

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK B. DONAHUE and U.S. POSTAL SERVICE,
POST OFFICE, New Bedford, MA

*Docket No. 02-2186; Submitted on the Record;
Issued December 23, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a cardiac condition in the performance of duty.

In August 2001, appellant, then a 62-year-old motor vehicle operator, filed a claim alleging that his cardiac problems, including a myocardial infarction sustained on July 1, 2001 were caused or aggravated by his exposure to secondhand smoke created by coworkers smoking cigarettes at work. He claimed that he was exposed to such smoke for a half-hour to an hour a day between late March 2001 and late June 2001.¹ On July 1, 2001 appellant was attending church when he experienced chest pains. He was hospitalized between July 1 and 5, 2001 and it was determined that he sustained an acute myocardial infarction on July 1, 2001. Appellant underwent extensive testing, including stress testing, between July and September 2001. By decision dated July 22, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not meet his burden of proof to establish that he sustained a cardiac condition in the performance of duty. The Office indicated that the medical reports of record, including the reports of Dr. Richard M. Delaney, a Board-certified cardiologist who served as an Office referral physician, did not contain a well-rationalized opinion establishing that appellant's cardiac condition was employment related.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a cardiac condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his 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

¹ Appellant's last day of work was June 30, 2001; he has not returned to work. It appears that the Office has accepted appellant's assessment of his exposure to secondhand smoke at work.

² 5 U.S.C. §§ 8101-8193.

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 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 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 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.⁵

The Board finds that the medical evidence of record does not show that appellant sustained a cardiac condition in the performance of duty.

In a report dated October 3, 2001, Dr. Zia U. Kidwai, an attending Board-certified cardiologist, noted that appellant reported being exposed to secondhand smoke for a half hour to an hour a day between late March 2001 and late June 2001. Dr. Kidwai stated:

“While secondhand smoking in general is considered to be detrimental in terms of causing increased incidence of coronary artery disease as well as pulmonary/lung problems, he was exposed to it for a brief period of time and the association between duration of exposure to secondhand smoking and secondary occurrence of cardiac events is unclear without any objective evidence.

“Summarizing, my findings, therefore, are that this gentleman does have risk factors that would on their own result in occurrence of cardiac events and heart problems including heart attack, but he did have secondhand exposure to smoking for a brief period of time that may have contributed to this. For reasons mentioned above, one cannot be completely certain about this link.”

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

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

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

Dr. Kidwai's report is of limited probative value on the relevant issue of the present case in that it contains an opinion on causal relationship, which is speculative and equivocal in nature.⁶ Dr. Kidwai indicated that it remained unclear whether appellant's exposure to secondhand smoke at work contributed to his cardiac condition. In fact, Dr. Kidwai strongly suggested that the relatively short time appellant was exposed to secondhand smoke served to cast doubt upon a finding that this factor contributed to his cardiac problems. Dr. Kidwai emphasized that appellant had nonwork risk factors which would be fully responsible for his cardiac condition.

In March 2002, the Office referred appellant to Dr. Delaney, a Board-certified cardiologist, for a second opinion regarding the claimed connection between his cardiac condition and exposure to secondhand smoke at work. In a report dated March 18, 2002, Dr. Delaney discussed appellant's cardiac condition and diagnosed coronary artery disease status post myocardial infarction with residual scar and clinically stable schema; hyperlipidemia, perhaps controlled; diabetes mellitus with insulin resistance; and hypertension, controlled. Dr. Delaney stated:

"It is my opinion that [appellant's] current condition might be, in part, indirectly related to the duties of his employment. This relationship takes the form of chronic isometric stress upon his left ventricle during his job as a truck driver lifting boxes on and off his truck. In addition, passive smoke ingestion may have also contributed to the development of some element of his atherosclerosis by enhancing its development. However, he does have other risk factors that probably played a greater role in contributing to the occurrence of his obstructive coronary artery disease."

* * *

"It is unknown how much each of these two activities contributed to the precipitation, aggravation or indirect acceleration of his underlying coronary condition that became clinically manifest for the first time in July 2001."

The Office requested that Dr. Delaney provide a supplemental report further explaining his opinion. In a report dated April 26, 2001, Dr. Delaney again suggested that passive smoke ingestion and isometric stress from the physical demands of appellant's job might have contributed to his cardiac condition. Dr. Delaney stated:

"There is no way to exactly quantify the degree to which a specific risk factor may have played in the eventual development of [appellant's] coronary condition. It is my opinion that these two work-related factors probably played a small (less than 40 percent) role in the causation and/or aggravation of his disease, but this is only speculation, not fact."

⁶ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

In his March 18 and April 26, 2002 reports, Dr. Delaney also provided an essentially speculative and equivocal opinion regarding whether work factors contributed to appellant's cardiac condition. He used such words and phrases as "speculation," "possible" and "might be" to describe the possible relationship between secondhand smoke exposure (as well as the job's physical demands) and appellant's cardiac condition. When the reports are viewed in their totality it is clear that Dr. Delaney was unable to determine whether work factors caused or aggravated appellant's cardiac problems, including his July 1, 2001 myocardial infarction. His reports are of limited probative value for the further reason that they lack adequate medical rationale and complete factual and medical histories. For example, Dr. Delaney did not provide any notable discussion of the degree to which appellant was exposed to secondhand smoke at work. Nor did he adequately describe the medical process through which the implicated employment factors could have contributed to appellant's medical condition.

For these reasons, appellant did not meet his burden of proof to establish that he sustained a cardiac condition in the performance of duty.

The July 22, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 23, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member