



heart attack on November 6, 1996 in the performance of duty.<sup>2</sup> The Board noted that the Office accepted that appellant performed gardening duties outside at the employing establishment, under various weather conditions between October 5, 1995 and November 6, 1996. The Board found that appellant did not submit sufficient medical evidence to show that these accepted employment factors caused or contributed to his heart attack on November 6, 1996.<sup>3</sup>

In the second appeal, the Board issued a decision on September 2, 2004 affirming the Office's finding that appellant did not submit sufficient medical evidence to establish that his heart attack on November 6, 1996 was due to his gardening duties. The Board found that the reports of Dr. Raymond A. Haibach, an attending Board-certified family practitioner, were not sufficiently well rationalized to establish appellant's claim.<sup>4</sup> The facts and the circumstances surrounding the prior appeals are set forth in the Board's prior decisions and are hereby incorporated by reference.

By letter dated August 8, 2005, appellant requested reconsideration of his claim before the Office. He again attributed his heart attack on November 6, 1996 to performing outside work at the employing establishment between October 5, 1995 and November 6, 1996. Appellant submitted a March 12, 1998 report in which Dr. Haibach answered several questions concerning appellant's application for disability. Dr. Haibach indicated that appellant was unable to perform his job as a gardener due to his coronary artery disease and stated, "Because of the chest pain, it can affect his attendance depending on weather conditions." He noted that, due to his coronary artery disease, appellant experienced chest pain and was unable to work if he had to perform "a lot of heavy exertion" or if the weather was "very hot or very cold." Dr. Haibach stated that appellant's coronary artery disease was first noted in 1988 and posited that his condition would persist such that he would be unable to perform his job.

Appellant also submitted a March 19, 1998 report in which Dr. Francis R. Nullet, an attending Board-certified cardiologist, provided an assessment of his cardiac condition in support of his application for disability retirement. Dr. Nullet detailed the history of appellant's coronary

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<sup>2</sup> On December 5, 1996 appellant, then a 46-year-old gardener, filed a claim alleging that he sustained a heart attack on November 6, 1996 in the performance of duty. He stated that he was in the garage getting dressed for shoveling black top when he began to feel pain in his back. Appellant later alleged that his heart attack was caused by performing outside work at the employing establishment between October 5, 1995 and November 6, 1996. He claimed that he had to work under both hot and cold weather conditions. Appellant stopped work on November 6, 1996 and returned to work on November 25, 1996. He underwent heart surgery in November 1996 and July 1997 and on June 2, 1998 he was approved for disability retirement. Appellant had a preexisting heart condition and suffered a heart attack in June 1988.

<sup>3</sup> The Board also issued several other decisions which considered Office decisions denying other claims appellant filed for cardiac or emotional conditions. The subject matters of these decisions are not directly related to the subject matter of the present claim; none of the claims for cardiac conditions implicated the employment factors alleged in the present claim.

<sup>4</sup> The Board also determined that the Office properly refused to reopen appellant's case for further review of the merits of his claim.

artery disease since 1988 including the findings of catheterization performed in November 1996 and July 1997 and a stress test performed in December 1996. He stated:

“[Appellant] has coronary artery disease which most recently has been stable. He has hypercholesterolemia as well. He does have a region comprising the distal half of the inferior wall which does not have a satisfactory blood supply and is not able to be revascularized short of aortocoronary bypass surgery. I would expect him to experience angina at high workloads or, possibly, at moderately high workloads and he gives a history consistent with this. Therefore, he might not be able to perform heavy physical activity for extended periods of time if his job requires that.”

By decision dated September 6, 2005, the Office denied appellant’s reconsideration request on the grounds that his request was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed his claim to the Board. By order dated February 17, 2006, the Board set aside the Office’s September 6, 2005 decision because it improperly used the clear evidence of error standard to evaluate his August 2005 reconsideration request. The Board remanded the case to the Office for evaluation of appellant’s reconsideration request under the standards for a timely request.

By decision dated April 10, 2006, the Office reviewed appellant’s claim on the merits and denied his claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a heart attack on November 6, 1996 in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>5</sup> has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

### ANALYSIS

Appellant claimed that he sustained a heart attack on November 6, 1996 due to performing outside gardening work between October 5, 1995 and November 6, 1996 under both hot and cold weather conditions. The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a heart attack on November 6, 1996 in the performance of duty.

In a March 12, 1998 report, Dr. Haibach, an attending Board-certified family practitioner, indicated that he was unable to perform his job as a gardener due to his coronary artery disease. He stated, "Because of the chest pain, it can affect his attendance depending on weather conditions." Due to his coronary artery disease, appellant experienced chest pain and was unable to work if he had to perform "a lot of heavy exertion" or if the weather was "very hot or very cold." Although Dr. Haibach made generalized comments about the effects of certain activities and conditions on appellant's symptoms and ability to work, his report does not establish that appellant sustained an employment-related heart attack on November 6, 1996. Dr. Haibach did not adequately explain how appellant's work duties or hot and cold temperatures would cause or contribute to coronary artery disease or precipitate the November 6, 1996 heart attack. He noted other risk factors, such as hypercholesterolemia, but did not provide a discussion of how the implicated employment factors contributed to appellant's heart disease. The Board has held that a report which does not contain an opinion on causal relationship is of limited probative value in establishing a claim.<sup>9</sup> Dr. Haibach did not provide a rationalized medical opinion explaining how specific gardening duties or exposure to environmental conditions could have contributed to appellant's heart attack on November 6, 1996. He did not provide a complete account of appellant's factual and medical history or explain why his heart attack was not solely due to his preexisting cardiac condition.<sup>10</sup>

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<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>9</sup> *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>10</sup> In its September 2, 2004 decision, the Board had determined that earlier reports of Dr. Haibach did not establish appellant's claim.

Appellant also submitted a March 19, 1998 report in which Dr. Nullet, an attending Board-certified cardiologist, detailed the history of his coronary artery disease since 1988. Dr. Nullet stated, "I would expect him to experience angina at high workloads or, possibly, at moderately high workloads and he gives a history consistent with this. Therefore, he might not be able to perform heavy physical activity for extended periods of time if his job requires that." Dr. Nullet's opinion is of limited probative value on the relevant issue of the present case. He also failed to provide any opinion that appellant sustained a heart attack on November 6, 1996 which was related to the implicated employment factors. Dr. Nullet's report contains an opinion suggesting that appellant might sustain future injury at work, but it is well established that the possibility of future injury constitutes no basis for the payment of compensation.<sup>11</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a heart attack on November 6, 1996 in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' April 10, 2006 decision is affirmed.

Issued: December 19, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).