

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYRTLE D. DRAPER, Executrix of the Estate of JAMES M. DRAPER and
DEPARTMENT OF LABOR, PENSION & WELFARE BENEFITS ADMINISTRATION,
Atlanta, GA

*Docket No. 97-1915; Submitted on the Record;
Issued May 21, 2001*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that the employee sustained injury causally related to factors of his federal employment.

The Board has duly reviewed the case record in this appeal and finds that the case is not in posture for decision.

On June 14, 1988 the employee, then a 59-year-old auditor, filed a claim for an occupational disease (Form CA-2) assigned number A50-38298 alleging that on September 2, 1987 he suffered from severe angina pectoris and a coronary heart condition due to factors of his employment. He stated that the nature of his job was one of constant pressure, demands and deadlines.¹

By letter dated April 14, 1988, the Office of Workers' Compensation Programs advised the employee to submit factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit evidence regarding the claim.

In an undated letter, the Office advised the employee that it appeared that he had attributed the worsening of his condition to everyday work factors which was not a continuation of the old accepted condition of angina pectoris, which resolved on January 15, 1984. The Office further advised him to submit another Form CA-2 because it appeared that he had developed a new angina condition.²

¹ Appellant retired from the employing establishment on November 20, 1987.

² Prior to the instant claim, the employee appellant filed a claim assigned number A50-22672, which was accepted by the Office for angina pectoris.

In response to the Office's letters, the employee and the employing establishment submitted additional factual evidence.

By decision dated December 16, 1988, the Office found the evidence of record insufficient to establish that the employee's angina was caused by factors of his federal employment. In a January 4, 1989 letter, he requested an oral hearing.

By decision dated April 28, 1989, an Office hearing representative set aside the December 1988 decision and remanded the case for further development of the medical evidence to determine whether the employee's disability due to his angina condition was causally related to his federal employment.

In a letter dated November 3, 1989, the Office accepted the claim for multiple episodes of angina through aggravation of preexisting conditions.

The employee filed several claims for wage loss for various periods of disability beginning November 20, 1987 through December 31, 1990.

In a December 14, 1990 decision, the Office found the evidence of record insufficient to establish that the employee's angina continued to cause him to be totally disabled based on the opinion of Dr. Henry A. Lieberman, a Board-certified internist and impartial medical examiner. By letter dated April 24, 1991, the employee requested an oral hearing before an Office representative.

By decision dated July 7, 1992, the hearing representative affirmed the Office's decision. In a December 2, 1992 letter, the employee, through his representative, requested reconsideration.

In a March 15, 1993 decision, the Office denied the employee's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence, and thus, it was insufficient to warrant review of the prior decision. In a March 29, 1993 letter, the employee, through his representative, appealed the Office's decision to the Board.

By order dated August 16, 1993, the Board granted the Director's motion to remand the case.³ Accordingly, the Board set aside the Office's July 7, 1992 and March 15, 1993 decisions, and remanded the case for further development of the medical evidence.

By letter dated January 4, 1994, the Office referred the employee, together with a list of specific questions, medical records and a statement of accepted facts, to Dr. Stanley Arnold, a Board-certified internist, for an impartial medical examination. By letter of the same date, the Office advised Dr. Arnold of the referral.

³ In its motion to remand, the Office conceded that it did not properly follow its procedures in referring the employee to Dr. Lieberman for an impartial medical examination as argued by the employee's counsel and in creating a statement of accepted facts.

Dr. Arnold submitted a February 18, 1994 medical report revealing the employee's underlying coronary conditions and opinion that his unstable angina was caused by a September 2, 1987 meeting between the employee and management regarding his performance rating. In an April 4, 1994 letter, the Office requested that Dr. Arnold provide additional information regarding the impact of the September 2, 1987 incident on the employee's underlying coronary conditions and the progression of the employee's angina were it not for factors of his employment.

In response, Dr. Arnold submitted a June 10, 1994 supplemental report indicating that the September 2, 1987 incident changed the employee's underlying coronary condition. He also indicated that he could not answer the question regarding the progression of the employee's angina, but that his condition had progressed to its current state and it did so under the influences of his employment.

By decision dated June 20, 1994, the Office found the evidence of record insufficient to establish that the claimed medical condition or disability occurred in the performance of duty. In a June 30, 1994 letter, the employee, through his representative, requested an oral hearing before an Office representative.

In an August 20, 1996 decision, the hearing representative set aside the Office's decision and remanded the case for further development of the medical record.

In an October 1, 1996 letter, the Office requested that Dr. Arnold submit a supplemental report providing the impact of the employee's cigarette smoking on his underlying coronary condition and whether appellant's employment accelerated, precipitated or caused the development of his underlying coronary condition.

In a January 13, 1997 report, Dr. Arnold opined that the employee's cigarette smoking was a risk factor and that it may in some way contributed to the development of his atherosclerosis. He further stated that he was unable to answer the question whether the employee's employment accelerated, precipitated or caused his underlying coronary conditions prior to September 2, 1987.

By decision dated February 4, 1997, the Office found the evidence of record insufficient to establish that the employee's coronary condition was caused by factors of his employment.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.⁴ Unless this procedure is carried out by the Office, the intent of

⁴ See *Nathan L. Harrell*, 41 ECAB 402 (1990).

section 8123(a) of the Federal Employees' Compensation Act⁵ will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.⁶

In the present case, the Office selected Dr. Arnold as an impartial specialist to resolve the conflict in the medical evidence on whether the employee's employment caused or aggravated his underlying coronary conditions and caused disability. The Office cited Dr. Arnold's January 13, 1997 supplemental report as a basis for its decision denying his claim. Dr. Arnold's report, however, failed to establish that the employee's underlying coronary conditions and disability were not caused by factors of his employment. In his report, he stated that he understood the Office's question regarding the cause of the employee's underlying conditions to apply to events, which occurred prior to September 2, 1987. Dr. Arnold stated:

"It is known that mental stress and 'Type A behavior' can be associated with increased risk for development of underlying coronary artery disease. I truthfully do not know the answer to this question and I am not sure that I have the data upon which to answer it. I have responded to this question in regard to the episode of September 2, 1987, but if I am to answer it in regard to the more general question posed, I would need more information regarding any specific events other than that of the above date and more specific information from the patient himself, which is not available."

The Board finds that Dr. Arnold's report does not provide a specific answer to the question of whether factors of the employee's federal employment caused or contributed to the aggravation of his underlying coronary conditions and disability. The case will be remanded for referral for another impartial medical specialist. On remand, the Office shall obtain an opinion from an appropriate impartial medical specialist as to whether the employee's underlying coronary disease was caused or permanently aggravated by factors of his federal employment. After such further development as necessary, the Office shall issue a *de novo* decision.

⁵ 5 U.S.C. § 8123(a) provides the following: "An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by [him] present to participate in the examination. 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."

⁶ *Harold Travis*, 30 ECAB 1071 (1979).

The February 4, 1997 and August 20, 1996 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further development consistent with this decision.

Dated, Washington, DC
May 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member