

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

W.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 06-1269
Issued: May 7, 2007**

Appearances:

*Norman R. McNulty, Jr., Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 19, 2006 appellant, through counsel, filed a timely appeal of a February 17, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative which affirmed the termination of his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this termination case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation on the grounds that he no longer had any residuals or disability causally related to his employment-related aggravation of angina; and (2) whether appellant established that he had any continuing employment-related residuals or disability after April 12, 2004.

FACTUAL HISTORY

On August 2, 1999 appellant, then a 45-year-old inspector, filed an occupational disease claim. On June 5, 1999 he first realized that his unstable angina was caused by his federal employment. Appellant stated that his heart disease was first diagnosed in 1991 and developed

into unstable angina.¹ He alleged that it was aggravated by work-related stress that increased over months until he was hospitalized for chest pain. Appellant stated that his doctor led him to believe that stress was a factor of his heart disease. He stopped work on June 4, 1999.² By letter dated January 4, 2001, the Office accepted appellant's claim for aggravation of angina.

Dr. Roger F.D. Chamusco, an attending Board-certified internist, submitted a February 26, 2001 medical report which stated that physical activity and stress would definitely aggravate appellant's symptoms of angina pectoris because he had significant amounts of myocardium that could become ischemic.

By letter dated May 15, 2001, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Robert G. Thompson, Jr., a Board-certified internist, for a second opinion medical examination.

In a report dated June 11, 2001, Dr. Thompson opined that there was no relationship between appellant's work and his current anginal problems as he had not worked since June 1999. He stated that appellant's condition was a natural progression of his preexisting disease. Dr. Thompson found that appellant could not perform his regular work duties but he could perform sedentary work with restrictions.

By letter dated July 27, 2001, the Office requested that Dr. Chamusco respond to Dr. Thompson's findings. In an August 2, 2001 letter, Dr. Chamusco opined that appellant had severe effort-induced and stress-induced angina. He reiterated that appellant's work environment would exacerbate his angina.

By letter dated September 5, 2001, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Thompson's medical opinion. The Office provided 30 days in which he could respond to this notice.

In an addendum report dated September 11, 2001, Dr. Thompson stated that the aggravation of appellant's angina pectoris due to his employment activities would have ceased as soon as he stopped working. He noted that, based on general knowledge in the medical field, this condition caused no long-term damage to the heart.

Dr. Chamusco stated in an October 2, 2001 letter, that the high stress environment in appellant's job aggravated his underlying coronary disease which resulted in bypass surgery and probably contributed to the poor surgical outcome.

In an October 4, 2001 letter, appellant, through counsel, disagreed with the Office's proposed action. Counsel contended that Dr. Thompson's report was not well rationalized.

¹ In March 1991, appellant had a heart attack and subsequently underwent heart bypass surgery.

² Appellant retired from the employing establishment on disability effective October 18, 1999.

The Office found a conflict in medical opinion between Dr. Chamusco and Dr. Thompson as to whether appellant had any continuing employment-related residuals or disability. To resolve the conflict, the Office, by letter dated October 18, 2001, referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Dayne D. Hansen, Jr., a Board-certified internist, for an impartial medical examination.

In a December 14, 2001 report, Dr. Hansen stated that appellant was totally disabled from performing his usual work duties. However, he opined that appellant's underlying atherosclerosis was not caused or exacerbated by job stress. Rather, it was caused by smoking and hyperlipidemia that went on for quite some time after his initial diagnosis.

By letter dated January 24, 2002, the Office requested that Dr. Hansen provide additional information regarding appellant's condition. In a February 15, 2002 letter, Dr. Hansen stated that appellant was totally disabled from performing his regular work duties because they would cause angina. He noted that appellant's job caused angina due to increased activity and increasing mental stress, which resulted in increased oxygen consumption by the heart, that increased angina in the setting of significant coronary artery disease. Dr. Hansen opined that the aggravation of this condition was not caused by appellant's employment. He concluded that appellant had underlying coronary disease that was not work related.

By letter dated February 26, 2002, the Office issued a notice of proposed termination of appellant's compensation based on the opinions of Dr. Thompson and Dr. Hansen. The Office provided 30 days in which appellant could respond to this notice. Appellant did not respond within the allotted time period.

In a decision dated April 26, 2002, the Office terminated appellant's compensation benefits based on Dr. Hansen's impartial medical opinion. Appellant disagreed with this decision and requested an oral hearing before an Office hearing representative.

