

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE McGOWEN and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 96-1685; Submitted on the Record;
Issued June 15, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that his medical condition on and after February 16, 1993 is causally related to an accepted aggravation of varicose veins or other factors of his federal employment.

The Office accepted that appellant, then a 49-year-old marine machinery mechanic, sustained an exacerbation of a pre-existing varicose vein condition in the performance of duty on or before September 22, 1992. The record indicates that from approximately 1986 onward, appellant was on permanent light duty as a mail carrier, taxi driver, operations clerk and uniform clerk, due to accepted bilateral atopic dermatitis of the hands.¹

In September 10 and 30, 1992 reports, Dr. J. Richard Herd, an attending Board-certified family practitioner, noted appellant's work restrictions due to atopic dermatitis and 1982 myocardial infarction.² He stated that appellant was removed that month from his taxi driver position "because of his heart condition and placed on a job where he has to stand all day long either walking, climbing ladders or filing and has had rather prompt exacerbation of his varicose veins." Dr. Herd stated that appellant had "extensive lower extremity varicosities" and an "incompetent deep vascular system," managed by compression stockings. Dr. Herd recommended that appellant wear full-length support stockings while at work, and be placed in a position with minimal walking or standing, with "at least four hours a day where he can get off his feet and when he has an opportunity to elevate his feet.

¹ In an August 3, 1988 report, an employing establishment physician noted permanent restrictions against appellant working "with chemicals, solvents, or other solutions that are involved in the work environment of a marine machinist mechanic." Appellant's dermatitis claim was accepted under Claim No. A14-0211467. This claim is not before the Board on the present appeal.

² The record demonstrates that appellant had a December 1981 myocardial infarction, triple bypass coronary artery bypass surgery in February 1982, and quintuple bypass in April 1993.

In an October 22, 1992 form, Dr. James Kruger, an employing establishment physician, permanently limited standing to one hour maximum at one time, limited stair climbing and walking to a minimum, and that appellant “must sit at least a total of four hours per day.”

In a January 28, 1993 report, Dr. Herd stated that appellant’s varicose vein condition was stable until a December 1992 job change requiring standing “most of the day, passing out new uniforms,” causing increased “leg discomfort and swelling.” Dr. Herd recommended that appellant be “reassigned to a job where he doesn’t stand more than an hour at a time,” in accordance with Dr. Kruger’s permanent October 22, 1992 restrictions.

In February 17 and March 15, 1993 reports, Dr. Herd noted that appellant was off work due to continuing symptoms of pain and swelling in both legs, and that thigh-length compression stockings were of limited benefit. He recommended surgery.³

In an April 12, 1993 report, Dr. Herd opined that appellant’s duties delivering mail and filing caused a “temporary aggravation of “ and “made worse” his pre-existing varicose vein condition beginning in January 1992.

The employing establishment issued a proposed notice of removal on May 5, 1993, as light duty could not be found within appellant’s limitations.

In a September 27, 1993 report, Dr. Robert A. McAlexander, a Board-certified internist and second opinion physician,⁴ reviewed the medical record and statement of accepted facts, and by findings on examination diagnosed “[b]ilateral varicose veins with combined deep and superficial incompetence.” “[Appellant] did have considerable walking and standing. Without effective compression therapy, any activity, especially standing, would be expected to aggravate varicose veins.” Dr. McAlexander stated that appellant’s varicose vein condition appeared stable, and that “if [appellant] were to continue adequate elastic support ... he could continue in his occupation as a mail carrier”

By decision dated February 18, 1994, the Office denied appellant’s claim for compensation benefits on the grounds that he had not established any period of disability causally related to the accepted aggravation of varicose veins. Appellant requested an oral hearing held on October 20, 1994, and submitted additional evidence.⁵

³ Dr. Herd noted that a flare-up of hemorrhoids in February 1993 was unrelated to appellant’s varicose vein condition.

⁴ The Office referred appellant, the medical record and a statement of accepted facts to Dr. Robert A. McAlexander, a Board-certified vascular surgeon, for a second opinion evaluation.

⁵ Appellant, through his attorney, asserted that as he continued to have permanent residuals of the contact dermatitis and could not return to his original position of ship fitter, he should continue to receive compensation, citing to *Armin Foster*, 37 ECAB 702 (1986); and *Ronald E. Neilsen*, 37 ECAB 462 (1987). The Board notes that as the dermatologic condition claim is not before the Board on the present appeal, the Board cannot consider this argument.

In May 26, 1993 and October 10, 1994 reports, Dr. Brad Lind, an attending Board-certified cardiologist, noted appellant's cardiac history and "fairly severe bilateral venous insufficiency ... in part a result from his previous bypass grafting in 1982." Dr. Lind noted permanent restrictions against lifting over 30 pounds, "being on his feet for any prolonged periods of time," and limited standing and walking to four hours per day total.

