

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERTON PINGEL and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, TRI-CITY AIRPORT, Freeland, MI

*Docket No. 02-2074; Submitted on the Record;
Issued January 22, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that his employment-related aggravation of hypertension had ceased.

The case has previously been on appeal.¹ In a November 1, 2000 decision, the Board noted that the Office had accepted that appellant had an employment-related aggravation of hypertension due to the stress of his work as an air traffic controller, which had caused him to stop working on July 22, 1974. Subsequent development of the medical evidence created a conflict in the medical evidence on whether appellant's employment-related aggravation was permanent or had ceased. The Office referred appellant to Dr. Russell J. DiPonio, an internist, to resolve the conflict in the medical evidence. He concluded that appellant had essential hypertension, which had been aggravated by his federal employment. However, Dr. DiPonio stated that the aggravation had ceased after appellant stopped working. The Office terminated appellant's compensation on the basis of his examination. The Board reversed the Office's decision on the grounds that Dr. DiPonio was not Board-certified and, therefore, could not serve as an impartial medical adviser under the Office's procedures.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Gerald Levinson, a Board-certified internist specializing in cardiology, to resolve the conflict in the medical evidence. In a January 23, 2002 report, he stated that appellant was medically disabled from his position as an air traffic controller due to poorly controlled essential hypertension. Dr. Levinson indicated that appellant was able to work in a sedentary type of job. He stated that appellant's hypertension was the genetically predetermined essential type and was not in any way caused by his employment as an air traffic controller. Dr. Levinson stated that the employment-related aggravation was temporary, not permanent. He indicated that, although appellant's blood pressure may be affected by work-related stress, he had not worked in over 30

¹ Docket No. 00-209 (issued November 1, 2000).

years and his blood pressure remained elevated. He commented that this fact showed that the employment-related aggravation was only of a temporary nature as there currently was no work component and there had not been one for many years but appellant's blood pressure remained elevated. Dr. Levinson stated that appellant admitted he had not been following his blood pressure control program. He concluded that appellant's continuing hypertension was no longer job related and was only a temporary aggravation.

The Office requested further clarification from Dr. Levinson. In an April 1, 2002 report, he responded that the employment-related temporary aggravation of appellant's hypertension ceased when he stopped working as an air traffic controller. Dr. Levinson reviewed the medical reports of record and commented that there was no medical documentation in the literature or in his own experience that had shown there would be a permanent effect on chronic essential hypertension from temporary stress-related exposures.

In a June 5, 2002 decision, the Office terminated appellant's compensation on the grounds that his accepted work-related aggravation had ceased.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

The Office, to resolve a conflict in the medical evidence on whether appellant continued to be disabled due to his employing establishment, referred appellant to Dr. Levinson for an examination under section 8123(a).³ He indicated that appellant had essential hypertension, which had a genetic cause and, therefore, was not caused by his employment. Dr. Levinson indicated that appellant's employment caused only a temporary aggravation of his hypertension. He suggested that appellant's current hypertension was due to his failure to follow the appropriate blood pressure control program. In situations when there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴ In this case, Dr. Levinson, based on an accurate history of appellant's condition, concluded that his employment caused only a temporary aggravation of his hypertension, which ceased when he ceased his work as an air traffic controller. Dr. Levinson supported his opinion by clear rationale. His report, therefore, is entitled to special weight and, in the circumstances of this case, constitutes the weight of the medical evidence. Dr. Levinson's report establishes that

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ 5 U.S.C. § 8123(a).

⁴ *James P. Roberts*, 31 ECAB 1010 (1980).

appellant's employment-related aggravation of hypertension had ceased. The Office, therefore, had sufficient medical evidence to support its decision to terminate appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated June 5, 2002 is hereby affirmed.

Dated, Washington, DC
January 22, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member