United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 07-964**
	)	**Issued: August 1, 2007**
DEPARTMENT OF VETERANS AFFAIRS, RALPH H. JOHNSON MEDICAL CENTER, Charleston, SC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2007 appellant filed a timely appeal from a November 22, 2006 merit decision of the Office of Workers' Compensation Programs. 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 met his burden of proof to establish that he had any continuing residuals or disability causally related to the accepted elevated blood pressure condition.

FACTUAL HISTORY

On February 6, 2003 appellant, then a 55-year-old human resources specialist, filed a Form CA-2, occupational disease claim, alleging that harassment and an excessive workload caused anxiety, dizziness, nausea and elevated blood pressure. He did not stop work.

By letters dated February 20, 2003, the Office advised appellant of the type of evidence needed to develop his claim and requested that the employing establishment respond. In an undated statement, appellant stated that his increased blood pressure and anxiety were caused by an excessive workload and harassment by Cheryl Cote who scolded him three times in one week in September 2002 concerning his job duties, assigned him menial job duties, made negative statements about him and slammed his office door open when he was trying to work. He stated that he missed two and a half days work and continued to be dizzy for several days after. In a March 22, 2003 statement, appellant alleged that he had been overloaded with duties since he was hired in March 1998 and had excessive overtime but was refused overtime pay or compensatory time and that, since a reorganization in April 2002, he had excessive pressure to perform from his supervisor, Maurice Ponce, and described events that occurred in September 2002 in which he was harassed by Ms. Cote. He admitted that he had self-increased his blood pressure medication and submitted a diary prepared for an Equal Employment Opportunity Commission claim which listed allegations of harassment and discrimination.

The employing establishment controverted the claim, and submitted employing establishment treatment notes dated September 30, 2002, signed by Teresa M. Sullivan, a nurse practitioner, Donald W. Vann, a physician's assistant, and Barbara C. Stoney, R.N., that reported a history that appellant was complaining of elevated blood pressure with dizziness. The reports advised that appellant admitted to excessive caffeine intake and stated that he checked his blood pressure and had increased his medication to a double dose a few days previously but that the elevation had not improved. Blood pressure was initially measured at 144/100 and later in the day at 140/90. It was recommended that appellant see his personal physician. In a March 7, 2003 report, Mr. Vann again noted that appellant had self-increased his blood pressure medication and diagnosed uncontrolled hypertension and excessive caffeine intake. Mr. Vann advised that, "based on the limited interaction and follow-up, I am only able to say that, on that specific day, September 30, 2002, [appellant] appeared somewhat anxious [and] had elevated blood pressure.... I have no personal or objective way of knowing if these symptoms occurred as a direct result of job stressors, nor can I say it was not." On April 20, 2003 appellant advised that he did not have excessive caffeine intake.

On September 3, 2003 the Office referred appellant to Dr. John V. Custer, a Board-certified psychiatrist, for a second opinion evaluation. Dr. Custer was furnished with a set of questions and a statement of accepted facts that included factors of employment that appellant was harassed by Ms. Cote who pushed and slammed a door open while he was trying to work. In an October 2, 2003 report, he noted his review of the statement of accepted facts and medical record. Dr. Custer reported appellant's complaints of discrimination, harassment and overwork at the employing establishment and that he stated that he had elevated blood pressure since 1993. Blood pressure was measured at 140/92. Dr. Custer diagnosed an occupational problem, narcissistic personality traits, hypertension and gout. He advised that appellant did not have an emotional condition and that his slight elevation in blood pressure was caused by the accepted employment incidents. Dr. Custer opined that appellant's blood pressure was not a problem at the time of his examination. In a work capacity evaluation dated October 6, 2003, he advised that appellant could perform his regular job duties for eight hours a day. Following an Office request for clarification, by report dated October 29, 2003, Dr. Custer advised that appellant's work-related increase in blood pressure was a temporary aggravation that had ceased, probably the day after the September 30, 2002 examination.

On November 13, 2003 the Office accepted that appellant sustained an elevation of blood pressure and advised that he could claim disability on a Form CA-7 claim form. In a separate decision also dated November 13, 2003, the Office terminated entitlement to future compensation for wage loss and medical benefits, effective that day. Appellant requested a hearing on December 8, 2003, that was held on January 25, 2005. At the hearing, he testified that he continued to work full time and argued that the Office decision was erroneous because his blood pressure continued to be elevated and his medication had been increased; therefore, the condition was permanently aggravated by employment factors. Appellant voluntarily retired effective March 2, 2005 but continued as a contractor at the employing establishment until July 29, 2005.

