

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

G.B., Appellant)
and) Docket No. 08-1534
DEPARTMENT OF THE ARMY, ARMY) Issued: December 15, 2008
CORPS OF ENGINEERS, Los Angeles, CA,)
Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 5, 2008 appellant filed a timely appeal from a December 3, 2007 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim and a March 13, 2008 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the March 13, 2008 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has established that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment; and (2) whether the Office properly denied his request for merit review of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated October 5, 2007, the Board set aside a January 16, 2007 nonmerit decision denying appellant's request for further merit review of his claim.¹ The claim was based on appellant's contention that he sustained a myocardial infarction while in travel status due to employment-related stress. The Board noted that the Office accepted as a compensable employment factor that the employing establishment erred in failing to timely pay him at an accurate rate. The Office determined, however, that the medical evidence was insufficient to support that appellant sustained a heart attack due to the compensable employment factor of timely receiving his proper pay. The Board found that he had submitted relevant and pertinent medical evidence with his request for reconsideration and remanded the case for the Office to review the merits of the claim. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On June 6, 2001 appellant experienced a myocardial infarction while on travel status in Oregon. He attributed his heart condition and heart attack to stress from learning a new job under time constraints. Appellant further asserted that he sustained a significant amount of stress because he was not timely paid due to payroll's delay in processing his documents. The employing establishment also listed him at an inaccurate step and payroll paid him at an incorrect rate. Appellant contended that he sustained increased damage to his heart because he was in a remote location when he sustained his heart attack.

On July 19, 2001 the employing establishment maintained that new employees were not under pressure "to learn new material within any specified period of time." Appellant began work on May 6, 2001 and should have received his salary on May 31, 2001. He was paid on June 4, 2001 at an inaccurate pay rate. Appellant received his proper salary on June 14, 2001.

In a September 12, 2002 statement, appellant related that he accepted his position with the employing establishment because of a promised salary increase. He stated, "Due to an administrative error, not only was I not paid on time for the first two pay dates scheduled, my salary level was at a GS-11, Step 1 instead of Step 8 as promised."

On November 13, 2002 the Office referred appellant to Dr. Satinder Swaroop, a Board-certified internist, for a second opinion examination. In an accompanying statement of accepted facts, it listed as compensable employment factors that the employing establishment failed to timely issue appellant's paycheck and paid him at an inaccurate rate. The Office indicated that he began working May 6, 2001 and was eligible for a paycheck on May 31, 2001. When appellant received his first paycheck on June 4, 2001, his pay rate was inaccurate. He received his proper salary the next pay date of June 13, 2001. The Office noted that at the time of his myocardial infarction he and other employees were on a bus trip to the Oregon coast to take a

¹ Docket No. 07-1302 (issued October 5, 2007). On July 2, 2001 appellant, then a 52-year-old real estate specialist filed an occupational disease claim alleging that he sustained a heart attack on June 6, 2001 and a heart condition causally related to work stress. He attributed his stress to learning a new job under time constraints and a delay in receiving his pay. Appellant also noted that his pay rate was inaccurate. He was on travel status in Oregon at the time of his June 6, 2001 myocardial infarction. Appellant argued that working in a remote location three hours from a hospital contributed to his heart damage.

tour of a marina. Appellant experienced symptoms on the bus tour and went to a hospital after returning to his hotel.

On December 12, 2002 Dr. Swaroop reviewed appellant's history of chest discomfort on a trip to Oregon. He sought treatment at a hospital and was diagnosed as having a myocardial infarction. Dr. Swaroop diagnosed status post old posterior wall myocardial infarction. He opined that it was "quite unclear" whether appellant's myocardial infarction was caused or aggravated by employment factors. Dr. Swaroop noted that "he was not doing any unusual activity at the time of infarct; however, he stated that he was out of town and he also stated that his pain was somewhat delayed and he also stated that his treatment was somewhat delayed as he was at a somewhat remote place from the hospital." He found that it was unclear whether appellant's work conducting negotiations contributed to his heart condition. Dr. Swaroop also found that it was unclear whether traveling to Oregon caused his heart attack.

On February 11, 2003 the Office noted that Dr. Swaroop was not responsive to its questions regarding causal relationship. It requested that he provide an opinion regarding whether the delay in pay contributed to appellant's heart attack. In a supplemental report dated July 14, 2003, Dr. Swaroop opined that he was unsure whether a four-day delay in paying appellant "would have caused such a severe stress to cause a heart attack. Apparently, delay in payment would be a stressful situation, however, it is difficult to evaluate whether a delay of four days would have caused such a severe stress to cause a heart attack." Dr. Swaroop concluded, "Based on the information provided, I do not think that the work factors caused [appellant's] heart attack. However, one factor involved was that the care for his myocardial infarction was delayed because he was working in a remote area, and that may have delayed his recovery from his heart attack."

