

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

D.M., Appellant)	
)	
and)	Docket No. 10-857
)	Issued: January 3, 2011
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Orofino, ID, Employer)	
)	

Appearances:
Martin Kaplan, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2008 appellant, through his representative, filed a timely appeal from the August 12, 2008 merit decision of the Office of Workers' Compensation Programs, which accepted a temporary aggravation of preexisting coronary disease prior to September 22, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office met its burden to establish that the employment-related temporary aggravation of coronary disease resolved by September 22, 2002. Appellant's attorney argues on appeal that the opinion of the Office's second opinion physician is not sufficient to discharge the Office's burden.

FACTUAL HISTORY

On October 6, 2002 appellant, then a 56-year-old law enforcement officer, filed a traumatic injury claim alleging that he sustained chest, left arm and left side pains on September 2, 2002. He stated that he had been working long, stressful shifts and had been on-call 24 hours a day.

Appellant submitted a November 18, 2002 report from Dr. Gerhard Muelheims, a Board-certified internist, specializing in cardiovascular disease. Dr. Muelheims provided examination findings and noted that appellant underwent cardiac intervention and percutaneous stenting of his right coronary vessel on September 20, 2002. His report reflected a history of coronary artery disease and elevated cholesterol.

On January 3, 2003 Dr. Muelheims reported that he was treating appellant for coronary artery disease and vascular risk factors. Appellant was admitted to Deaconess Medical Center on September 20, 2002 with complaints of chest pain. He was found to have coronary artery disease with a 95 percent blockage of his right coronary artery with evidence of hypokinesis, but with fairly well-preserved left ventricular ejection fraction. Appellant also had mild to moderate disease of his left anterior descending artery.

By decision dated January 29, 2003, the Office denied appellant's claim on the grounds that there was no evidence establishing that the claimed medical condition was caused by the established work-related events.

On February 25, 2003 appellant requested an oral hearing. On June 30, 2003 he filed an occupational disease claim.

In an October 30, 2003 statement, appellant alleged that his coronary condition was caused by his stressful employment conditions and activities. His duties included the apprehension and arrest of criminals and illegal immigrants. Appellant experienced stress related to an internal investigation regarding malicious and false allegations against him. On September 2, 2002, after climbing a flight of stairs in the main building of the employing establishment, he had a heart attack, which required a coronary angiography for a blockage of a major artery. Prior to the September 2, 2002 attack, appellant had worked 40 days straight, without a day off.

By decision dated January 22, 2004, an Office hearing representative vacated the January 23, 2003 decision and remanded the case for further development regarding fact of injury.

In a letter dated February 19, 2004, Ginger R. Swisher, appellant's supervisor, stated that appellant was responsible for the detection of crimes and the identification, arrest and detention of those responsible for committing such crimes on national forest lands. Appellant often participated in special law enforcement details that require extensive hours of work. His job was both physically and psychologically demanding. It was a high stress job and often caused officers to work long hours and late night hours. Normal off-duty living conditions were often interrupted by law enforcement call out needs. Appellant was a single officer patrol in his area and carried a pager, so that he was available when a law enforcement need arises whether he is on duty or off. For the year 2002, he averaged over 12 hours of overtime per week. Current hours worked would reflect an average overtime of 17.36 hours per week the most recent six pay periods. Appellant's statement regarding the internal investigation was accurate. Allegations by employees were made which caused an extensive and stressful investigation to ensue (approximately three years in length). Appellant was cleared of all allegations and the employees making the allegations were subject to personnel action. During the time the allegations were being made, there were some trust, credibility, and character attacks made

towards appellant; this was undoubtedly very stressful for him, as an officer's integrity is a main stay necessity for their success. For the period of work surrounding the date of appellant's heart attack, he was working extensive days and hours. Immediately preceding his heart attack, he worked a 73.5-hour workweek.

In a June 4, 2004 report, Dr. Muelheims stated that appellant's coronary artery condition likely developed over a number of years, most likely secondary to his being a male as well as having elevated cholesterol. He was unable to identify the exact precipitating factor that caused, or the degree to which stress contributed to, his hospitalization in September 2002.

In a decision dated August 20, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish that the claimed cardiac condition was causally related to established work-related events. On September 18, 2004 appellant requested an oral hearing.

