

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

J.D., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Los Angeles, CA, Employer**

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**Docket No. 10-746
Issued: January 19, 2011**

Appearances:

*Sally F. LaMacchia, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 25, 2010 appellant filed a timely appeal from an October 21, 2009 merit decision of the Office of Workers' Compensation Programs concerning compensation for a work-related heart condition. 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 residuals of his accepted heart condition after January 31, 2005.

FACTUAL HISTORY

In mid 2007 the Office accepted that appellant, then a 65-year-old addiction counselor, sustained post-traumatic stress disorder due to work factors.¹ The accepted work factors

¹ Appellant continues to receive compensation for his post-traumatic stress disorder and this matter is not currently before the Board.

included an incident on November 10, 1999 when a patient came to the workplace with a gun and shot and killed another patient. Appellant hid in his office while the shooter looked for other victims and he later saw the patient that was killed. The second factor involved a February 25, 2000 incident when a patient told appellant that he was going to murder him and then commit suicide.²

The Office referred appellant for a second opinion examination to determine if he suffered from a heart condition caused or contributed to by the accepted events. On July 5, 2007 appellant saw Dr. Allen B. Tabibian, Board-certified in internal medicine and cardiovascular disease, for the second opinion examination and evaluation. He diagnosed atrial fibrillation as verified by echocardiogram. Dr. Tabibian opined that appellant's stressful work events may have caused him to suffer a sudden onset of proximal atrial fibrillation. He noted, however, that in patients with no risk factors, this condition would resolve and the heart rhythm would have returned to normal. Dr. Tabibian stated that appellant's work events would have aggravated his preexisting atrial fibrillation condition, but it did not directly cause this condition. He found the aggravation temporary while the claimant was undergoing the stress and posited that, when the stress condition was removed, the aggravation would have ceased. Dr. Tabibian posited that the aggravation ceased when the claimant retired on January 31, 2005.

The Office received an October 22, 2007 medical report from Dr. Ed Fik, an attending Board-certified psychiatrist, who noted that appellant had a diagnosis of post-traumatic stress disorder and continuing residuals of that condition. Dr. Fik opined that appellant also developed depression and that he was disabled on a psychiatric basis.

In a November 5, 2007 decision, the Office accepted temporary aggravation of atrial fibrillation due to the accepted stress events at appellant's employment that resolved as of January 31, 2005. Pursuant to an April 16, 2008 decision by the Branch of Hearings and Review, appellant was referred for a second opinion examination with a psychiatrist and, if the physician determined that appellant had residuals of post-traumatic stress disorder, then the case file should be resubmitted to Dr. Tabibian to address any coronary residuals.

Appellant was referred to Dr. Stephan Simonian, a Board-certified psychiatrist, who opined in a June 16, 2008 report that appellant had residuals of his work-related post-traumatic stress disorder which rendered him temporarily totally disabled. As a result of Dr. Simonian's finding, the case file was resubmitted to Dr. Tabibian to address whether the aggravation of appellant's atrial fibrillation condition was resolved, even though he continued to suffer from post-traumatic stress disorder.

In a July 7, 2008 report, Dr. Tabibian opined that appellant did not have residuals of the atrial fibrillation condition. He stated that appellant had multiple risk factors for dysrhythmia and atrial fibrillation including coronary artery disease, history of myocardial infarction, hypertension and left atrial enlargement. As noted in Dr. Tabibian's initial July 5, 2007 report, once appellant was removed from the work environment, the aggravation ceased. He opined that appellant's multiple medical problems contributed to his dysrhythmia, which was nonindustrial in nature and posited that aggravation was no longer a factor.

² Appellant voluntarily retired from the employing establishment effective January 31, 2005.

In a July 24, 2008 decision, the Office determined that appellant did not meet his burden of proof to establish that he had residuals of his accepted heart condition after January 31, 2005. It found that the weight of the medical evidence regarding this matter rested with the well-rationalized reports of Dr. Tabibian. In an October 21, 2009 decision, the Office affirmed its July 24, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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.⁵

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he had residuals of his accepted heart condition, temporary atrial fibrillation, after January 31, 2005. The Board finds that the weight of the medical evidence regarding this matter rests with the well-rationalized reports of Dr. Tabibian, an Office referral physician who is Board-certified in internal medicine and cardiovascular diseases.

In his July 5, 2007 report, Dr. Tabibian diagnosed appellant with atrial fibrillation and opined that his stressful work events may have caused him to suffer a sudden onset of proximal atrial fibrillation. He noted, however, that in patients with no risk factors, this condition would resolve and the heart rhythm would have returned to normal. Dr. Tabibian stated that appellant's events at work would have aggravated his preexisting atrial fibrillation condition, but it did not directly cause this condition. He found the aggravation to be temporary while the claimant was undergoing the stress and posited that, when the stress condition was removed, the aggravation would have ceased. Dr. Tabibian posited that the aggravation ceased when the claimant retired on January 31, 2005.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

In his follow-up July 7, 2008 report, Dr. Tabibian opined that appellant did not suffer residuals of his atrial fibrillation condition. He again noted that, once appellant was removed from the work environment, the aggravation ceased. Dr. Tabibian opined that appellant's multiple medical problems contributed to his dysrhythmia, which was nonindustrial in nature, and posited that aggravation was no longer a factor.

On appeal, counsel argued that Dr. Tabibian's reports were not adequately rationalized because he did not reference the appropriate cardiac medical records or the opinion of Dr. Simonian, a Board-certified psychiatrist who served as an Office referral physician. The report of Dr. Tabibian refers to the complete medical history and there is no evidence to suggest that he did not adequately consider the cardiac or psychiatric medical evidence of record. Counsel also argued, in the alternative, that there was a conflict in the medical opinion between Dr. Tabibian and Dr. Fik, an attending psychiatrist. However, Dr. Fik's opinion does not hold weight on the relevant issue of this case as he is not a cardiologist but rather a psychiatrist. Therefore, no conflict in the medical opinion exists.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he had residuals of his accepted heart condition after January 31, 2005.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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