

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE A. BANCHS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION, Boston, MA

*Docket No. 01-2065; Submitted on the Record;
Issued July 10, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant's stroke on March 31, 1997 was causally related to factors of his federal employment.

On August 31, 1997 appellant, then a 45-year-old supervisor detention enforcement officer, filed an occupational disease claim alleging that he suffered a stroke on March 31, 1997 due to stress arising from his work duties and job environment. He has not worked since the date of the stroke.

In a report dated May 15, 1997, appellant's treating physician, Dr. Adam W. Cerel, a Board-certified internist with a specialty in cardiovascular disease, stated that appellant was admitted to the hospital in April 1997 with numbness and probable lacunar stroke. He stated that the stroke occurred in the setting of job stress. Dr. Cerel stated that there was no question that the stress from appellant's work environment had exacerbated episodes of chest discomfort.

The Office of Workers' Compensation Programs prepared a statement of accepted facts dated January 26, 1998 that noted that on March 31, 1997 appellant was making an arrangement for the deportation of several deportees. Appellant was transported to the hospital from work and treated with a neurological consultation. He was discharged from the hospital on April 3, 1997.

In a report dated February 25, 1998, Dr. Robert Levine, a referral psychiatrist and neurologist, considered appellant's history of injury, performed a physical examination and diagnosed stroke with left-sided numbness. He noted that, just prior to the stroke at work, appellant had trouble talking. Dr. Levine opined that there was no causal relationship between appellant's work activities and the March 31, 1997 stroke. He stated that the actual episode began at home and it was questionable whether it was a stroke. Dr. Levine stated that assuming it was a stroke, it was unclear what part of the brain was involved since his "imaging studies" were unremarkable. He stated that the clinical presentation suggested it was principally a right parietal event but it was difficult to explain appellant's inability to speak.

By decision dated April 16, 1998, the Office denied the claim, finding that appellant failed to establish that the claimed condition was caused by his employment.

By letter dated May 15, 1998, appellant requested an oral hearing before an Office hearing representative.

Following a review of the case record, an Office hearing representative issued an August 31, 1998 decision which set aside the April 16, 1998 decision. The hearing representative found that Dr. Levine's report was not well rationalized and the statement of accepted facts was deficient in failing to properly describe appellant's difficulties on his job due to a pending blizzard in the region on March 31, 1997. The Office hearing representative directed the Office to amend the statement of accepted facts and secure a supplemental report from Dr. Levine.

In a September 24, 1998 statement of accepted facts, the Office noted that appellant was responsible for the management of all detention at the service processing center which was a holding facility with 50 available beds. His job required him to make on-the-spot operational decisions that affected up to 50 service center detainees and an additional 75 to 100 detainees in outside contract jail facilities. On Sunday, March 30, 1997, while taking a shower, appellant experienced the sudden onset of numbness through his entire left upper extremity and developed a headache which resolved, although he continued to experience persistent numbness involving the third, fourth and fifth fingers, the ulnar hand and forearm. On Monday, March 31, 1997, as a blizzard developed, appellant was forced to make alternate arrangements for the deportation of several detainees and, at the last moment, cancel prior arrangements that had taken weeks of planning. Appellant experienced stress in attempting to make the necessary last minute changes, felt the sudden onset of numbness of his left face and was transported and admitted to the hospital.

In a report dated October 1, 1998, Dr. Levine stated that the nature of the sensory stroke on March 30, 1997 was never defined. He stated that some of the records stated that it was a right parietal stroke and others felt it was a lacunar stroke. Dr. Levine stated, however, that even with the amended statement of accepted facts there was no causal relationship between any work activity or stress at work and appellant's presumed stroke. He stated that in general there was no causal relationship between stress and "these types of stroke."

By decision dated December 7, 1998, the Office denied appellant's claim, finding that the weight of medical evidence failed to establish that his claimed condition was caused by factors of his federal employment.

By letter dated January 5, 1999, appellant requested an oral hearing before an Office hearing representative. An oral hearing was held on July 19, 1999. Appellant's attorney contended that the amended statement of accepted facts failed to state that appellant's symptoms on March 30, 1997 had resolved before he went to bed and failed to describe appellant's symptoms on March 31, 1997 in proper detail. He also contended that Dr. Levine's October 1, 1998 supplemental report was deficient as it was based on an erroneous amended statement of accepted facts and was not well rationalized.

