

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT M. FRENKEL and SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS & APPEALS, New York, NY

*Docket No. 01-1830; Submitted on the Record;
Issued May 16, 2002*

DECISION and ORDER

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

The issue is whether appellant has established a recurrence of disability causally related to his employment injuries.

The case was before the Board on a prior appeal. In a decision dated December 4, 2000, the Board set aside a decision of the Office of Workers' Compensation Programs dated June 16, 1999; the Board found that appellant had submitted sufficient evidence to warrant development on the issue of causal relationship between appellant's accepted injuries and a disabling loss of vision. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

Upon return of the case record, the Office referred medical evidence and a statement of accepted facts to Dr. Robert Lopez, an ophthalmologist.¹ In a report dated May 8, 2001, Dr. Lopez indicated that appellant had a scotoma or blind spot in his left eye as a result of a retinal arterial occlusion. He stated that "although workplace stress can exacerbate hypertension which can worsen carotid artery and heart disease, it is difficult for me to directly relate this branch retinal arterial occlusion to workplace stress." With respect to disability, Dr. Lopez stated that, since appellant's right eye was unaffected, he was not disabled and could read normal printed material.

In a report dated February 20, 2001, an attending physician, Dr. Alan Friedman, reiterated his opinion that appellant's branch retinal occlusion was secondary to carotid artery disease. He indicated that he had reviewed the statement of accepted facts and concluded that appellant's "work environment was a causal factor in exacerbating his cardiac/carotid artery disease and subsequently his branch retinal artery occlusion." Dr. Friedman opined that the loss of vision disabled appellant for work as an administrative law judge.

¹ The Office initially referred the case to Dr. Joshua Fink, an internist, who indicated in a March 20, 2001 report that questions regarding a retinal artery occlusion should be sent to an ophthalmologist.

In a decision dated May 11, 2001, the Office denied appellant's claim for a recurrence of disability commencing November 13, 1998, on the grounds that the medical evidence was insufficient to establish that his left eye loss of vision was causally related to the accepted aggravation of coronary and carotid artery disease and hypertension.

The Board finds that the case is not in posture due to a conflict in the medical evidence.

Section 8123(a) of the Federal Employees' Compensation 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.² 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.³

As the Board noted in its prior decision, Dr. Friedman supported causal relationship between the accepted conditions of aggravation of coronary and carotid artery disease and a disabling loss of vision in the left eye due to a branch retinal artery occlusion. Dr. Friedman reiterated his opinion, in the February 20, 2001 report. On the other hand, the second opinion referral physician, Dr. Lopez, did not support causal relationship between a disabling left eye condition and appellant's federal employment.

In order to resolve the conflict, the case will be remanded to the Office for further development. The Office should send a statement of accepted facts and relevant evidence to an impartial medical specialist for an opinion on whether appellant had a left eye condition causally related to his federal employment, and if so, whether the condition was disabling. After such further development as is necessary, the Office should issue an appropriate decision.⁴

² *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

³ *William C. Bush*, 40 ECAB 1064 (1989).

⁴ The June 16, 1999 Office decision addressed appellant's claims for additional employment-related conditions, including the foot and hands. As the June 16, 1999 decision was set aside, appellant is entitled to a merit decision that addresses all the relevant issues related to his claim for a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated May 11, 2001 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
May 16, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member