United States Department of Labor
Employees' Compensation Appeals Board

LUIS A. PEREZ, Appellant	)	
and	)	**Docket No. 04-1611**
	)	**Issued: November 16, 2004**
DEPARTMENT OF AGRICULTURE, FOOD & NUTRITION SERVICE, Boston, MA, Employer	)	

Appearances:
Luis A. Perez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 7, 2004 appellant filed a timely appeal from the October 8, 2003 and March 18, 2004 merit decisions of the Office of Workers' Compensation Programs, which denied his claim seeking compensation for a heart attack. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial.

ISSUES

The issues are: (1) whether appellant has established a compensable factor of employment; and if so (2) whether his heart attack on or about February 15, 2003 is causally related to that compensable factor of employment.

FACTUAL HISTORY

On February 24, 2003 appellant, then a 42-year-old purchasing agent, filed a claim alleging that he sustained a massive heart attack on February 15, 2003 as a result of continued stress at work. He attributed the heart attack to disputes with coworkers:

> "For over two years, there have been ongoing arguments among the three employees of the Support Services Unit at the Regional Office of the Food and Nutrition Service. The number of hours per week varied. But, it has been consistent. I am one of the three employees. Management has been aware of the situation. Various attempts to resolve the problem have been tried, including counseling and mediation. These attempts have not been successful.
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> "During the week of February 10, 2003, there was a major argument between myself and the other two employees relating to work duties. On Wednesday, February 12 and Thursday, February 13, [2003] I discussed the situation with my supervisor, Michael Malone, and requested his help in resolving the dispute. On Friday, February 14, [2003] I felt tightness in my chest. On Saturday morning, February 15, [2003] the tightness became worse. I drove myself to Waltham Hospital and sought medical attention."

Appellant related to his medical caregivers that on February 10, 2003 he had a disagreement at work with his coworker "which has been going on for a year but this was worse." Appellant stated that he developed severe pressure and a heartburn feeling in the retrosternal area with waxing and waning for about two hours, which then resolved spontaneously. The following day he had a similar episode for an hour but had no recurrence until the last episode on February 14, 2003.

In a February 27, 2003 report, Dr. Edward J. Busick, an internist, noted severe stress at work several days leading up to the myocardial infarction on February 15, 2003, with work being extremely stressful on February 10 and 11, 2003. He reported that appellant was experiencing chest pain while he was under this stress and that he entered the emergency room because the chest pain was not going away. Dr. Busick concluded: "This stress contributed to the occurrence of the onset of the myocardial infarction."

On April 24, 2003 Dr. Ik-Kyung Jang, Director of Clinical Research at the Cardiology Division of Massachusetts General Hospital and Associate Professor of Medicine at Harvard Medical School, discussed the relationship between stressful situations and acute coronary syndromes and heart attacks:

> "Stressful situations can precipitate acute coronary syndromes and heart attacks in individuals with underlying atherosclerotic coronary disease. According to [appellant], he had stressful incidents at his work on both February 10 and February 11 [, 2003] . He states that he left work early on both of these days due to chest pain. [Appellant] sustained a myocardial infarction on February 15, 2003 as demonstrated by EKG [electrocardiogram] and cardiac enzyme measurements.

… Clearly, a less stressful work situation would be of benefit given his recent heart attack and coronary artery disease."

Responding to an Office request for more information, appellant again described his activities just prior to the onset of his heart attack:

"On February[,] Monday 10 and Tuesday 11 of 2003, I had a disagreement with my two coworkers based on past issues. This particular incident trigger chest pain so severe I had to go [home] twice on both days after reporting these problems to my immediate supervisor.

"On Friday February 14, 2003, I had burning sensation in my chest so severe I went to bed thinking it was just heartburn. It didn't go away so, I check myself in Waltham Hospital for a check up. This is when I learned that this wasn't just heartburn, but a major heart attack."

The employing establishment acknowledged conflict at work: "The employee did have a conflict with his coworkers, and the [employing establishment] provided counseling for the problem." The Office asked appellant to describe in detail and as specifically as possible the events of February 10 and 11, 2003. Appellant replied as follows:

"The aspect of my employment that I considered detrimental to my health was continued exposure to a hostile work environment over several years. From March 2000, combative arguments occurred, practically on a daily basis, between the three employees in the Support Services Unit. These three employees consisted of Lois Jarema, Beth Campusano, and myself. These arguments were over numerous issues (*e.g.*, work duties, responsibilities, politeness, etc.)."

