

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISMAIL I. SHAISHAA and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, New York, NY

*Docket No. 01-1929; Submitted on the Record;
Issued June 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant's mild stroke on November 2, 1998 was causally related to his federal employment.

On February 1, 1999 appellant, then a 58-year-old senior auditor, filed an occupational disease claim asserting that "the very stressful work atmosphere and high tension in the work environment" had caused or at least contributed to the mild stroke he suffered on November 2, 1998 while at work. He explained that he found the nature of audit work to be very stressful.

Dr. Husam B. Shitia, a specialist in internal medicine and appellant's attending physician, diagnosed angina pectoris, questionable brain lesion and questionable stroke versus transient ischemic attack. In a form report dated January 21, 1999, Dr. Shitia indicated with an affirmative mark that these conditions were caused or aggravated by appellant's employment. He added: "stress, heavy work, heavy activity might caused (sic) or did aggravate the condition since first symptoms started at work November 2, 1998."

On February 3, 1999 Dr. Shitia reported as follows:

"[Appellant], with his multiple risk factors of diabetes, hypertension and the stressful atmospheric nature of his job as senior auditor could have [precipitated] his attack of minor stroke on Nov[ember] 2, 1998. Because of the brain lesion (ischemia, mild stroke), he will be more thoroughly evaluated by a neurologist at Yale New Haven Hospital in the near future. Next week he is scheduled for an angiogram to evaluate his heart condition.

"Due to the nature of his heavy and stressful work conditions, I recommend that he should not work until a full evaluation of his neurological and cardiac status is completed. Meanwhile, we are trying to have a better control over his blood pressure and diabetes."

On March 4, 1999 the Office of Workers' Compensation Programs wrote to Dr. Shitia and requested that he submit a comprehensive report containing, among other things, his opinion, supported by a medical explanation, on how the reported work incident caused or aggravated appellant's condition. The Office elaborated:

"We accept that the patient's employment is sometimes confrontational in nature, especially when he finds fraud, waste or abuse during the course of his duties. It is also accepted that the patient has other significant risk factors such as diabetes and hypertension. Please give us your opinion as to the relationship between the patient's employment factors and the minor stroke he suffered on Nov[ember] 2, 1998. Include in your report what role the patient's diabetes and hypertension may have played in the claimed condition."

In a report dated March 10, 1999, Dr. Shitia replied as follows:

"Regarding item # 7 [opinion on causal relationship], since [appellant's] diabetes and hypertension were under control with his previous primary care physician and given the stressful nature of his job as a senior auditor, as was explained by [appellant], it is my opinion that [appellant] did, in all probability, suffer from a minor stroke on November 2, 1998, which could have been precipitated by his heavy and stressful work conditions. His first neurological consultation report from Dr. Lawrence Beck, dated November 4, 1998, (see attached copy), his last MRI [magnetic resonance imaging] results, dated December 18, 1998 (see attached copy), as well as his recent neurological consultation with Dr. Joseph B. Guarnaccia, (Yale School of Medicine), dated February 22, 1999, supports [appellant's] diagnosis of mild stroke."

In a decision dated April 28, 1999, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish that his condition resulted from factors of his federal employment.

On May 14, 1999 Dr. Shitia reported the following regarding the minor stroke and angina appellant suffered on November 2, 1998:

"[Appellant's] blood pressure and diabetes were under control prior to his stroke (see attached copy of blood tests, dated October 30, 1998, including HgA1C of 6.9) would make them low as risk factors.

"So given the stressful nature of his job as it was explained by [appellant], it is my opinion that [appellant] in all probability, suffered from a minor stroke on November 2, 1998, which could have been precipitated by his stressful work conditions."

On August 5, 1999 Dr. Shitia provided clarification:

"[Appellant's] blood pressure and diabetes were under medical control prior to his stroke (see attached copy of blood tests dated October 30, 1998, including HgA1C

of 6.9). In light of these findings, the diabetes and blood pressure, although risk factors to stroke, were low risk factors at the time of his stroke.