By decision dated and finalized January 3, 1995, the Office's hearing representative remanded the case for further development, directing that the statement of accepted facts be amended to include additional work activities,⁶ and that a detailed, well-rationalized supplemental report should be obtained from Dr. McAlexander regarding whether appellant's work activities caused an aggravation or material worsening of his varicose vein condition.⁷

In a February 14, 1995 report, Dr. McAlexander reviewed the revised statement of accepted facts, and opined that appellant sustained a temporary aggravation of his varicose vein condition beginning January 27, 1993 for approximately three weeks, during which compression therapy with elastic stockings was sufficient "to return his legs to satisfactory condition to continue working. ... [Appellant] would require wearing an adequate level of compression, at least 30 millimeters, in elastic stockings," as lighter weight stockings did not provide adequate relief and resulted in "his being off work because of leg problems intermittently through 1992." Dr. McAlexander stated that treatment for varicose veins on and after September 22, 1992 was "related to his employment, with standing and sitting, and resulting venous stasis."

By decision dated March 13, 1995, the Office found that appellant had established entitlement to compensation for the period January 27 to February 16, 1993 only, based on Dr. McAlexander's reports as the weight of the medical evidence. Appellant disagreed with this decision and requested an oral hearing held November 29, 1995. He submitted additional evidence.

In a March 15, 1993 report, Dr. Herd noted that appellant's employment as a mail handler, operations clerk and uniform clerk "caused him to spend his whole day standing which definitely aggravates the varicose veins by causing blood to pool in his legs and to damage the support valves in the vein system." Dr. Herd noted that surgery was an option.⁸

⁶ The record indicates that appellant was removed from the mail carrier position in February 1992, drove a taxi at the employing establishment until September 1992 and was removed due to his cardiac condition, performed clerical duties in October and November 1992, and handed out equipment at a counter from November 1992 through January 27, 1993. The original statement of accepted facts relied on by Dr. McAlexander incorrectly noted that appellant worked as a mail carrier through January 1993.

⁷ The Office requested the supplemental report from Dr. McAlexander in a January 23, 1995 letter, and enclosed a revised statement of accepted facts.

⁸ In a November 1, 1995 report, Dr. Ronald W. Knight, a Board-certified cardiac surgeon, noted that appellant had no cardiac-related restrictions. In a November 20, 1995 report, Dr. Eric P. Jaecks, an internist, noted that appellant was able to walk "several times per week two to three miles," and had chronic leg edema "because of his chronic venous insufficiency." Dr. Jaecks released appellant to light duty, with lifting limited to 30 pounds and no prolonged periods "on his feet."

By decision dated February 8 and finalized February 9, 1996, the Office hearing representative affirmed the March 13, 1995 decision, finding that residuals of the accepted injury had ceased as of February 16, 1993. The Office noted that the additional medical evidence submitted did not contain sufficient rationale addressing causal relationship and was therefore of limited probative value.

The Board finds that the case is not in posture for a decision due to a conflict of medical evidence between Dr. McAlexander, for the government, and Dr. Herd, for appellant.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The Board notes that it is unclear as to why the Office chose February 16, 1993 as the date appellant's temporary aggravation of varicose veins ceased. Dr. McAlexander, the second opinion physician and Board-certified internist, did not use the February 16, 1993 date in either of his reports. In a September 27, 1993 report, Dr. McAlexander opined that prolonged standing at work caused venous stasis aggravating appellant's varicose veins, but did not specify the period of aggravation, and whether appellant's condition would have returned to baseline. In a February 14, 1995 report, Dr. McAlexander opined that appellant sustained a temporary aggravation of his varicose vein condition beginning January 27, 1993 for approximately three weeks. Yet, he stated that medical treatment for varicose veins on and after September 22, 1992 was "related to [appellant's] employment," without noting when, if ever, such treatment was no longer employment related.

Appellant's attending Board-certified family practitioner, Dr. Herd, submitted reports indicating that appellant continued to be disabled for work on and after February 16, 1993, and that specific employment duties had caused a permanent worsening of his varicose vein condition. Dr. Herd submitted February 17 and March 15, 1993 reports indicating that appellant was disabled for work due to continuing leg symptoms, and recommended surgery as compression stockings were no longer effective. He noted in a March 15, 1993 report that prolonged standing as a mail handler, operations clerk and uniform clerk caused "blood to pool in [appellant's] legs ... damag[ing] the support valves in the vein system." Dr. Herd thus opined that work factors caused a permanent worsening of appellant's condition by damaging the venous support valves, whereas Dr. McAlexander noted no permanent residuals. In an April 12, 1993 report, Dr. Herd opined that appellant's duties delivering mail and filing caused a "temporary aggravation of " and "made worse" his pre-existing varicose vein condition beginning in January 1992, again indicating an organic worsening of the condition along with a period of temporary aggravation. Dr. Herd did not opine in any of his reports that appellant had no residuals of the accepted temporary aggravation after February 16, 1993.

Thus, there is a conflict of medical opinion between Dr. Herd, for appellant, and Dr. McAlexander, for the government, as to the duration of the temporary aggravation of varicose veins, and the existence of permanent residuals. Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for an examination and a rationalized

medical opinion to resolve the medical conflict regarding whether his varicose vein condition on and after February 16, 1993, and any of the claimed periods of disability, were caused or aggravated by the accepted temporary aggravation of varicose veins, or any other factors of his federal employment. The specialist should also indicate which periods of medical treatment, if any, were due to occupational causes. Following such development as the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated February 8 and finalized February 9, 1996 is hereby set aside, and the case remanded for further development consistent with this decision and order.

Dated, Washington, D.C.
June 15, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member