The record contains an August 18, 2004 report from Dr. Pierre Leimgruber, a Board-certified internist, specializing in cardiovascular disease, who noted that he had been treating appellant since September 2002, when he was admitted with acute coronary syndrome. Dr. Leimgruber's findings were consistent with a high-grade stenosis in appellant's right coronary artery and he underwent successful balloon angioplasty and stenting. He opined that appellant's coronary artery disease progression, which ultimately culminated in his acute event in September 2002, was significantly caused by stress experienced in his work environment. Dr. Leimgruber explained that stress has been well known to aggravate and accelerate underlying coronary artery disease.

By decision dated March 7, 2005, an Office hearing representative affirmed the Office's prior decision.

On October 26, 2005 appellant requested reconsideration. He submitted a May 16, 2005 report from Dr. Leimgruber, who explained that stress causes the progression of coronary artery disease by raising catecholamine levels, which increases the heart rate and blood pressure. On August 15, 2005 Dr. Charles R. Foster, a treating physician, opined that appellant's stressful job activities caused appellant's coronary artery disease and acute September 2002 event, on a more probable than not basis.

By decision dated October 28, 2005, the Office denied modification of the prior decision. On July 13, 2006 appellant requested reconsideration.

Appellant submitted a June 1, 2006 report from Dr. John G. Peterson, a Board-certified internist, specializing in cardiovascular disease. Dr. Peterson opined that work stressors precipitated acute ischemic heart disease in September 2002.

The Office referred appellant to Dr. Robert G. Thompson, a Board-certified internist, specializing in cardiovascular disease, for a second opinion examination and an opinion as to whether appellant's diagnosed coronary artery disease was causally related to employment factors. If the condition was aggravated by employment factors, the Office asked the physician

to provide a rationalized opinion on whether the aggravation was temporary or permanent. The statement of accepted facts provided to Dr. Thompson stipulated that appellant worked 12 to 16 hours per day for the 40 days preceding the September 2002 cardiac incident, and that his duties included monitoring and relocating sensors and radio traffic and arresting people attempting to leave the United States illegally.

In a June 27, 2007 report, Dr. Thompson provided a history of appellant's injury and treatment. He stated that it was impossible to say that ongoing stress in this case caused appellant's chronic coronary problem.

By decision dated July 24, 2007, the Office affirmed the prior decision, finding that there were no employment factors contributing to appellant's coronary condition.

Appellant's representative noted that he had not received notice of the second opinion examination and requested that the July 24, 2007 decision be vacated based on the Office's procedural error. In a letter dated October 12, 2007, the Office informed appellant's counsel that the July 24, 2007 decision was set aside.

The Office referred appellant, together with a statement of accepted facts, to Dr. Amish J. Desai, a Board-certified internist, specializing in cardiovascular disease, for a second opinion examination and an opinion as to the cause of his cardiac condition. In a report dated August 28, 2007, Dr. Desai stated that stress in the workplace has been shown to increase the risk of coronary artery disease and subsequent myocardial infarction, "especially when it is protracted, intense and continuous, such as in [appellant's] case." He opined that appellant's underlying cardiac condition was accelerated by his employment as a law enforcement officer. Dr. Desai also noted that "aggravation as related to the work factors ceased when the patient stopped this line of work." In a supplemental report dated November 16, 2007, he opined that appellant's coronary artery disease was more probably than not accelerated by his ongoing stressful work environment, which led to elevated cortisol levels in the blood stream, which, in turn, damaged the blood vessels in the heart.¹

On June 11, 2008 the Office informed appellant that Dr. Desai's reports would be excluded from the record, as his opinion was equivocal, and appellant was referred to Dr. Douglas L. Dawley, a Board-certified internist, specializing in cardiovascular disease, for another second opinion examination. It asked Dr. Dawley to provide an unequivocal opinion with medical rationale as to whether the work-related factor contributed to the development of appellant's cardiac disease.

In a June 11, 2008 report, Dr. Dawley provided a history of injury and treatment, noting that appellant underwent a coronary angiogram on September 20, 2002, which showed a 95 percent stenosis of the mid right coronary artery. Subsequently, he underwent RCA stenting of the high-grade right coronary lesion with a 3.0 express stent. Dr. Dawley stated that, since that time, appellant's angina had not recurred. He provided: examination findings reflecting a blood

¹ Appellant filed an appeal with the Board for review of the Office's July 24, 2007 decision. The appeal was dismissed by order dated February 27, 2008 at appellant's request. Docket No. 08-112 (issued February 27, 2008).

pressure of 142/82; heart 71 and regular, respirations 18; thyroid not palpable; neck supple without adenopathy; lungs clear; extremities without edema; pulses: carotids full bilaterally without bruits; radial and dorsalis pedis pulses 1+ bilaterally. Dr. Dawley opined that appellant's only cardiac risk factor appeared to be hypercholesterolemia.