By decision dated March 31, 2003, a hearing representative set aside the April 26, 2002 decision and remanded the case to the Office. The hearing representative found that Dr. Hansen's opinion was not well rationalized because he did not respond to the Office's question regarding the extent and duration of any work-related injury and relied on a statement of accepted facts that was incomplete. The hearing representative directed the Office to prepare a new statement of accepted facts and refer appellant to another impartial medical examiner to resolve the conflict in medical opinion.

By letter dated June 23, 2003, the Office referred appellant, together with a new statement of accepted facts, the case record and a list of questions to be addressed, to Dr. E. Louise B. Kremkau, a Board-certified internist, for an impartial medical examination.

In a July 10, 2003 report, Dr. Kremkau reviewed the records and provided a history of the 1999 accepted employment injury and appellant's social background. She reported normal findings on physical and cardiovascular examination. Dr. Kremkau indicated that appellant sustained coronary heart disease with myocardial infarction in 1991 and underwent quadruple bypass surgery during that same year. She noted that he had unstable angina in 1999 and underwent an angiography in the same year. Dr. Kremkau diagnosed fairly stable Functional

Class II angina by history with multiple risk factors for vascular disease which included former tobacco abuse until 1999, obesity, hypertension, hyperlipidemia and diabetes. She stated that appellant had reduced ventricular function and an ejection fraction of 40 percent at catheterization in 1999. Dr. Kremkau opined that appellant appeared to be limited due to his angina pectoris. She found that his angina pectoris was likely a combination of the natural progression of his coronary disease, which was aggravated by his work stress in 1999. Dr. Kremkau also found that appellant continued to experience angina although he was not currently working. She concluded that appellant did not have a work-related condition at that time.

By letter dated August 20, 2003, the Office requested that Dr. Kremkau provide additional information regarding the development of appellant's angina and whether he would still have sustained this condition had the work injury not occurred. In an August 29, 2003 supplemental report, she stated that appellant had important coronary disease and angina pectoris which was not controlled at the time of the unstable anginal episode in 1999. Appellant also had multi-vessel coronary disease, graft disease and evidence of coronary heart disease with reduced ejection fraction. Because of the extent of the disease, appellant was a candidate for angina pectoris. Dr. Kremkau indicated that appellant's symptoms were related to the progression of his coronary disease. She opined that in 1999 it was possible that appellant's work activities contributed to an aggravation of the angina pectoris due to the underlying coronary artery disease.

By decision dated September 19, 2003, the Office terminated appellant's compensation benefits based on Dr. Kremkau's impartial medical opinion. On October 9, 2003 appellant, through counsel, requested an oral hearing.

In a January 29, 2004 decision, a hearing representative set aside the September 19, 2003 decision and remanded the case to the Office, finding that Dr. Kremkau's opinion was not fully rationalized on the issue of aggravation. On remand, the hearing representative instructed the Office to obtain a supplemental report from Dr. Kremkau as to whether appellant's coronary artery disease was temporarily or permanently aggravated by his employment.

By letter dated February 10, 2004, the Office requested that Dr. Kremkau provide clarification as to whether the aggravation of appellant's coronary artery disease by his employment was temporary or permanent. In a supplemental report dated March 24, 2004, Dr. Kremkau opined that the 1999 episode of unstable angina was likely the result of the normal progression of appellant's coronary artery disease with multiple risk factors, many of which were not under good control. She stated that it was possible that his work activities at that time aggravated his condition. However, any work-related aggravation was temporary. She indicated that no changes occurred with the coronary disease itself. Dr. Kremkau suspected that the episode of angina that occurred might have been aggravated due to an increase in blood pressure or heart rate. She concluded that the effects of the temporary aggravation was caused by appellant's employment.

In a decision dated April 12, 2004, the Office terminated appellant's compensation. The Office accorded special weight to Dr. Kremkau's opinion as an impartial medical specialist. On April 26, 2004 appellant, through counsel, requested an oral hearing.

By decision dated May 20, 2004, a hearing representative affirmed the Office's April 12, 2004 decision. The hearing representative found that Dr. Kremkau's opinion was sufficiently rationalized to be given special weight afforded an impartial medical specialist.

Appellant submitted Dr. Chamusco's progress notes dated November 25, 2002, August 5, 2003 and April 20, 2004. He stated that appellant was stable with infrequent angina on his current medical therapy.

On August 17, 2005 appellant appealed to the Board. In an order dated January 9, 2006, the Board remanded the case to the Office for reconstruction of the case record, as it did not receive the case record within 30 days as requested. The Board directed the Office to reissue an appropriate decision to fully protect appellant's appeal rights.

