

**United States Department of Labor
Employees' Compensation Appeals Board**

ARTHUR J. BROOKS, Sr., Appellant)	
)	
and)	Docket No. 03-1601
)	Issued: December 4, 2003
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Terminal Island, CA, Employer)	
)	

Arthur J. Brooks, Sr., *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On June 9, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 10, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he was entitled to disability compensation from about March 29, 2001 as a result of a March 22, 2001 aggravation of a work-related cerebrovascular accident (CVA).

FACTUAL HISTORY

On October 4, 1998 appellant, then a 40-year-old correctional counselor, sustained an aggravation of a CVA while in the performance of duty. He stopped work that day.

In a report dated December 17, 1999, Dr. Flor Geola, a second opinion physician Board-certified in internal medicine with a specialty in endocrinology, found that appellant's October 4, 1998 aggravation of a CVA was work related and released him to return to light duty effective that day.

On February 17, 2000 the Office accepted that appellant sustained an aggravation of a CVA on October 4, 1998. Appellant had retired on disability, but elected Federal Employees' Compensation Act benefits¹ and thereafter received compensation benefits through May 21, 2000.

On April 26, 2000 Dr. Omid Omidvar, Board-certified in psychiatry and neurology, released appellant to return to full duty effective May 22, 2000.

By letter dated December 20, 2000, appellant filed a claim for a schedule award for partial loss and limited use of his right side.²

On March 29, 2001 appellant filed a recurrence of disability claim stating that, on March 22, 2001, he was hospitalized for severe pain on his right side with total weakness in his arm and legs.

On May 10, 2001 the Office referred appellant, his medical records, a statement of accepted facts and a list of specific questions to Dr. Michael Perley, a second opinion physician who is Board-certified in internal medicine with a specialty in endocrinology and metabolism, to determine whether a causal relationship existed between appellant's current condition and his employment, and also to determine if he had an impairment of any extremity as a result of his accepted condition.

In a report dated July 3, 2001, Dr. Perley noted that appellant had been symptomatic with diabetes for the prior seven years. He also noted that appellant apparently experienced a CVA in 1998 which resulted in partial hemiparesis and right-sided numbness in his face and down his right side. Dr. Perley also noted his intermittent right-sided headaches (cephalgia) in the occipital area, right-sided dysesthesias and a 15-year history of hypertension. He then noted appellant's pneumothorax in 1986 and a March 2001 exacerbation of his right-sided weakness. A brain scan taken at that time revealed a small lacunar infarct in the left basal ganglia. Dr. Perley advised that appellant was a high risk patient for coronary and cerebral atherosclerosis as a result of his diabetes

¹ 5 U.S.C. § 8101-8193.

² The Office has not issued a final decision on this claim and thus the Board cannot address this issue. In an April 23, 2001, CA-110, report of telephone call, the Office noted that it had advised appellant that there were no schedule awards for a heart condition.

and that his hypocholesterolemia and hypertension may lead to a stroke. He opined that simple work stress would not likely lead to a stroke unless the person also had diabetes mellitus, hypertension and hypercholesterolemia. However, Dr. Perleyhe advised that appellant's main problem was his episodic cephalgia and that his right-sided discomfort may be secondary to cerebral dysfunction which, in turn, may be related to his prior CVA. He advised that appellant's "disability was subjective at this time," noting that he "is generally functional and literally capable to carry out everyday activities."

In a supplemental report dated November 20, 2001, Dr. Perley advised that an exact answer to the question of whether appellant's CVA condition as of March 2001 was causally related to his employment was "not feasible" because the "events that occurred are remote and were not witnessed by myself at the time of their occurrence." However, he noted that in theory emotional tension may have caused, in part or in total, the March 2001 CVA. He noted that, without an underlying condition such as arteriosclerosis, similar stress in someone else would not have caused a CVA.

On January 7, 2002 the Office referred the case to Dr. Paul Azer, also Board-certified in internal medicine with a specialty in endocrinology and metabolism, for another second opinion regarding whether appellant's current condition was causally related to his employment and, if so, whether an impairment resulted from that condition. In a report dated February 7, 2002, Dr. Azer stated that he was not able to provide an opinion regarding the role stress, aggravation or hypertension had on appellant's 1998 stroke because his diabetes was out of control. He opined that it was more appropriate to direct appellant's care to controlling his diabetes. On March 5, 2002 the Office asked Dr. Azer to clarify his February 7, 2002 report with respect to his opinion regarding whether employment factors aggravated his CVA. In an April 2, 2002 facsimile response, Dr. Azer stated that he could not comment on the causal relationship of appellant's CVA and his employment.

