U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS WALDRON and DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, St. Joseph, MO

Docket No. 02-1815; Submitted on the Record;
Issued December 10, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether appellant has established that accepted factors of his employment contributed to or caused his 1992 myocardial infarction resulting in disability for work.

This case has previously been before the Board. By decision dated November 20, 2000, the Board reversed the Office of Workers' Compensation Programs decision dated March 10, 1999, denying appellant's request for reconsideration. The Board found that a September 11, 1998 report from Dr. Gita G. Sprague, a Board-certified internist, constituted new and relevant evidence and that appellant was entitled to a merit review. Appellant requested review of a September 4, 1997 decision, denying his claim for an emotional condition. An Office hearing representative in a decision dated August 3, 1998, found that even though appellant established six compensable factors of employment, the medical evidence was insufficient to establish causal relationship between the employment factors and appellant's myocardial infarction on September 12, 1992.

Appellant subsequently requested reconsideration. The Office in a decision dated March 10, 1999 denied review. Following the Board's November 20, 2000 decision, the Office on August 10, 2001 referred appellant to a second opinion physician to determine whether appellant's diagnosed heart condition was caused or aggravated by employment factors. Dr. Naseem A. Jaffrani, a Board-certified internist, submitted reports dated September 5, 2001 and February 25, 2002. Dr. Jaffrani examined appellant on August 29, 2001 and diagnosed coronary artery disease, status post anterior myocardial infarction, hypertension, anxiety disorder and history of smoking. He stated that appellant's underlying disease process that included hypertension, smoking history, cardiac disease, obesity and chronic lung disease, could trigger a heart attack. The Office asked Dr. Jaffrani whether, based upon physical and diagnostic examination, appellant's work factors caused or precipitated his heart attack on September 12, 1992. He stated:

> "In addition to the above factors mentioned including hypertension, sedentary lifestyle and smoking, stress is another factor which can precipitate a cardiac

event which leads to a heart attack (acute myocardial infarction). Due to higher stress level, the body secrets (sic) chemicals known as Catecholamines. These chemicals in turn increase platelet aggregation or stickiness of the platelets. Also, there [i]s increase in spasm of blood vessels or coronary arteries, which may lead to an acute myocardial infarction or heart attack. At this point, it [i]s hard to say that his heart attack was solely due to stress. However, on the bases of my physical examination and diagnostic testing performed earlier, I do n[o]t see any physiological or clinical evidence of any decompensatory cardiac functions."

Even though Dr. Jaffrani stated that at this point he could not determine whether appellant's heart attack was due to stress, he added:

"Although I believe that his [appellant's] condition could be aggravated or accelerated by employment factors due to the fact that he was involved in a lawsuit which lasted approximately six months. Also, the fact that he has increased anxiety due to the lack of nautical chemical components he was working with, etc., are most likely temporary aggravation which probably lasted until he retired."

Dr. Jaffrani also submitted a report dated February 25, 2002, in which he modified his answers regarding stress and appellant's heart attack. Dr. Jaffrani stated:

"It is more likely than not that stress precipitated cardiac event. It is known that stress plays a major role in interpretation of a cardiac event. According to some studies, about 50 [percent] of acute myocardial infarctions are related to stress. It would be, however, difficult to be 100 [percent] sure that [appellant's] heart attack was solely due to stress at this point.

"The patient's condition could have been aggravated or accelerated by increased stress and at the same time he was dealing with a lawsuit which could have triggered a coronary event. The patient, however, continued to have increased anxiety at this point which appears to be permanent."

Since Dr. Jaffrani's reports were unclear as to the cause of appellant's condition, the Office referred appellant to Dr. Donald L. Levene, a Board-certified internist, for an additional second opinion.[1] In a report dated May 17, 2002, Dr. Levene opined on the underlying cause of appellant's heart condition, stating:

"Arteriosclerotic heart disease secondary to cigarette smoking, hypertension, hyperlipidemia and probably aggravated by anxiety…. These are the major factors in the cardiac event more so than the type of work. This does not minimize the tendency for severe anxiety or even depression to aggravate the problem whose genesis is cigarette smoking, etc."

[1] Dr. Levene is actually the third second opinion physician of record. Dr. Mohan R. Hindupur, a Board-certified internist, did not provide sufficient responses to the Office's questions.

Dr. Levene indicated that appellant has a history of heavy cigarette smoking, hypertensive disease and hyperlipidemia. He opined that employment factors were much less of a problem than these other factors for coronary disease. He stated that there was no objective evidence to support that the underlying cause of appellant's heart condition was work related.

By decision dated June 10, 2002, the Office denied appellant's claim, finding that the weight of the medical evidence did not support that appellant's underlying condition was a result of exposure to factors of his federal employment.

The Board finds that the issue of whether appellant sustained a medical condition causally related to his employment is not in posture for decision as there is a conflict in medical opinion.