Appellant explained that the Support Services Unit was an isolated "mail and supply" room. It was separated from the rest of the office, and no first-line or second-line supervisor maintained a desk in the unit. At one point, he stated that the arguments became so bad that it was suggested that the first-line supervisor move her desk into the unit. Appellant continued:

"On February 10 and 11, [2003] Beth, Lois and myself engaged in 'heated' arguments over work duties. I experienced chest pains and informed my first-line supervisor, Mike Malone, that I was leaving work early in order to avoid additional exposure to the hostility in the workplace.

"On February 12, 2003, the arguments started again. I notified my supervisor, Mike Malone, that I was experiencing chest pains and I wanted to arrange a meeting between him, me, and Lou Spychalski, the Union Representative. Mr. Malone set up a meeting for February 13[, 2003] in the afternoon, less than 48 hours before my heart attack…. The outcome of the meeting was inconclusive. Mr. Malone did not offer a solution or plan to remedy the situation.

"On February 14, 2003, there were more arguments in Support Services. I experienced chest pains, but I finished my workday.

> "On February 15, 2003, when I awoke the chest pains continued. I sought medical attention at the Emergency Room of Waltham Hospital."

On June 25, 2003 Mr. Spychalski confirmed that a meeting was held on or about February 13, 2003 to discuss ongoing problems within appellant's unit, specifically, the relationship between appellant and his coworkers, Ms. Jarema and Ms. Campusano. Mr. Spychalski stated that it was appellant's allegation at the meeting that Ms. Jarema and Ms. Campusano were continuing to engage in unproductive, antagonistic behavior.

A January 29, 2003 statement from Ms. Jarema, taken as part of an investigation into appellant's complaint of discrimination, confirmed that there was a conflict in the workplace: "I would say there was conflict in [s]upport [s]ervices workplace. The behavior exhibited during this time was unprofessional, unpredictable and erratic and allowed to continue. In addition there was a failure on the part of the supervisor/management to address the ongoing problem." A January 21, 2003 statement from Ms. Campusano, also taken as part of the investigation, explained that the three people in the support services unit were not getting along with each other: "It was a conflict of personalities in the workplace, and it just festered, until it was difficult for anyone to work in the work unit. Most of the conflict is gone. There are still residual effects to this day, but not to the extent there was in the past. It is much more workable in there now. I believe that the mediation was helpful, as has been a new supervisor." A January 2002 statement from Douglas A. MacArthur, appellant's second-line supervisor, related the following:

> "There were problems in the [s]upport [s]ervices unit starting around March or April of 2000. The nature of the problems had to do with the interpersonal relations among the various members of the unit. … There were arguments among the staff members that continued through the next 18 months. They individually would come to me and discuss their inability to get along with one another. There were blow ups in the unit that were also witnessed by people outside the unit."

In a decision dated October 8, 2003, the Office denied appellant's claim for compensation. The Office accepted as factual that there were interpersonal conflicts between appellant and his coworkers but found that appellant failed to allege a compensable factor of employment because neither he nor his coworkers stated specifically what the conflicts were about.

Appellant requested a review of the written record. Although he indicated that he was enclosing a memorandum in support of his claim, no such memorandum accompanied his

request.[1] The record does contain an October 27, 2003 affidavit in which appellant more specifically described the disputes he had with his two coworkers:

> "The subject matter of the altercations that took place in the Support Services Unit, USDA-Food and Nutrition Service, Northeast Regional Office dealt with work issues only during the performance of my federal job.
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> "Several altercations were over the responsibility of checking that the doors of the office were locked at the end of the workday. Previously, this duty was the responsibility of Joseph Caggiano, the previous Management Services Specialist. When Beth Campusano, the new Management Services Specialist, started work, the Supervisors (*e.g.,* Kathleen Ottobre, Roger Hamilton, Douglas MacAllister) started to alternate this duty among the members of the Support Services Unit so frequently, that it became unclear as to who was actually responsible for this duty from week to week.
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> "Many altercations involved the Supply Technician, Lois Jarema, or the Management Services Specialist, Beth Campusano, constantly interrupting me when I was answering a customer's question.
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> "Other altercations involved assignment of backup work duties when one of the three people in the Support Services Unit was absent.
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> "Additional subjects of the altercations are … compiled from mediation sessions on July 2, 2002 and July 25, 2002."

