately contributed to his heart condition.

By decision dated September 20, 1999, the hearing representative found that appellant did not meet his burden of proof in establishing that he sustained an employment-related heart disease. The hearing representative found that appellant's allegations of harassment by Ms. Roane were vague and unsubstantiated; he, therefore, failed to establish a compensable factor of employment. The hearing representative further noted that, even had a compensable factor been established, the medical evidence was not sufficient to establish causal relationship.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related injury.

An employee seeking benefits under the Federal Employees' Compensation Act,¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ that an 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.⁵ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

Appellant has alleged that he was harassed by his supervisor. Actions of an employee's supervisors or coworkers that the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. However, for harassment to give rise to a compensable factor of employment, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement, the claimant must

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.115.

³ See *James A. Lynch*, 32 ECAB 2116 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Delores C. Ellyett*, 41 ECAB 922 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Charles E. Burke*, 47 ECAB 185 (1995).

establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸

In this case, appellant has alleged that he was harassed by his supervisor and submitted evidence regarding two grievances he filed. Appellant, however, has not provided details of the specific verbal incidents alleged or evidence substantiating or verifying what was said. One of the grievances was settled with no fault found⁹ and the second was appealed to arbitration. The record, however, does not contain an arbitration decision. For these reasons, the Board finds that appellant has failed to factually establish this allegation of harassment by his supervisor as a compensable factor of his employment.¹⁰

Furthermore, the medical evidence does not establish that appellant's cardiovascular condition is employment related. While he submitted a June 22, 1999 report, in which Dr. Berger advised that employment "certainly may exacerbate his symptoms," Dr. Berger did not provide a rationalized medical opinion explaining with specificity how appellant's heart condition was caused or aggravated by employment factors. The other medical evidence submitted did not address the issue of causal relationship. The medical evidence is, therefore, insufficient to establish that appellant's heart condition is employment related.

⁸ See *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ The record indicates that a "Letter of Warning" was reduced to an official discussion.

¹⁰ *Garry M. Carlo*, 47 ECAB 299 (1996).

The decision of the Office of Workers' Compensation Programs dated September 20, 1999 is hereby affirmed.

Dated, Washington, DC
February 26, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member