

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN F. CONTE and U.S. POSTAL SERVICE,  
POST OFFICE, Van Nuys, CA

*Docket No. 00-1905; Submitted on the Record;  
Issued May 9, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a stress-related cardiac condition causally related to factors of his employment.

This is the second appeal in this case.<sup>1</sup> Previously, the Board remanded the case for further development because the impartial medical specialist selected to resolve the conflict in the medical opinion evidence had failed to address whether compensable factors of employment had caused or contributed to appellant's emotional or cardiac condition. The facts of this case are set forth in the Board's March 2, 1998 decision and are herein incorporated by reference.

By letter dated April 14, 1998, the Office of Workers' Compensation Programs referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. Robert Shiroff, a Board-certified internist specializing in cardiology, for an evaluation as to whether appellant's cardiac condition was caused or aggravated by compensable factors of his employment.

In a report dated June 16, 1998, Dr. Shiroff related that appellant had an acute myocardial infarction in May 1991. He provided findings on examination and reviewed the medical records. Dr. Shiroff stated:

“There is no clear-cut unequivocal evidence that one can state with a reasonable degree of medical assurance that there is a cause and effect relationship between stress and acute myocardial infarction. That, however, does not mean that there is not an association.

“The issues being addressed in this situation and the questions being addressed to me were a statement of accepted facts. The opinion must be addressed whether or

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<sup>1</sup> Docket No. 96-502 (issued March 2, 1998).

not any of the factors of employment which your office determined to be compensable factors of employment [con]tributed to the claimant's emotional condition and heart condition. I cannot comment about the emotional conditions as that is out of my area of expertise. In terms of the heart condition, it is my opinion after review of literature (this will be made available to you on request, the names, articles and background information) that there is a clear-cut association between the stress that [appellant] was under in his job and his acute myocardial infarction."

In a supplementary report dated August 11, 1998, Dr. Shiroff stated that the last sentence in his June 16, 1998 report should have read: "There is no clear-cut association between the stress that [appellant] was under in his job and his acute myocardial infarction." He continued, "I am of the opinion that there is no unequivocal evidence in the literature and that [appellant's] infarction cannot be clearly blamed on stress."

By decision dated September 10, 1998, the Office denied appellant's claim on the grounds that the weight of the medical evidence, as represented by the report of Dr. Shiroff, established that his cardiac condition was not causally related to employment factors.

By letter dated October 9, 1998, appellant requested an oral hearing which was held on February 23, 1999.

By decision dated and finalized May 6, 1999, the Office hearing representative affirmed the Office's September 10, 1998 decision.

The Board finds that this case is not in posture for decision.

In this case, the Office referred appellant to Dr. Shiroff, a Board-certified internist specializing in cardiology, for an evaluation of whether compensable factors of employment caused or aggravated appellant's cardiac condition.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>2</sup>

In this case, the Board finds that the report of the impartial medical specialist, Dr. Shiroff, is of diminished probative value and, therefore, insufficient to resolve the conflict in medical opinion. In his June 16 and August 11, 1998 reports, Dr. Shiroff stated: "There is no clear-cut unequivocal evidence that one can state with a reasonable degree of medical assurance that there is a cause and effect relationship between stress and acute myocardial infarction. That, however, does not mean that there is not an association." He indicated that, "after his review of articles in the medical literature, he found no clear-cut association between appellant's job stress and his acute myocardial infarction."

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<sup>2</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

The Board finds that Dr. Shiroff's opinion is equivocal and speculative in nature on the issue of causal relationship. Therefore, his opinion is of diminished probative value on whether appellant's claimed condition was causally related to factors of his employment and his report is not entitled to be accorded special weight. Furthermore, it is not clear whether Dr. Shiroff considered whether the compensable factors of employment accepted by the Office caused or aggravated appellant's cardiac condition.

On remand, the Office should refer appellant to a new Board-certified impartial medical specialist, for an examination and evaluation that addresses the specific factors of employment which the Office determined were compensable factors of employment. The Office should then issue a *de novo* decision on appellant's entitlement to compensation benefits.

The May 6, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC  
May 9, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member