In a decision dated March 18, 2004, an Office hearing representative affirmed the denial of appellant's claim. He noted that appellant's statement, supported by affidavits from other employees, clearly established that were several heated arguments at work: "The claimant appears to have been in constant disagreement with his coworkers. However, there is no evidence as to what these disagreements were about. There is no evidence that they were over work matter; many of the arguments appear to have been personal conflicts." The hearing representative found that any stress as a result of these arguments was not deemed to have arisen in the performance of duty and was not a compensable factor of employment.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act authorizes the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as

[1] Because the Office first received this memorandum on April 5, 2004, the Board has no jurisdiction to review it. 20 C.F.R. § 501.2(c). Office receipt is not presumed under the "mailbox rule" because appellant, as an individual, has no established mailing custom or business practice. *See generally* Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).

[2] 5 U.S.C. § 8102(a).

the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[3] "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his employer's business, at a place where he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[4]

But as the Board observed in the case of *Lillian Cutler*,[5] workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his employment duties, or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen "out of employment," such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

Larson states that assaults arise "out of the employment" either if the risk of assault is increased because of the nature or setting of the work, or if the reason for the assault was a quarrel having its origin in the work. Assaults for private reasons do not arise out of the employment unless, by facilitating an assault that would not otherwise be made, the employment becomes a contributing factor.[6] Larson goes on to explain that the friction and strain of close contact may supply the necessary work connection by increasing the probability of quarrels among employees:

> "This view recognizes that work places men under strains and fatigue from human and mechanical impacts creating frictions which explode in myriads of ways, only some of which are immediately relevant to their tasks. Personal animosities are created by working together on the assembly line or in traffic. Others initiated outside the job are magnified to the breaking point by its compelled contacts. No

[3] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[5] 28 ECAB 125 (1976).

[6] 1 A. Larson, *The Law of Workers' Compensation* § 8.00 (May 2004).

> work is immune to these pressures and impacts upon temperament. They accumulate and explode over incidents trivial and important, personal and official. But the explosion point is merely the culmination of the antecedent pressures. That it is not relevant to the immediate task, involves a lapse from duty, or contains an element of violation or illegality does not disconnect it from them nor nullify their causal effect in producing its injurious consequences."[7]

The Board has held that this principle applies with equal force to mental or emotional injuries.[8] As with assaults, when the subject matter of a verbal altercation is imported into the employment from a claimant's domestic or private life, and there is no indication that work contributed to or facilitated the dispute, the dispute is not a compensable factor of employment and any injury resulting therefrom does not arise out of employment.[9]

ANALYSIS -- ISSUE 1

Appellant alleges that his heart attack on or about February 15, 2003 was a result of combative arguments with two coworkers in the support services unit, particularly disagreements that occurred the week of his hospitalization.[10] The record supports, and the Office does not dispute, that these disagreements occurred at a time when appellant was engaged in his employer's business, at a place where he was expected to be in connection with his employment and while he was fulfilling the duties of his employment or was engaged in doing something incidental thereto. "In the course of employment" is established. The question for determination is whether these disagreements constitute a compensable factor of employment, such that any resulting heart attack may be found to have arisen "out of employment."

The Office accepted as factual that there were interpersonal conflicts between appellant and his two coworkers and that the evidence clearly established several heated arguments at work. The Office denied appellant's claim, however, on the grounds that any stress resulting from these arguments was not a compensable factor of employment because there was no evidence of what the disagreements were about and no evidence that they were about work matters. The Board finds two errors in this reasoning. First, appellant made clear that the heated arguments he had with Ms. Jarema and Ms. Campusano concerned work duties, and in his October 27, 2003 affidavit, he provided a reasonably specific description that the disagreements

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[7] *Id*. § 8.01(6)(a) (May 2004), quoting *Hartford Acc. & Indem. Co. v. Cardillo*, 72 D.C. App. 52, 112 F.2d 11, 17 (1940). *See generally Robert L. Williams*, 1 ECAB 80, 86 (1948) (the true principle is that compensation shall be paid for disability or death having its origin in the employment -- whether the act that gives rise to the injury is one flowing directly from an action in the line of the duty, such as from an act directly forwarding the work, or whether it arises out of environmental factors in the employment or from ordinary random conduct of employees interacting in association, conduct which may not be immediately relevant to the task at hand, or may even constitute a hindrance to the flow of the work).

