U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS M. BLOMENKAMP and U.S. POSTAL SERVICE,
DUTCH HOLLOW STATION, Belleville, IL

Docket No. 00-281; Submitted on the Record;
Issued March 29, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a myocardial infarction causally related to compensable factors of his employment.

On February 29, 1996 appellant, then a 48-year-old supervisor of customer service, filed a claim alleging that emotional stress encountered in his employment caused him to suffer a myocardial infarction on December 5, 1995. Appellant stopped work on December 6, 1995 and underwent coronary bypass surgery on December 11, 1995. He was off work for approximately four months and then returned to full-time duty, with restrictions. In a November 25, 1996 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. He requested an oral hearing, which was held on July 30, 1997. In a decision dated November 7, 1997, an Office hearing representative found that appellant had established several compensable factors of employment and remanded the case for additional medical development by the Office. In a decision dated March 2, 1998, the Office denied appellant's claim on the grounds that the weight of the medical evidence established that appellant's myocardial infarction was not causally related to the compensable employment factors. In a May 23, 1998 letter, appellant requested reconsideration of the Office's denial and submitted additional medical evidence in support of his request. In a September 1, 1998 merit decision, the Office denied appellant's request for modification of the March 2, 1998 decision. By letter dated October 21, 1998, appellant again requested reconsideration and submitted additional medical evidence in support of his request. In an August 18, 1999 merit decision, the Office again denied his request for modification.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or

specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

In narrative statements submitted in support of his claim, appellant stated that his work as a frontline relief supervisor was very stressful and that this stress increased on June 23, 1993, when he returned from vacation and was informed that his work assignments had been changed. In addition to a change in his nonscheduled days off, which no other supervisors had to endure and a change from alternating day and night duty to straight night duty, appellant was also given a new assignment as mail processing supervisor, with additional duties. Appellant was informed that he would now be responsible for making the weekly schedules for the clerk craft workers, for scheduling all leave requested by clerk craft workers and for counting all flexible stamp credits. He was also placed in charge of scheduling clerk audits and ensuring that the other supervisors conducted their clerk audits in a timely manner. Appellant stated that downsizing, staffing shortages and budget constraints resulted in increased workloads for all employees and appellant was charged with seeing that these duties were carried out. He stated that on June 17, 1994 he received a memorandum chastising him for failing to follow up on the absence of an employee and was further advised by the postmaster on January 18, 1995, that letters of warning would be issued to the next supervisor who missed an audit. Appellant also stated that adjustments in schedules and duties resulted in low productivity figures for several supervisors on July 26, 1994, but that he was the only one who received a note from his superior questioning his low productivity. He alleged that this greatly increased job stress caused or contributed to his having a myocardial infarction on December 5, 1995, requiring coronary bypass surgery.

In letters dated March 6 and 7, 1996, respectively, the postmaster and the employing establishment's human resources specialist controverted appellant's claim, noting that appellant smoked almost three packs of cigarettes a day, was overweight and had gone on a crash diet and

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

[3] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

operated a second business during the day. The employing establishment asserted that it was these factors, rather than job stress, which led to appellant's myocardial infarction.

The Office accepted that appellant established three compensable factors of employment: additional responsibility for clerk craft employee weekly work and leave schedules and flexible stamp counts; scheduling the clerk audits and ensuring all audits were conducted by the supervisors in a timely manner; and extra work pressure associated with reduced staffing and budget constraints. All of these activities involved appellant's assigned duties and, therefore, were within his performance of duty. The supervisory warnings about reduced productivity, employee absences and clerk audits and the changes in appellant's work schedule, are all considered to be administrative actions unrelated to appellant's assigned duties. While appellant alleges that he was singled out for some of these changes and warnings, he has provided no supporting evidence that the employing establishment either erred or acted abusively in the administration of these personnel matters. He provided a witness statement from Kathy Wallis, who agreed with appellant that the employing establishment had gone through many changes, that the job was very stressful and that some of the supervisors are shown obvious favoritism. As this statement speaks only in generalities and does not corroborate the specific instances of unfair treatment alleged by appellant, it does not support a finding of error or abuse.[4]

As appellant has established compensable factors of employment, the issue then becomes whether these factors caused his emotional condition. 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;[5] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[6] 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.[7] The medical evidence required to establish 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,[8] must be one of reasonable medical certainty[9] and must be supported by medical rationale explaining the nature

[4] *See James D. Carter*, 43 ECAB 113 (1991).

[5] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[6] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[7] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

[8] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

In support of his claim, appellant submitted several medical reports from his treating physicians, Dr. Thomas B. Cahill, Jr. and Dr. James V. Vest, both Board-certified internists. In each of their reports dating between February 21, 1996 and March 24, 1998, Dr. Cahill and Dr. Vest acknowledged that appellant had numerous risk factors for coronary heart disease, but stated that they believed appellant's very stressful job was the major contributing factor to his having a myocardial infarction on December 5, 1995. As none of these reports contained any history of specific factual events or discussed any of the facts accepted as compensable, on January 22, 1998, the Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Gerald A. Wolff, a Board-certified internist, for an examination and second opinion.

In a February 20, 1998 report, Dr. Wolff reviewed appellant's medical, social and employment histories and reported his findings on physical examination and testing. He stated that appellant had multiple risk factors for coronary artery disease, including heavy cigarette smoking, probable hyperlipidemia and a history of treatment for hypertension. He further noted that, although appellant stated that his job was stressful, he indicated that he had experienced no sudden, dramatic, violent, bitter, argumentative or emotional job events, followed shortly by chest pain. Dr. Wolff stated that without evidence that appellant's heart attack occurred within one hour of some moderate to high intensity physical labor, or a very discreet emotional reaction, it is impossible to say with reasonable medical certainty that appellant's work caused his heart attack. He acknowledged that recent scientific and medical studies supported the causal role of intense physical or emotional stresses when very close in time to the onset of a heart attack, but explained that in his opinion, the evidence of record was "too vague and inconclusive to support a causal connection" between appellant's work and his heart attack. Dr. Wolff concluded that in his opinion, appellant's coronary artery disease and myocardial infarction were caused, accelerated, aggravated and ultimately precipitated by his being overweight, being a heavy cigarette smoker, having at least a history of hypertension and having probably high serum lipids."

In his most recent report of record, submitted by appellant in support of his final request for reconsideration, Dr. Cahill addressed for the first time the employment factors he believed contributed to appellant's myocardial infarction. Among the factors he stated had caused appellant considerable emotional stress, Dr. Cahill cited, with specificity, to the added responsibility of having to make the weekly clerk schedules, the extra pressure of having to count the flexible stamp credits and the new responsibility of assuring that the other supervisors performed their clerk audits on time. As the factors cited by Dr. Cahill included factors that the Office found were compensable factors of employment, his report, therefore, creates a conflict with the report of Dr. Wolff.

Section 8123(a) of the Act provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

shall appoint a third physician who shall make an examination."[11] Therefore, the case must be remanded for resolution of this conflict. On remand, the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The specialist should be requested to provide a rationalized opinion on whether appellant's December 5, 1995 myocardial infarction was caused or aggravated by the compensable factors of his employment, in whole or in part. After further development as it may find necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs, dated August 18, 1999 and September 1, 1998, are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, DC
March 29, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[11] 5 U.S.C. § 8123(a).