In a report dated September 26, 2006, Dr. Jerome Pierson, a Board-certified internist, opined that work stress "was a substantial cause for the myocardial infarction [appellant] suffered on June 6, 2001" He noted that appellant had other risk factors but that "the only new and progressive factor identified was the work[-]related stress. [Appellant] clearly felt he was treated unfairly and the lack of appropriate pay, through no fault of his own, placed additional psychological and physical stress on him. The timing of his cardiac event had to be impacted by the work[-]related stress suffered by [him]." Dr. Pierson concluded that the increased stress due to the failure to obtain pay and other work disputes could "cause increased coagulation and plaque disruption and lead to myocardial infarction."

On remand, by decision dated December 3, 2007, the Office denied modification of its November 8, 2005 decision. It determined that the September 6, 2006 report submitted by Dr. Jerome Pierson, a Board-certified internist, was insufficient to show that appellant's June 6, 2001 myocardial infarction causally related to the accepted employment factor.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the

concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁴ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁵ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

Proceedings under the Act are not adversarial in nature, nor are the Office a disinterested arbiter.⁹ While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that

² 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁴ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁵ See *William H. Fortner*, 49 ECAB 324 (1998).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ *Phillip L. Barnes*, 55 ECAB 426 (2004); *Vanessa Young*, 55 ECAB 575 (2004).

justice is done.¹⁰ Accordingly, once it undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹¹

ANALYSIS

Appellant attributed his heart condition and myocardial infarction in part to pressure to learn new material within time constraints. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹² Appellant, however, did not specifically describe the duties he was required to learn within specific time limitations and also did not submit any evidence to establish that his allegation was factual.¹³ The employing establishment controverted his contention that he was under pressure to “learn new material within any specified period of time.” As appellant submitted no evidence substantiating his allegation, he has not established a compensable employment factor.

Appellant attributed his stress to the employing establishment’s failure to timely pay him and its failure to pay him at an accurate rate. An employee’s reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of an employee.¹⁴ However, error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.¹⁵ In its September 14, 2001 decision, the Office properly accepted as a compensable employment factor that the employing establishment erroneously delayed paying appellant and then paid him as a GS-11, Step 1 instead of a GS-11, Step 8.

Appellant’s burden of proof is not discharged by establishing compensable employment factors. He must also submit rationalized medical opinion evidence establishing that his emotional condition is causally related to the accepted employment factor.¹⁶ It is well established, however, that proceedings under the Act are not adversarial in nature and that, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁷ Once the Office undertakes development of the medical evidence, it has the responsibility to do in a manner that will resolve the relevant

¹⁰ *Richard E. Simpson*, 55 ECAB 490 (2004).

¹¹ *Melvin James*, 55 ECAB 406 (2004).

¹² *Peter D. Butt, Jr.*, 57 ECAB 117 (2004).

¹³ *Id.*

¹⁴ *Jeral R. Gray*, 57 ECAB 611 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

¹⁵ *Id.*

¹⁶ *Charles D. Gregory*, 57 ECAB 322 (2006).

¹⁷ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

issues in the case.¹⁸ The Board finds that the opinion of Dr. Swaroop, the Office referral physician, is speculative and insufficiently rationalized to resolve the medical issue presented. Dr. Swaroop initially asserted that he was unsure whether appellant's myocardial infarction was caused or aggravated by employment factors. In his July 14, 2003 supplemental report, he generally concluded that he did not believe that work factors caused the myocardial infarction. Dr. Swaroop, however, further opined that he was "unsure" whether a four-day delay in receiving pay would constitute sufficient stress to cause a heart attack. He did not address whether receiving pay at an inaccurate rate caused or contributed to appellant's heart condition. Consequently, Dr. Swaroop's opinion is insufficient to resolve the pertinent issue developed by the Office of whether compensable factors of employment caused or contributed to his myocardial infarction and heart condition. On remand, it should obtain a rationalized medical opinion addressing whether appellant sustained a heart condition or myocardial infarction caused or aggravated by the compensable employment factors.

Dr. Swaroop further opined that appellant's delay in receiving treatment because he was working in a remote location may have delayed his recovery. If factors of employment caused a delay in the treatment of his condition which materially affected his condition or aggravated it in any way that would be covered under the Act.¹⁹ In its August 6, 2004 decision, the Office determined that it was reasonable for appellant to wait until he returned to the area around his hotel to seek medical treatment. It did not make a specific factual determination regarding whether his location at the time of his myocardial infarction delayed his receipt of medical treatment. On remand the Office should make a factual determination regarding whether appellant's work location on the Oregon coast at the time of his myocardial infarction delayed him obtaining medical treatment and, if so, request a reasoned medical opinion regarding whether the delay aggravated or worsened his condition.

CONCLUSION

The Board finds that the case is not in posture for decision.²⁰

¹⁸ See *Melvin James*, *supra* note 11.

¹⁹ See *Rudy C. Sixta, Jr.*, 44 ECAB 727 (1993).

²⁰ In view of the Board's disposition of the merits, the issue of whether the Office properly denied appellant's request for merit review of his claim is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 13, 2008 and December 3, 2007 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 15, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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