[8] *Monica M. Lenart*, 44 ECAB 772, 774 n.5 (1993).

[9] *See Edward Savage, Jr*., 46 ECAB 346 (1994).

[10] Although the Office addressed issues relating to appellant's Equal Employment Opportunity complaints and his relationship with his superiors, the record makes clear that he is basing is claim for compensation on the hostile interaction he had with these two coworkers.

were about such matters as who was responsible for checking that the doors of the office were locked at the end of the workday, constant interruptions when he answered customer questions, and the performance of backup work duties when one of the three people in the support services unit was absent. Second, to fall within the scope of workers' compensation, the implicated disagreements need not concern work duties. It is no grounds to deny compensability that the disagreements were not relevant to the immediate task. As Larson indicates, even if the subject of the dispute is unrelated to the work, an injury is compensable if the work of the participants brought them together and created the relations and conditions that resulted in the clash.[11]

The point is illustrated by the case of *Shirley I. Griffin*, where an altercation arose out of the claimant's failure to introduce a male employee to her coworker, who had asked about meeting the employee. Reversing the Office's finding that the employment contributed nothing to the episode, the Board found that work proximity was the sole connection between the claimant and her coworker. Although the conflict involved a nonwork topic, the Board held that the altercation was compensable because the employment brought the claimant and her coworker together and created the conditions that resulted in the altercation. That the lack of introduction was not relevant to the work, the Board explained, did not disconnect it from the employment nor from the injurious consequences of the altercation.[12]

The Board will modify the Office's October 8, 2003 and March 18, 2004 decisions to find a compensable factor of employment. The disagreements that appellant had with his two coworkers in the supply services unit, including the disagreements that occurred the week of his hospitalization, are covered by the "friction and strain" doctrine of work connection and fall within the scope of the Act. The only matter left to be resolved is whether appellant's heart attack on or about February 15, 2003 is causally related to this compensable factor of employment.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[13]

Causal relationship is a medical issue,[14] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

[11] 1 A. Larson, *The Law of Workers' Compensation* § 8.06[a] (May 2004). There is no suggestion in this case of a private quarrel imported to the employment from appellant's domestic or private life.

[12] 43 ECAB 573 (1992).

[13] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[14] *Mary J. Briggs*, 37 ECAB 578 (1986).

opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[15] must be one of reasonable medical certainty,[16] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[17]

ANALYSIS -- ISSUE 2

The medical opinion evidence submitted in this case is not sufficient to establish the critical element of causal relationship. In his February 27, 2003 report, Dr. Busick noted severe stress at work, but he demonstrated no familiarity with the nature of the reported stress.[18] He reported that this stress contributed to the onset of appellant's myocardial infarction, but he offered no medical reasoning to show how he came to this conclusion. The Board has held that medical conclusions unsupported by rationale are of little probative value.[19]

On April 24, 2003 Dr. Ik-Kyung Jang explained that stressful situations "can precipitate" acute coronary syndromes and heart attacks in individuals with underlying atherosclerotic coronary disease. Like Dr. Busick, he did not demonstrate a familiarity with the nature of the reported stress, and he failed to explain whether stressful incidents at work did in fact precipitate appellant's heart attack. At best, he laid a foundation for the possibility of a causal relationship without demonstrating that the relationship existed in fact. The opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, but neither can it be speculative or equivocal.[20]

Although the medical opinion evidence in this case is generally supportive of appellant's claim, the evidence is of little probative value and is insufficient to discharge appellant's burden of proof to establish a causal relationship between the established and compensable disagreements he had with his two coworkers and the heart attack he suffered on or about February 15, 2003. The Board will affirm the denial of his claim for compensation.

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[15] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[16] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[17] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[18] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

[19] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[20] *Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

CONCLUSION

The evidence establishes a compensable factor of employment, but the medical opinion evidence is insufficient to establish a causal relationship between this compensable factor of employment and the heart attack for which appellant seeks compensation. Appellant has not met his burden of proof.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2004 and October 8, 2003 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Issued: November 16, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member