On April 29, 2002 the Office referred appellant to Dr. Jay Jurkowitz, Board-certified in psychiatry and neurology. In a report dated May 29, 2002, Dr. Jurkowitz noted a familiarity with appellant's history of injury including his 10-year history of hypertension and diabetes. He reviewed appellant's medical record including a computerized tomography (CT) scan report,³ an ultrasound, an electrocardiogram, x-rays and an echocardiogram performed on October 4 and 5, 1998. He also reviewed hospital admission and discharge summaries as well as reports from the Office's second opinion physicians. Based on the nerve conduction studies that he conducted, Dr. Jurkowitz found a mild generalized polyneuropathy in the lower extremities, evidence of right carpal tunnel syndrome and moderate to severe decompression of the right ulnar nerve at the elbow. He diagnosed appellant as post left cerebral stroke in October 1998, with residuals of some numbness and discomfort in the right upper and lower extremity; diabetic polyneuropathy, neuralgia of the feet, and evidence of possible left⁴ carpal tunnel syndrome and ulnar nerve dysfunction in the elbow. In describing injury-related factors

³ Dr. Jurkowitz stated that he did not review the scan itself.

⁴ Dr. Jurkowitz noted right carpal tunnel syndrome in his summary section.

of disability, Dr. Jurkowitz stated that appellant had distal weakness in the feet, absent knee and ankle jerks and mild slowing of the peroneal and tibial nerves of the lower extremities. He referred to a prior report which noted a left and general capsule lesion which “generally causes numbness or weakness.”⁵ Dr. Jurkowitz noted that appellant’s diabetes and October 1998 stroke were clinically established and stated that, if the October 4, 1998 aggravation of a CVA was work related, then the March 22, 2001 incident “was definitely related to that.”

In response to the question to give a detailed reason for his conclusion of whether appellant’s aggravation was permanent or temporary, Dr. Jurkowitz said that “I would have to describe the incident of March 22, 2001, as an aggravation of the original stroke, which was temporary, and [it] went back to the previous state.” He noted that appellant’s current medical issue was the need to conduct trials of medicines to control his diabetes-induced pain. In describing limitations and restrictions, he stated that “I do not really know how much disability he has from the stroke. Dr. Jurkowitz seems to have almost normal strength.” He added that appellant could perform sedentary jobs but that he would not reach maximum medical improvement until he has had a trail of medications for his diabetes-related pain.

In a supplemental report dated August 19, 2002, Dr. Jurkowitz stated that “the recurrence of March 22, 2001 was definitely related to the original stroke. The aggravation was related to the original stroke and the diabetic neuropathy was related completely to the diabetes and not to the stroke.” Dr. Jurkowitz then noted that appellant’s March 22, 2001 stroke was temporary and “then he went back to his previous state.” He added that “aggravation would have ceased one week after the onset of symptoms.”

By decision dated September 19, 2002, the Office denied appellant’s claim for compensation. The Office found that the medical evidence was insufficient to establish a causal relationship between the March 22, 2001 aggravation of a CVA and his work-related October 4, 1998 CVA aggravation. In a letter dated September 26, 2002, appellant requested review of the written record.

In a decision dated March 10, 2003, the hearing representative reversed the September 19, 2002 Office decision, finding that appellant sustained a recurrence of his October 4, 1998 aggravation of a CVA on March 22, 2001. Since Dr. Jurkowitz noted no residuals one week after the recurrence of disability, the hearing representative found that appellant was not entitled to compensation for any period of more than one week after March 22, 2001.

LEGAL PRECEDENT

When an employee claims a recurrence of disability to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative

⁵ An October 4, 1998 CT scan of the brain “revealed 1 centimeter low density lesion involving the interior limb of the left internal capsule.”

and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.⁶

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

ANALYSIS

In this case, it is appellant's burden to establish that he was disabled from work more than a week after the onset of his symptoms on March 22, 2001. The only medical report of record that supports the causal relationship of his March 22, 2001 aggravation of a CVA are the May 29 and August 19, 2002 reports from Dr. Jurkowitz. In these reports, he found that appellant's March 22, 2001 episode was causally related to his employment provided that the prior October 1998 CVA aggravation was causally related as well. He then stated that appellant had returned to almost normal strength after the stroke, that he could perform sedentary jobs, and that the aggravation would have ceased after one week from the date of the onset. Dr. Jurkowitz advised that appellant needed a trial of medication to control his diabetes-related pain, after which time an assessment could be made regarding the date of his maximum medical improvement. His reports did not establish a disability after one week from March 22, 2001, the date of onset of appellant's aggravation of his work-related CVA.

CONCLUSION

Since none of the evidence supports a disability beyond a week from the date of onset of aggravation on March 22, 2001,⁸ appellant failed to meet his burden of proof.

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁷ *Id.*

⁸ Appellant would have received disability compensation for one week from March 22, 2001 which would have ended on March 28, 2001. Thus appellant received no disability compensation from March 29, 2001.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2003 decision of the Office of Workers' Compensation Programs be, and hereby is, affirmed.

Issued: December 4, 2003
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member