On June 29, 2005 the Office again referred appellant to Dr. Custer for an appointment on July 14, 2005, and furnished him with a set of questions. By letter dated July 19, 2005, the Office proposed to suspend appellant's compensation because he failed to attend a scheduled medical examination. In an August 12, 2005 decision, the suspension was made final. In a letter dated July 29, 2005, received by the Office on August 15, 2005, appellant advised that he did not attend the scheduled medical appointment because he could not leave work. The Office twice rescheduled appointments with Dr. Custer. On September 1, 2005 appellant requested a hearing regarding the August 12, 2005 decision.

By report dated September 21, 2005, Dr. Custer advised that he had reexamined appellant that day and again reported the complaints regarding appellant's work environment and a 10- to 15-year history of elevated blood pressure. He reiterated his diagnoses and in answer to specific Office questions advised:

> "1. Please explain how you concluded that [appellant's] elevated blood pressure was temporary in light of the fact that he had doubled his blood pressure medication following the work injury and continues to take the increased dosage.
>
> "Answer: Given that [his] work situation was temporary (he indicated that in October of 2003 the 'difficult people' in his department had retired) and that he was using excessive caffeine around the time of the work injury, it remains quite reasonable to propose that his increase in blood pressure was temporary, as he had been removed from the difficult people in question and that he could easily reduce or eliminate the excessive caffeine which could have been contributing to his higher blood pressure.
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> "2. Would [appellant] continue to suffer the symptoms of high blood pressure if he ceased taking his medication?
>
> "Answer: Given that [he] has had high blood pressure for 10 to 15 years, well before he encountered the difficulties at the [employing establishment], it is highly likely that his high blood pressure is preexisting and he would have symptoms of high blood pressure if he stopped taking his medication.

> "3. Has [appellant] returned to his preinjury state with respect to elevated blood pressure, considering the fact that [he] continues to take increased doses of his blood pressure medication?
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> "Answer: [His] blood pressure appears to still be elevated even though he retired from the [employing establishment] six months ago. Therefore, one cannot make any connection between his current blood pressure and the work injury of September 2002. We must then conclude that he has returned to his preinjury state, as he had high blood pressure before the work injury, and he continues to have high blood pressure even after retiring from the [employing establishment]."

In an attached work capacity evaluation, Dr. Custer advised that appellant could do his usual job. In a decision dated October 13, 2005, the Office found that appellant's elevated blood pressure caused by a September 25, 2002 employment incident had ceased.

On November 9, 2005 appellant requested a hearing that was held on October 17, 2006. In a decision dated November 22, 2006, an Office hearing representative reversed the August 12, 2005 decision and affirmed the October 13, 2005 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act[1] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[2] Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act,[3] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[5]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he had any continuing disability due to his accepted elevated blood pressure condition after

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[3] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[4] *Donald E. Ewals*, 51 ECAB 428 (2000).

[5] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, supra* note 4.

November 3, 2003.[6] In a well-rationalized comprehensive report dated September 21, 2005, Dr. Custer noted his findings in October 2003 and explained that, given appellant's 10- to 15-year history of elevated blood pressure, well before he encountered problems at the employing establishment in 2002, because the difficult people had retired and because appellant himself had retired, his current elevated blood pressure was not caused by the September 2, 2002 employment injury. Appellant has submitted no medical evidence whatsoever to support that any blood pressure condition is employment related, to show that he needs an increased dosage of blood pressure medication, or that he has any disability related to this condition.[7] The medical evidence of record, therefore, does not establish that appellant had an employment-related disability or condition after November 3, 2003.

CONCLUSION

The Board finds that appellant had no employment-related disability after November 13, 2003.

[6] The Board notes that after the Office has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment. *Kenneth R. Burrow*, 55 ECAB 157 (2003). In this case, however, appellant did not file a Form CA-7 claim for compensation or request leave buy back for the two and a half days he missed work in September 2002. He thus did not receive disability compensation and did not request reimbursement for medical expenses. Appellant therefore retained the burden of proof to establish that he had any continuing disability after November 13, 2003. *See Shelly A. Paolinetti*, 52 ECAB 391 (2001).

[7] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Donna L. Mims*, 53 ECAB 730 (2002). Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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. *Leslie C. Moore*, 52 ECAB 132 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 22, 2006 be affirmed.

Issued: August 1, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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