At the hearing, appellant testified that in March 1997, his office had been planning a “huge deportation” to connect through Germany and Italy. He stated that he had to obtain provisional passports and airline tickets for several detainees, fly the officers with the detainees and find officers to cover the officers who were leaving. Appellant stated that the detainees were coming in from New Hampshire and the deportation hearings had been set up in Boston; however, with the blizzard coming, Logan Airport had closed. Appellant stated that when he called the State Department to advise that the detail had to be cancelled, he suddenly was unable to talk and experienced blurred vision and numbness in his left hand. Appellant stated that he had been under a “tremendous amount” of stress at work in general because he had no support staff to perform the “voluminous” clerical work he generated.

In a report dated March 8, 1999, Dr. Cerel considered appellant’s medical history and job duties in general, performed a physical examination and reviewed an electrocardiogram. He concluded that appellant’s prior vocation as a supervisory detention enforcer “would have aggravated and exacerbated his episodes of angina, simply through the daily stresses associated with this position, as well as potentially physical stress from having to react and move quickly under certain circumstances.”

By decision dated October 17, 1999, the Office hearing representative found that Dr. Levine’s opinion was not well rationalized. The case was remanded for Dr. Levine to provide another opinion or for the Office to obtain another second opinion from an appropriate medical specialist. The Office hearing representative instructed the Office to amend the statement of accepted facts to include that appellant first experienced numbness on the left side during the evening of March 30, 1997.

In a report dated January 4, 2000, Dr. Levine reiterated his opinion that there was no causal relationship between appellant’s stress at work and his presumed stroke. Dr. Levine stated that his opinion was “based on the fact that [appellant’s] possible stroke first became symptomatic at home while showering” and, therefore, “the pathological process if there was one to result in his stroke, began at home.” He stated that the event was a transient ischemic heart attack. Dr. Levine stated that the symptoms recurred the following day when appellant was at work. He stated that the event at work had no relationship to the fact that appellant was at work. Dr. Levine stated that “[j]ust at the first event occurred while at home showering, the event at work could well have occurred had it been a day [appellant] was not working.” He stated that “[t]he whole pathologic process had begun the day before and coincidentally had not been at a time when he was working.”

By decision dated January 24, 2000, the Office denied appellant’s claim, stating that the weight of the evidence rested with Dr. Levine’s opinion and failed to establish that appellant’s stroke was causally related to his work activities or stress arising in the workplace.

By letter dated January 28, 2000, appellant requested an oral hearing before an Office hearing representative that was held on June 12, 2000.

In a report dated May 31, 2000, Dr. Cerel considered appellant’s history of injury and performed a physical examination. He opined that appellant was an insulin-dependent diabetic, was hypertensive, had cardiovascular disease and was hyperlipidemic. Dr. Cerel stated that

appellant's symptoms were consistent with angina and he believed appellant's employment had aggravated and exacerbated his angina. He stated:

“In regards to the events on March 30, 1997, [appellant] developed tingling of his entire left side, pins and needles. He was evaluated by a [B]oard-certified neurologist, [Dr.] Gary Stanton, who felt that [his] symptoms were consistent with a lacunar event and [he] was treated with aspirin. There is no way based on [appellant's] history of response to stress, that these symptoms were not aggravated or exacerbated by the ongoing stress from [his] workplace.”

By decision dated August 22, 2000, the Office hearing representative found that there was a conflict in the medical evidence between Dr. Cerel and Dr. Levine as to whether appellant's stroke was work related. The case was remanded to refer appellant to an impartial medical specialist to resolve the conflict.

On remand the Office referred appellant to Dr. Robert W. Egan, a Board-certified psychiatrist and neurologist selected as the impartial medical specialist. In a report dated October 19, 2000, Dr. Egan considered appellant's history of injury, performed a physical examination and reviewed the results of a head computerized axial tomography (CAT) scan. He diagnosed, in part, s/p transient cerebral ischemic attack in March 1997, more likely localized to right pons brainstem because of combination of the type of sensory loss and speech and swallowing problems, than to right parietal locus. Dr. Egan also diagnosed arterial sclerotic heart disease with angina pectoris, Class III. He stated:

“From all of the above, I have to conclude, that what transpired on March 31, 1997, clearly was part of the process of a transient ischemic event involving [appellant's] central nervous system. This process clearly had its beginning on Sunday, March 30, [1997] but its effects became more obvious during the morning of March 31, 1997, as the accumulative effects of the fatigue of all of [appellant's] morning activities summated between 8:30 a.m. and 9:00 a.m., making his need for medical assistance obvious to all.”