On February 17, 2006 an Office hearing representative reissued the Office's May 20, 2004 decision, affirming the termination of appellant's compensation on the grounds that he no longer had any residuals or disability causally related to his employment-related aggravation of angina. The hearing representative accorded special weight to Dr. Kremkau's medical opinion as an impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

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.⁵

ANALYSIS -- ISSUE 1

The Board finds that a conflict in medical opinion arose between Dr. Chamusco, an attending physician, and Dr. Thompson, an Office referral physician. The physicians disagreed as to whether appellant had any continuing residuals or disability causally related to his accepted aggravation of angina. Dr. Chamusco opined that physical activity and stress aggravated

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

appellant's symptoms of angina pectoris because he had significant amounts of myocardium that could become ischemic. Dr. Thompson opined that there was no relationship between appellant's work and his current anginal problems as he had not worked since June 1999 and that, although he could not perform his regular work duties, he could perform sedentary work with restrictions.

The Office referred appellant to Dr. Kremkau, selected as the impartial medical specialist. In a July 10, 2003 report, Dr. Kremkau reviewed appellant's history of injury, provided normal findings on examination and related her clinical findings. She indicated that appellant sustained coronary heart disease with myocardial infarction and underwent quadruple bypass surgery in 1991 and that he had unstable angina and underwent an angiography in 1999. Dr. Kremkau diagnosed fairly stable Functional Class II angina by history and multiple risk factors for vascular disease, including former tobacco abuse until 1999, obesity, hypertension, hyperlipidemia and diabetes. She noted that appellant had reduced ventricular function and ejection fraction of 40 percent at catheterization in 1999. Dr. Kremkau opined that appellant appeared to be limited due to his angina pectoris. She further opined that his angina pectoris was likely a combination of the natural progression of his coronary disease which was aggravated by his work stress in 1999. Dr. Kremkau found that appellant continued to suffer from angina although he was not currently working. She concluded that appellant did not have a work-related condition at that time. In an August 29, 2003 supplemental report, Dr. Kremkau opined that appellant had important coronary disease and angina pectoris which was not controlled at the time of the unstable anginal episode in 1999. Appellant also had multi-vessel coronary disease, graft disease and evidence of coronary heart disease with reduced ejection fraction. Because of the extent of the disease, Dr. Kremkau stated that appellant was a candidate for angina pectoris, noting that his symptoms were related to the progression of his coronary disease. She opined that in 1999 it was possible that appellant's work activities contributed to the aggravation of the angina pectoris due to the underlying coronary artery disease. In a supplemental report dated March 24, 2004, Dr. Kremkau noted that the 1999 episode of unstable angina likely caused the normal progression of appellant's coronary artery disease with multiple risk factors, many of which were not under good control. However, it was possible that appellant's work activities at that time aggravated this condition. The aggravation was temporary in nature and there were no changes in the coronary disease process itself. Dr. Kremkau suspected that the episode of angina that occurred might have been aggravated because of an increase in blood pressure or heart rate.

The Board finds that Dr. Kremkau's opinion is sufficiently well rationalized and based upon a proper factual and medical background. It is entitled to special weight as she found that appellant no longer had any residuals or disability due to his accepted employment-related aggravation of angina.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had any disability causally related to his accepted injury.⁶ To establish a causal relationship between the condition, as well as any attendant

⁶ See Manuel Gill, 52 ECAB 282 (2001).

disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ 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.⁹

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding continuing employment-related residuals and disability after April 12, 2004 includes Dr. Chamusco's April 20, 2004 progress note. Dr. Chamusco stated that appellant was stable with infrequent angina on his current medical therapy. The Board finds that Dr. Chamusco's progress note is insufficient to establish appellant's burden of proof because it failed to address how the diagnosed condition was caused or contributed to by his accepted employment-related condition.¹⁰

Appellant has not submitted sufficient rationalized medical evidence establishing that he has any continuing residuals or disability causally related to his accepted employment-related condition.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation on the grounds that he no longer had any residuals or disability causally related to his employment-related aggravation of angina. The Board further finds that appellant failed to establish that he had any continuing employment-related residuals or disability after April 12, 2004.

⁷ *Id.*

⁸ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *Richard A. Neidert*, 57 ECAB ____ (Docket No. 05-1330, issued March 10, 2006); *Alice J. Tysinger*, 51 ECAB 638 (2000) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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