

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

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ARMINDO A. DASILVA, Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
BUREAU OF CUSTOMS & BORDER )  
PROTECTION, LOGAN INTERNATIONAL )  
AIRPORT, East Boston, MA, Employer )

\_\_\_\_\_ )

**Docket No. 05-367  
Issued: May 3, 2005**

*Appearances:*  
Armindo A. Dasilva, 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 November 30, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 19, 2004 denying appellant's claim for compensation for the reason that the medical evidence does not establish that the claimed medical condition was sustained in the performance of duty causally related to appellant's federal employment. Pursuant to 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 has met his burden of proof in establishing that his myocardial infarction was sustained in the performance of duty causally related to his federal employment.

## **FACTUAL HISTORY**

On July 29, 2004 appellant, then a 52-year-old supervisory border protection officer, filed an occupational disease claim alleging that he suffered from a heart attack as a result of stressful situations at work and working many hours of overtime. He submitted a statement alleging that his condition was caused by the reorganization of the agencies at his duty station, the changing work conditions, the increasingly irregular work schedules, the irregular eating schedule, the continuous misconduct of certain employees and the overcrowding of passengers in the inspection area. Appellant has not worked since July 3, 2004, the date of his myocardial infarction.

Appellant also submitted in support of his claim an August 5, 2004 report by Dr. Kenneth E. Salzsieder, a Board-certified cardiologist, stating that he treated appellant on July 3, 2004, the day that he sustained an acute anterior septal wall myocardial infarction. He noted that appellant was admitted to Kent County Hospital where he was treated unsuccessfully with thrombolysis and was then transferred to Rhode Island Hospital where a Dr. Edward Thomas performed a successful rescue angioplasty. He indicated that appellant was receiving follow-up care at the New England Wellness Center. Dr. Salzsieder opined:

“In my opinion [appellant’s] employment to the best of my knowledge could have aggravated situation to cause heart attack. [Appellant] is under major stress at work doing his job as immigration officer working many overtime hours especially during the night. This clearly could have aggravated the situation and the precipitated coronary artery disease heart attack.”

By letter dated August 23, 2004, the Office requested that appellant submit further information. By letter dated September 24, 2004, appellant responded to the Office’s request by noting, *inter alia*, that his employment was stressful, that the week of his heart attack he dealt with an insubordinate employee and that he was required to be on call at all times which occasionally resulted in him getting only two to three hours of sleep. He also submitted the results of various laboratory tests conducted from January 5 through August 6, 2004.

By decision dated November 19, 2004, the Office denied appellant’s claim for the reason that the evidence did not establish that the claimed medical condition resulted from the accepted event.

## **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Melinda C. Epperly*, 45 ECAB 196 (1993).

The alleged injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.<sup>3</sup>

In an occupational disease claim, the claimant must submit: (1) medical evidence establishing the existence of the disease or condition on which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his condition as well findings upon examination and appellant's medical history and state whether these employment factors caused or aggravated appellant's diagnosed condition.<sup>5</sup> An award of compensation may not be based on surmise, conjecture, or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.<sup>6</sup> Furthermore, 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.<sup>7</sup>

### ANALYSIS

Appellant has established employment factors implicated as contributing to his myocardial infarction. However, the Board finds that the Office properly determined that appellant had not submitted medical evidence sufficient to establish that his myocardial infarction was causally related to his federal employment. Initially, the Board notes that Dr. Salzsieder only notes that he treated appellant on July 3, 2004. Although Dr. Salzsieder does mention that appellant's job stress and overtime hours could have aggravated his appellant's situation and precipitated the coronary artery disease heart attack, he does not provide any results of a physical examination or express any knowledge of appellant's prior medical history; nor does he provide medical rationale explaining the nexus between the implicated employment factors and appellant's employment. Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.<sup>8</sup> Furthermore, the fact that appellant's work conditions "could have" aggravated his medical condition is unduly speculative and not sufficient to establish that appellant's employment actually caused the

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<sup>3</sup> See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

<sup>4</sup> *Id.*

<sup>5</sup> See *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> *William S. Wright*, 45 ECAB 498, 503 (1993).

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349, 352 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

myocardial infarction.<sup>9</sup> The mere fact that a disease or condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>10</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused by employment.<sup>11</sup> As part of this burden he must present rationalized medical opinion evidence showing causal relationship.<sup>12</sup> He did not do so in this case. Appellant therefore did not meet his burden to establish that his myocardial infarction was causally related to his federal employment.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that his myocardial infarction was sustained in the performance of duty causally related to his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 19, 2004 is affirmed.

Issued: May 3, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>9</sup> *Samuel Senkow*, 50 ECAB 370 (1999).

<sup>10</sup> *Ernest St. Pierre*, 51 ECAB 628 (2000).

<sup>11</sup> *Id.*

<sup>12</sup> *Solomon Polen*, 51 ECAB 341 (2000).