

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERRILL H. MORGAN and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, San Ysidro, CA

*Docket No. 02-1603; Submitted on the Record;
Issued February 14, 2003*

DECISION and ORDER

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

The issue is whether appellant has established entitlement to compensation after November 9, 1999.

This case has previously been before the Board. The facts in this case were set forth in this Board's earlier decision and are hereby incorporated by reference.¹ Briefly stated, on November 2, 1999 appellant, then a 62-year-old immigration inspector, filed an occupational disease claim alleging that he suffered from hypertensive cardiovascular disease as a result of his federal employment.

In a medical report dated February 22, 2000, Dr. James F. Lineback, a Board-certified internist with a subspecialty in pulmonary medicine, found that appellant's hypertension and hypertensive heart disease were industrial. He recommended that appellant not return to his job and that he be retrained for a less stressful position to prevent any further aggravation of his hypertension and heart disease.

The Office referred appellant to Dr. Ajit Raisinghani, a Board-certified internist, for a second opinion. In a medical report dated February 2, 1998, he noted that appellant had hypertension since the early 1990s. Dr. Raisinghani noted that the job of immigration inspector is stressful and that his hypertension would be difficult to control. He indicated that if appellant were not subjected to any significant stress and chasing activities, his hypertension could be controlled. Dr. Raisinghani concluded that since appellant stopped working on October 15, 1999 his aggravation should have ceased by that time. He did not believe that appellant currently was disabled as his blood pressure levels were well controlled with medication.

¹ In the previous decision, the Board found that the Office improperly suspended appellant's compensation for obstruction of a medical examination, as it was unclear whether the Office's failure to receive appellant's records was due to appellant's inaction or the inaction of his physician. Therefore, this Board found that appellant's compensation must be reinstated retroactively. *Merrill H. Morgan*, Docket No. 01-1078 (issued January 11, 2002).

On April 24, 2002 appellant's claim was accepted for a temporary aggravation of preexisting hypertension for the period February 2, 1998 through October 15, 1999.

Appellant filed an appeal with this Board on May 8, 2002. Subsequently, the Office moved to dismiss the case for the reason that there was no final decision issued within one year of the date of the appeal. This Board disagreed, finding that as the Office limited the period that it accepted appellant's claim to the period between February 2, 1998 through October 15, 1999 and appellant contended that he was entitled to benefits after November 9, 1999, the April 24, 2002 decision was adverse to appellant.²

The Board finds that the Office properly awarded appellant benefits limited to the period of February 2, 1998 through October 15, 1999.

Under the Federal Employees Compensation Act,³ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁴ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased,⁵ even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁶

In the instant case, the Office accepted appellant's claim for temporary aggravation of hypertension from February 2, 1998 through October 15, 1999. The medical evidence of record does not establish that appellant's temporary aggravation of his hypertension lasted beyond October 15, 1999. Dr. Raisinghani indicated that the aggravation of blood pressure was temporary in nature and that as appellant stopped working on October 15, 1999, the temporary aggravation ceased on that date. Dr. Lineback recommended that appellant not return to his job in order to prevent any further aggravation of his hypertension and heart disease, but did not provide a reasoned medical opinion supporting a continuing employment-related aggravation after October 15, 1999. The possibility of future injury does not constitute an injury under the Act and, therefore, no compensation can be paid for such a possibility.⁷

² *Merrill H. Morgan*, Docket No. 02-1603, Order Denying Motion to Dismiss Appeal, issued November 14, 2002.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Richard T. DeVito*, 39 ECBA 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

⁵ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁶ *John Watkins*, 47 ECB 597 (1996); *Marion Thornton*, 46 ECAB 899, 906 (1995).

⁷ *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

The decision of the Office of Workers' Compensation Programs dated April 24, 2002 is hereby affirmed.

Dated, Washington, DC
February 14, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member