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 individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.[3] 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]

To establish appellant's claim that he has sustained a medical condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that he has a medical condition; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[5] 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.[6]

In this case, the Office accepted in the initial September 4, 1997 decision that appellant established six compensable factors of employment. These include: (1) In September 1992, appellant was involved in a lawsuit with regard to a work-related matter; (2) Appellant's reaction

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[5] *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[6] *Id*.

to his inability to hear people during conversations at work; (3) Appellant was held responsible for inspections by other inspectors, for which he had no input or control; (4) Appellant's reaction to lockout and tagout performances, which he stated that should not be part of his job duties; (5) Appellant's anxiety related to lack of knowledge of chemical components he was forced to work with; and (6) Appellant's reaction to having cold storage warehouses operate without inspection resulting in contamination due to shortage of inspectors. Appellant also has the burden of providing rationalized medical opinion evidence establishing that the identified employment factors are causally related to his medical condition.

The Board finds that there is a conflict in the medical evidence between the combined opinions of Drs. Sprague and Jaffrani and Dr. Levene regarding the first accepted factor of employment. Even though the opinions of Drs. Sprague and Jaffrani alone may not be sufficiently unequivocal to establish causal relationship, the Board finds that their combined reports are of virtually equal weight and rationale as the report from Dr. Levene.

The Office found that, in September 1992, appellant was involved in a work-related lawsuit lasting approximately six months. A man fell on the steps of an elevator shaft and hurt his back. This man subsequently sued the company, which appellant was responsible for inspecting. Appellant was requested to give a deposition but was instructed by his supervisor not to give information to the attorney and that he would be subject to disciplinary action if he did. Appellant was served with a subpoena to appear in court but the lawsuit was settled out of court before he was to appear.

Dr. Sprague, appellant's treating physician, opined in a June 15, 1998 report, that appellant's involvement in the work-related lawsuit triggered his myocardial infarction on September 12, 1992. She stated:

> "[Appellant] is a 55-year-old man who in November of 1992[7] suffered an acute anterior myocardial infarction documented by [electrocardiogram] changes and enzymes…. According to [appellant], the events that lead up to the stress-induced heart attack was a lawsuit at Seitz Foods where he was a USDA inspector. He had been subpoenaed several times by those lawyers and was feeling particularly vulnerable. Cardiac catheterization did not show significant artery disease. Therefore, it is reasonable to suspect that the vasospasm that caused the heart attack, which is documented, may have been triggered by stress and hypertension."

Dr. Sprague also stated in a September 11, 1998 report:

> "[Appellant] is a 55-year-old gentleman who has applied for Workman's Compensation associate with myocardial infarction. [He] was involved in several depositions and was under extreme pressure. He became so agitated that he presented to the hospital 24 hours later with an acute myocardial infarction documented by myocardial enzymes. [Appellant] was seen by a cardiologist, underwent cardiac catheterization the following week. He had no evidence of

[7] The Board assumes that Dr. Sprague means September 1992.

> coronary artery disease. It was speculated yes, but reasonable to assume that the stress caused his blood pressure to be extremely elevated and triggered the myocardial infarction…. He is at a loss to understand why that would not be considered a hazard since it was the stress of his job that triggered these events."

Second opinion physician, Dr. Jaffrani, also opined that appellant's involvement in the work-related lawsuit was related to the myocardial infarction. In a report dated September 5, 2001, he stated: "I believe that [appellant's] condition could be aggravated or accelerated by employment factors due to the fact that he was involved in a lawsuit which lasted approximately six months." In a report dated February 25, 2002, Dr. Jaffrani stated: "The patient's condition could have been aggravated or accelerated by increased stress and at the same time he was dealing with a lawsuit, which could have triggered a coronary event. The patient, however, continued to have increased anxiety at this point which appears to be permanent."

Dr. Levene, however, concluded that there was no objective evidence to support that the underlying cause of appellant's heart condition was work related. He opined that factors such as cigarette smoking, hypertension, hyperlipidemia and anxiety were the major contributing factors to appellant's myocardial infarction.

Section 8123(a) of the Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[8] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[9]

The Board finds that there is a conflict in the medical evidence between the combined opinions of Drs. Sprague and Jaffrani and Dr. Levene as to whether appellant's involvement in the 1992 work-related lawsuit contributed to the onset of his heart attack. The Office shall prepare a statement of accepted facts and refer appellant for an impartial medical examination as to whether factors of appellant's employment including the lawsuit contributed to or caused his 1992 myocardial infarction and if so, whether appellant is disabled due to this condition or continues to suffer residual from the 1992 myocardial infarction. After such further development as necessary, the Office shall issue a *de novo* decision.

[8] *H. Adrian Osborne,* 48 ECAB 556 (1997); *Lawrence C. Parr,* 48 ECAB 445 (1997).

[9] *Charles M. David,* 48 ECAB 543 (1997); *Lawrence C. Parr, supra* note 8.

The June 10, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside in part and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
December 10, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member