Dr. Dawley opined that stress was not a clear-cut causal factor in the occurrence or manifestation of symptomatic coronary artery disease. He stated:

"I think it could only be argued that his job stress provided a temporary aggravation of his cardiac symptoms, possibly due to a hyperadrenergic state. In no way, though, would his job stress be considered a major causal factor in the development of coronary artery disease."

Dr. Dawley indicated that "the temporary aggravation would have ceased when the specific provoking job activities ceased." He opined that appellant would need routine medical follow-up, specifically to monitor cardiac risk factors like hypertension and hypercholesterolemia.

In a decision dated August 12, 2008, the Office vacated the October 25, 2008 decision and accepted appellant's claim for temporary aggravation of his underlying coronary disease prior to September 22, 2002. The Office's decision was based upon Dr. Dawley's June 11, 2008 report.²

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to his employment, it may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.⁴ The fact that the Office accepted an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on the Office to demonstrate an absence of employment-related disability or residuals in the period subsequent to the date of termination or modification.⁵

² The Board notes that appellant submitted additional evidence after the Office rendered its August 12, 2008 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952)

³ 5 U.S.C. § 8102(a).

⁴ *Edwin Lester*, 34 ECAB 1807 (1983).

⁵ See *Elsie L. Price*, 54 ECAB 734, 739 (2003); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

ANALYSIS

On the same day, the Office accepted appellant's claim for temporary aggravation of his underlying coronary disease and found that the accepted condition had resolved effective September 22, 2002. As noted, the Office's acceptance of a claim for a specified period of disability does not shift the burden of proof to the claimant to demonstrate that he remains disabled thereafter.⁶ It is the Office's burden to demonstrate the absence of employment-related disability for the period following termination or modification of benefits.⁷ The Office based its decision to terminate compensation and medical benefits on Dr. Dawley's June 11, 2008 report. The Board finds that the medical evidence of record is insufficient to establish that appellant's accepted condition had resolved.

Dr. Dawley stated that it could "be argued" that appellant's job stress provided a temporary aggravation of his cardiac symptoms, "possibly" due to a hyperadrenergic state. His opinion regarding both the cause and duration of appellant's condition is equivocal in nature. Although he speculated that the temporary aggravation would have ceased when the specific provoking job activities ceased, Dr. Dawley did not explain the basis for his conclusion that the effects of the aggravation would be limited in time, or whether the accepted stressful employment factor had accelerated the underlying cardiac condition, as Dr. Desai opined. Such a discussion is particularly important in light of the opinions of appellant's treating physicians that stress causes the progression of coronary artery disease by raising catecholamine levels. Dr. Dawley's opinion that appellant would need routine medical follow-up to monitor cardiac risk factors like hypertension and hypercholesterolemia does not establish that the aggravation had resolved by September 22, 2002, but rather supports appellant's contention that he continues to experience residuals from the accepted condition. The Board finds that Dr. Dawley's report is of limited probative value and fails to demonstrate an absence of employment-related residuals required to terminate appellant's benefits.⁸

The record does not contain a rationalized medical opinion establishing that the accepted condition of temporary aggravation of coronary disease had resolved as of September 22, 2002. The Office, therefore, improperly terminated authorization for medical treatment for this accepted condition.⁹

⁶ *Elsie L. Price, supra* note 5.

⁷ *Id.*

⁸ *See supra* note 5.

⁹ The Office excluded Dr. Desai's reports from the record on the grounds that they were equivocal. Dr. Desai's reports, however, do not fall within the category of reports which should be excluded from the record. There is no evidence that he performed fitness-for-duty examinations for the employing establishment, that the Office had previously requested an impartial report and failed to seek clarification before seeking his opinion; that his reports were obtained through telephone contact or that the Office improperly utilized leading questions. The Office therefore was not required to exclude Dr. Desai's reports from the record. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.6 (September 1995). The Office's error in excluding Dr. Dasai's reports was harmless, however, it does not affect the outcome of this case.

On appeal, counsel contests the termination of the accepted aggravation of appellant's coronary condition. For reasons stated, the Board finds that the termination of benefits was improper.

CONCLUSION

The Board finds that the Office did not meet its burden to establish that appellant's accepted condition had resolved as of September 22, 2002. Accordingly, the Office's August 12, 2008 decision is affirmed as to its acceptance of temporary aggravation of coronary disease. The decision is reversed as to the termination of appellant's medical and compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2008 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: January 3, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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