

his claim for acceleration of CAD with depression and myocardial infarction with surgery. Appellant received compensation on the periodic rolls.

In a decision dated November 24, 1999, the Office rescinded its acceptance of appellant's claim on the grounds that the weight of the medical evidence established that his cardiovascular condition, surgery and depression were not causally related to job stressors.

In a decision dated July 26, 2000, an Office hearing representative reversed the November 24, 1999 rescission and remanded the case for further development. The hearing representative found that the statement of accepted facts relied upon by Dr. Claude A. Brachfeld, a Board-certified cardiologist and impartial medical specialist, was not accurate. The hearing representative instructed that the statement of accepted facts should be modified to include a finding that Director Sperling erroneously or abusively said such things as she did not want to hear any "goddamn" excuses and that it seemed to her that appellant did "nothing else but wait for the union to come walking in, pull down their pants and shit in your face." The hearing representative also found that Dr. Brachfeld did not have a complete medical background. The cardiologist reported that he did not have the original catheterization report to review, but the report was on file. The hearing representative also found that Dr. Brachfeld made an apparent error in reporting that appellant did not have chest pain for two or three weeks prior to his hospitalization; the best evidence was that chest pains started on February 26, 1985. As appellant was hospitalized on February 28, 1985, chest pains occurred two days before hospitalization. Finally, the hearing representative found that the opinion of the Office's second-opinion psychologist was based on an inaccurate statement of accepted facts and as such was insufficient to justify rescission with regard to psychological or psychiatric conditions.

The Office obtained supplemental reports and determined that a conflict had arisen with respect to appellant's emotional condition. The Office referred the case to Dr. Bert S. Furmansky, a Board-certified psychiatrist, for an opinion to resolve the conflict.

In a decision dated June 26, 2001, the Office rescinded its acceptance of appellant's claim. The Office found that the opinions of Drs. Brachfeld and Furmansky, the impartial medical specialists, were entitled to special weight and established that appellant's cardiac and emotional conditions were not work related.

In a decision dated July 16, 2002, an Office hearing representative affirmed the rescission. The hearing representative found that the Office amended the statement of accepted facts consistent with findings in the July 26, 2000 decision. The hearing representative also found that the opinions of Drs. Brachfeld and Furmansky were based on a complete and accurate factual background as well as a detailed review of the medical evidence, and both provided comprehensive and fully rationalized opinions negating causal relationship between factors of appellant's employment and the onset of his cardiac and psychiatric conditions. The hearing representative found that because the opinions of these impartial medical specialists constituted the weight of the medical evidence, the Office had met its burden of proof in rescinding acceptance and terminating entitlement to compensation.

LEGAL PRECEDENT

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical 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.¹

ANALYSIS

For a physician to form a general impression of the individual or evidence to be evaluated, the Office must provide the following essential element in a statement of accepted facts: “Condition(s) Claimed or Accepted -- allows the physician to assess whether the diagnoses given in the medical evidence to be reviewed are consistent with the conditions for which the claim is filed or for which the claim has been accepted.”²

The Office’s September 8, 2000 statement of accepted facts, upon which the impartial medical specialists relied, states that the Office accepted appellant’s claim for an acceleration of chronic ischemic heart disease as well as an adjustment reaction to his illness. It did not state that the Office accepted appellant’s claim for an acceleration of CAD with depression and myocardial infarction with surgery. The Office must provide a proper description of the accepted conditions in this case so that the impartial medical specialist can base his or her opinions on an accurate factual background.

The September 8, 2000 statement of accepted facts accepts only the following factors of employment to be factual: “The claimant’s supervisor told him once that she did not [want] to hear his ‘Goddamn’ excuses and that she said that she thought the claimant was letting the union ‘shit in his face.’” Yet, in an earlier statement of accepted facts of record -- it is undated but is associated with documents from 1997 -- the Office accepted the following additional factor as compensable: “During the week of February 11 to 15, 1985, [appellant] worked up to 12 hours per day during that week.” This accepted, compensable factor of employment did not appear after it revised the statement of accepted facts on June 24, 1999. Instead, in describing appellant’s work history and job duties, the statement read: “According to [appellant], he worked up to 12 hours per day during that workweek” of February 11 through 15, 1985. The September 8, 2000 statement of accepted facts reads the same. The Board finds that the September 8, 2000 statement of accepted facts is incomplete and must include the Office’s previous finding accepting this factor of employment as compensable without the qualification “according to [appellant].”

Also, the 1997 statement of accepted facts found the following work-connected event not to be compensable: “[Appellant] served as the Acting Labor Relations Representative in the absence of the individual who normally performed the representative’s job duties.” In subsequent statements of accepted facts, the Office dropped this finding and included it instead

¹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2-809.12.f (June 1984).

under appellant's work history and job description: "During the week of February 11 through February 15, 1985, [appellant] served as the Acting Labor Relations Representative in the absence of the individual who normally performed the Representative duties." Appellant implicated this detail assignment as a contributing factor of employment. As the Office accepts the detail as factual, and as appellant was in the course of his employment when he performed the duties of that detail assignment, the September 8, 2000 statement of accepted facts must include a finding accepting this factor of employment as compensable.

Apart from deficiencies in the statement of accepted facts, the Board notes that the Office never asked Dr. Furmanky, the impartial psychiatrist, the central question at issue: whether appellant's depression was causally related to the accepted factors of his federal employment.³ Instead, the Office asked Dr. Furmanky to choose between the opinions at conflict, to lend his opinion on appellant's current diagnosis, to explain whether appellant had any disabling residuals from any psychological condition that was caused by the factor outlined in the statement of accepted facts, and to address whether appellant could return to work. To justify a rescission of the accepted condition of depression, the Office must put the proper question to the impartial medical specialist so that he can address the issue directly.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees' Compensation Act and, where supported by the evidence, to set aside or modify a prior decision and issue a new decision.⁴ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can be set aside only in the manner provided by the compensation statute.⁵ It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.⁶ In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁷

The Office has not met its burden of proof in this case. The opinions of the impartial medical specialists are based on an inaccurate statement of accepted facts, one that lacks sufficient detail and context and one that does not accurately state what conditions the Office accepted as employment related. Further, the Office failed to pose the proper question to the impartial psychiatrist. For these reasons, the Board finds that the opinions of the impartial medical specialists are of diminished probative value. They do not represent the weight of the medical evidence, and they do not resolve the conflicts that arose in this case.

³ The Office did ask Dr. Brachfeld, the impartial cardiologist, whether appellant's work at the employing establishment, as described in the statement of accepted facts, caused or accelerated his coronary artery disease and his subsequent myocardial infarction of 1985.

⁴ *Eli Jacobs*, 32 ECAB 1147 (1981); *see* 5 U.S.C. § 8128(a).

⁵ *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

⁶ *See* 20 C.F.R. § 10.610 (1999).

⁷ *See James C. Bury*, 53 ECAB ____ (Docket No. 03-596, issued April 24, 2003).

CONCLUSION

The Board finds that the Office did not meet its burden of proof to rescind its acceptance of appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2002 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for reinstatement of compensation retroactive to the effective date of termination.

Issued: May 14, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member