“In my medical professional opinion, based on the foregoing, it is within reasonable medical probability that the stressful work conditions as described by [appellant], were the predominant and therefore, the most medically significant risk factor in causing [his] stroke on November 2, 1998.”

Following an oral hearing on December 22, 1999, an Office hearing representative issued a decision on April 12, 2000 setting aside the denial of appellant’s claim and remanding the case to the district Office for further development. The hearing representative found that Dr. Shitia’s reports were of diminished probative value because appellant did not provide “a completely accurate history of injury as evidenced by the comments of the employing agency.” Nonetheless, as the reports raised an uncontroverted inference of causal relationship, additional medical opinion evidence was warranted.

On remand the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Ronald H. Levin, a specialist in internal medicine, for an opinion on the issue of causal relationship. On July 26, 2000 Dr. Levin reported as follows:

“I believe that [appellant] had a stroke on November 2, 1998, which was probably related to his hypertension and diabetes mellitus and not his job.

“I believe he did have a stroke on November 2, 1998. Although, I do not think his job was the cause of the event. I am not sure he can perform those duties at this time secondary to some cognitive dysfunction. His current condition is secondary to the ischemic event (CVA) [cerebrovascular accident] of November 2, 1998.”

* * *

“I do not think he can perform all his duties of Senior Auditor position, because I think his cognitive function is currently slightly impaired. His disability is related to his stroke, secondary to his history of diabetes mellitus and hypertension.”

In a supplemental report dated August 3, 2000, Dr. Levin explained as follows:

“Both hypertension and diabetes predispose an individual to a stroke especially if not well controlled. The job description does not seem to be stressful enough to contribute to this event. I feel that the underlying medical problem predisposed him to this event.”

In a decision dated August 7, 2000, the Office denied appellant’s claim on the grounds that the weight of the medical evidence rested with the opinion of Dr. Levin and established that appellant’s stroke was caused by his underlying condition, not by factors of his federal employment.

Appellant requested reconsideration and submitted additional evidence to support his claim.¹ On June 20, 1992 Marcela Penaranda, a psychotherapist, reported: “Following extremely unjust treatment at work, [appellant] has developed anxiety and depression, in addition to a series of physical illnesses which are continuing to accelerate, possibly to the point of being life threatening.”²

On October 22, 1992 Dr. Nisar A. Quraishi, a Board-certified internist, reported that appellant had been under his care since April 1992 and had always presented with excessive stress at his place of employment. Appellant suffered from hypertension, diabetes mellitus and stress syndrome. Dr. Quraishi explained that diabetes mellitus and hypertension are adversely related to stress, and he had noticed that appellant’s diabetes and blood pressure had been out of control despite adequate medication: “This is undoubtedly due to his being under unusual stress at his place of work.”

On September 11, 1996 Dr. Quraishi reported: “[Appellant] reports to me that he has a lot of stress because of harassment at his job. This is affecting his diabetes, hypertension and general health in a deleterious way. Any actions taken to reduce stress at his work will be appreciated.”

Appellant also submitted a February 15, 2000 neuropsychological consultation assessment indicating that he was disabled by his clinically significant cognitive impairments and depression. The assessment noted: “The patient has a history of stress[-]related difficulties arising from his work that predated his neurological injury by many years. Those difficulties were never treated successfully. The patient now presents with a depressive disorder that is severe enough to exacerbate those mental impairments that arise from his neurological injury and perhaps cause others.” Dr. Pierre B. Fayad, an associate professor of neurology at Yale University, reported on March 12, 2001 that he completely agreed with this assessment.