Dr. Egan discussed generally whether stress can cause a stroke and noted that the effects of stress, as in a possible cause of stroke, had been debated for many years. He concluded that “[i]n the face of such lack of evidence favoring the etiology of stress being a definite factor to a degree of reasonable medical certainty, just has not been sustained, to my knowledge.”

Dr. Egan stated:

“For all of the above reasons, I believe that the number of risk factors for stroke that apply to anyone, such as [appellant], bad family history, ten years of significant insulin[-]dependent diabetes mellitus and hyperlipidemia far outweigh the role of stress and timing, in the event that began on Sunday and became more obvious on Monday, March 31, 1997.”

He concluded that there was no causal relationship between appellant's occupation and the events of his illness that evolved during the course of March 31, 1997.

By decision dated November 6, 2000, the Office found that the weight of the evidence rested with Dr. Egan's opinion and denied appellant's claim.

By letter dated November 9, 2000, appellant requested an oral hearing before an Office hearing representative that was held on April 24, 2001. At the hearing, appellant's attorney contended that appellant's symptoms of March 30, 1997 completely resolved that evening, contrary to the statement of accepted facts. The attorney contended that Dr. Egan's opinion was vague and speculative.

By decision dated July 11, 2001, finalized on July 23, 2001, the Office hearing representative affirmed the Office's November 6, 2000 decision.

The Board finds that appellant has not established that he sustained a stroke causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.² As part of this burden the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.³

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴

The Office found a conflict of medical opinion between Dr. Cerel, for appellant and Dr. Levine, a referral physician, as to whether his stroke was causally related to his federal employment. Based on this conflict, appellant was referred to Dr. Egan for an impartial medical examination. In an October 19, 2000 report, Dr. Egan reviewed appellant's medical file and the reports of the examining physicians. He noted that appellant was seen in the emergency room on March 31, 1997 and a CAT scan was negative. Appellant was treated by Dr. Stanton, who recommended his admission for a slight stroke. Dr. Egan stated that his neurological examination of appellant was essentially unremarkable for the cranial nerves, except for some sluggish reactive pupils and some sluggish motor findings consistent with the history of

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁴ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

March 31, 1997. He noted that appellant's pupillary responses, ankle reflex and distal reduction in vibration at the great toes was consistent with appellant's diabetic history. Dr. Egan diagnosed a transient cerebral ischemic attack on March 31, 1997 with insulin[-]dependent diabetes mellitus. He opined that appellant's history was significant for both difficult to control adult onset diabetes and active coronary artery heart disease. Dr. Egan noted that appellant retired from work in December, 1997 but continued to have active angina.

Dr. Egan reviewed appellant's job duties as a supervisory detention officer and stated that appellant's transient ischemic attack had its beginning on Sunday, March 30, 1997 but its effects became more obvious during the March 31, 1997 before appellant was transported to the hospital at 10:30 a.m. He explained that, with appellant's neurological dysfunction, appellant exhibited fatigue that became apparent at work. With regard to the relationship of stress as a possible cause of stroke, Dr. Egan noted that there was a lack of evidence from many studies that favored stress as an etiological or causative factor of strokes. He opined that appellant had a number of risk factors for stroke based on his family coronary and diabetes history, ten years of insulin[-]dependant diabetes mellitus and hyperlipidemia. Dr. Egan concluded that appellant's illness of March 31, 1997 was not causally related to stress arising from the performance of his federal employment.

The Board finds that the weight of medical opinion is represented by the report of Dr. Egan, the impartial medical specialist. His report is well rationalized and based upon a proper consideration of the factual and medical background of this case. The report of Dr. Egan is entitled to special weight and supports the Office's decision. As such, appellant has not sustained his burden of proof of establishing entitlement of benefits under the Act.

The July 23, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 10, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member