Dr. Shitia reported on May 22, 2000 as follows:

“This report is based on evidence reported by Dr. Nisar Quraishi regarding [appellant’s] stroke on November 2, 1998. After full evaluation of [appellant’s] medical reports and also base interpretation of his neuropsychological consultation, there was substantial evidence indicating a link between his stress at work and his resulting stroke. Based on all available evidence, previous examinations and lab[oratory] work, it is my professional opinion that his stroke, which occurred at work on November 2, 1998, was due to ongoing occupational stress.”

In a decision dated April 23, 2001, the Office reviewed the merits of appellant’s claim and denied modification of its previous decision. The Office found that the medical evidence

¹ Appellant submitted some of this evidence with a July 4, 2000 request for reconsideration.

² The report of a therapist has no probative value on medical issues because a therapist is not a “physician” as defined by 5 U.S.C. § 8101(2) and is therefore not competent to render a medical opinion. *Barbara J. Williams*, 40 ECAB 649, 657 (1988) (physical therapist).

appellant submitted lacked probative value because it failed to present a detailed description of the employment conditions or factors that caused or adversely affected the condition for which appellant claimed compensation. The medical evidence also failed to provide a reasoned medical opinion based on a complete and accurate history establishing a causal relationship between the claimed conditions and the implicated factors of employment.

The Board finds that this case is not in posture for decision. There is a conflict in medical opinion necessitating referral to a referee medical specialist pursuant to 5 U.S.C. § 8123(a).

Although his earlier reports were speculative on the issue of causal relationship, Dr. Shitia, appellant's attending internist, offered a definite opinion on May 22, 2000 that appellant's stroke on November 2, 1998 was due to ongoing occupational stress. Dr. Shitia based his opinion on a full evaluation of appellant's medical reports, including reports from Dr. Quraishi, the internist who reported as early as 1992 that appellant had always presented with excessive stress at work. Dr. Shitia relied as well on the February 2000 neuropsychological consultation assessment, the findings of which were adopted by Dr. Fayad, an associate professor of neurology. The assessment noted that appellant had a history of stress-related difficulties arising from his work that predated his neurological injury by many years, difficulties that were never treated successfully.

Dr. Shitia offered rationale in his November 2, 1998 and August 5, 1999 reports. He noted that appellant's blood pressure and diabetes were under medical control immediately prior to his stroke and were therefore low risk factors. Given the stressful working conditions described by appellant, Dr. Shitia reported that it was within a reasonable medical probability that these stressful work conditions were the predominant and, therefore, the most medically significant risk factor in causing appellant's stroke on November 2, 1998.

Although references in the medical record to "extremely unjust treatment" or "harassment" at work are not substantiated by the factual evidence, there is little dispute about the duties that appellant performed as a senior auditor and no dispute that he found the nature of audit work to be very stressful, as he explained when he filed his claim. To this extent appellant has established a factual basis for his claim and to this extent Dr. Shitia has offered a probative opinion supporting a causal relationship between appellant's federal employment and the mild stroke he suffered on November 2, 1998.

Dr. Levin, the internist and an Office referral physician, disagreed. He reported that appellant had a stroke on November 2, 1998 secondary to his history of diabetes mellitus and hypertension, not caused by his job. Asked for clarification, Dr. Levin explained that both hypertension and diabetes predispose an individual to a stroke, especially if not well controlled. Further, Dr. Levin observed that appellant's job description did not seem "stressful enough" to contribute to the event. Notwithstanding the vagueness of this assessment, Dr. Levin made clear that he disagreed with Dr. Shitia's opinion that appellant's stroke on November 2, 1998 was due at least in part to occupational stress.

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "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.”³

To resolve the conflict in opinion between Drs. Levin and Shitia, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate referee medical specialist for a reasoned opinion on whether appellant’s accepted duties as a senior auditor contributed to the mild stroke he suffered at work on November 2, 1998. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant’s claim for compensation.

The April 23, 2001 and August 7, 2000 decisions of the Office of Workers’ Compensation Programs are set aside. The case is remanded for further action consistent with this opinion.

Dated, Washington, DC
June 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

³ 5 U.S.C. § 8123(a).