

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDWIN S. CUNNINGHAM and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Buffalo, NY

*Docket No. 99-721; Submitted on the Record;  
Issued February 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective February 9, 1998.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 9, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>4</sup>

On February 11, 1992 appellant, then a 55-year-old revenue agent, filed a claim for occupational disease alleging that he suffered a myocardial infarction due to stress at work. The Office accepted his claim for benefits and paid compensation until his return to work in May 1992. A subsequent claim for recurrent disability on and after October 1, 1994 was also accepted. Appellant was found to be entitled to benefits until February 9, 1998, when the Office terminated appellant's benefits. In a decision dated September 17, 1998 and finalized on

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<sup>1</sup> *Lawrence D. Price*, 47 ECAB 120 (1995).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

September 18, 1998, an Office hearing representative affirmed the February 9, 1998 decision terminating appellant's benefits.

The Office, by letter dated October 25, 1995, referred appellant, a statement of accepted facts and a list of specific questions to Dr. David T. Nash, a Board-certified internist specializing in cardiovascular disease and the Office referral physician, for a complete medical evaluation. In a report dated November 1, 1995, he summarized the results of the examinations and tests, including his own and concluded that appellant's progression of his vascular disease, which clearly took place between 1992 and 1995, was related to his multiplicity of risk factors, including positive family history, adult male, low high-density lipoprotein (HDL) and high triglycerides and was not caused by the original work-related acute myocardial infarction. Dr. Nash stated that he would expect the date of full recovery after the acute myocardial infarction to have occurred in May 1992 and, in fact, he returned to work at that time. He also stated that he would expect full recovery from the acute myocardial infarction that occurred May 27, 1995 would be approximately three months or August 1995. Dr. Nash opined that the myocardial infarction appellant experienced on May 27, 1995 was not related to the event of February 11, 1992, but was related to the progression of atherosclerotic disease caused by low HDL, high triglycerides, male gender, positive family history and weight above the ideal. He opined that appellant could perform nonstressful activities, that he requires aggressive management of his risk factors and that an attempt at rehabilitation must be considered.

In a September 4, 1995 report, Dr. Brian J. Gaffney, a Board-certified internist specializing in cardiovascular disease, stated that appellant arrived in his office with all of his cardiac records seeking a second opinion concerning his disability claim. After reviewing appellant's records, he opined that appellant's case for disability was completely justified.

After issuing a notice of proposed termination on February 1, 1996, the Office, in a decision dated March 4, 1996, terminated appellant's compensation and medical benefits. The Office found that the weight of the medical evidence as represented by the November 1, 1995 report of Dr. Nash established that the acceptance of the recurrence of disability of October 1, 1994 was erroneous and that there was no continuing disability or medical treatment requirements referable to the injury of February 11, 1992.

In a February 15, 1996 report, which the Office received March 4, 1996, Dr. Ali Salimi, a Board-certified internist specializing in cardiovascular disease and appellant's treating physician, stated that he treated appellant since April 1995. He summarized appellant's cardiac history which included two angioplasties. Dr. Salimi related that, from appellant's history, it appeared that appellant sustained an acute anteroseptal myocardial infarction in 1992 while at work. Accordingly, the incident was considered to be work related because he was working under a stressful situation. Later, cardiac catheterization performed in 1994 revealed presence of significant three vessel coronary artery disease. Dr. Salimi stated the same, or nearly the same, level of coronary artery involvement would have been present at the time of appellant's myocardial infarction. The surgical procedures performed in May and July 1995 were for conditions that previously existed and a recommendation was made in November 1994 for appellant to undergo coronary artery graft bypass surgery, which would have been performed on the same vessels. He stated that, although coronary artery disease is a chronic condition, stress

can accelerate the process and precipitate events such as acute myocardial infarction. For this reason, Dr. Salimi recommended that appellant not work in a stressful job. He opined that the myocardial infarction that occurred on February 11, 1992 has some bearing on appellant's current cardiac condition.

In a March 11, 1996 letter, the Office noted that Dr. Salimi's report was received and found that his report was insufficient to alter the findings of facts set forth in the March 4, 1996 decision.

In a March 19, 1996 letter, appellant requested an oral hearing and submitted an April 2, 1996 report of Dr. Mushtaq Sheikh, a Board-certified internist and appellant's treating physician, who stated that appellant's anteroseptal myocardial infarction on February 11, 1992 clearly reflected a continuation of his coronary problem. He stated that he felt very strongly that work-related stress led to the conditions just prior to the premature heart attack and work stress caused the continuation of medical problems since May 18, 1992.

In a decision dated January 25, 1997 and finalized on January 29, 1997, an Office hearing representative vacated the March 4, 1996 decision. The hearing representative found that a conflict of medical opinion was created between Drs. Salimi and Sheikh and Dr. Nash. The case was remanded to the Office for referral to an impartial medical specialist.

On remand the Office referred appellant, along with a statement of accepted facts and copies of the relevant medical evidence of record, to Dr. John T. Walters, a Board-certified internist specializing in cardiovascular disease. In his report dated May 26, 1997, Dr. Walters, based on examination, patient history and a review of the medical evidence and prior and current cardiac testing, concluded that the infarct of 1995 was not related to appellant's initial infarct but was related to his progressive coronary artery disease. Dr. Walters noted that appellant did not have a catheterization at the time of his initial infarct, but assumed that the disease was progressive from the time of the initial infarct to the initial catheterization. He stated progression was due, in part, to the fact that appellant was a male with low HDL, high triglycerides and a positive family history. His disease had progressed to the point where he had an acute inferior wall myocardial infarction in May 1995 related to progressive artery disease. Dr. Walters opined that the infarct of May 1995 was not related to the infarct of February 1992, but was due to the progressive disease of his coronary arteries. He stated that he did not believe that this disease was related to his work effort, in fact he had not worked from the fall of 1994 until May 1995 when he had his second infarct, thus he had been away from work for eight months and still went on to have his infarct. Dr. Walters opined that acute stress of both physical and emotional nature, can trigger acute myocardial infarction by the acute hemodynamic changes acting on plaques. He stated that he did not think that there was any good evidence that chronic stress is, *per se* atherogenic.

After issuing a notice of proposed termination on April 24, 1997, the Office, in a decision dated May 28, 1997, terminated appellant's compensation and medical benefits based on the weight of Dr. Walters' report which established that appellant's May 1995 myocardial infarction was not employment related.

By letter dated June 17, 1997, appellant requested a hearing. By decision dated August 18, 1997, an Office hearing representative vacated the May 28, 1997 decision finding

that the Office did not meet its burden of proof to terminate compensation entitlement. The hearing representative found that Dr. Walters did not provide a clear opinion as to whether the claimed recurrence of September 1994 was causally related to the accepted injury of 1992.

In a November 10, 1997 letter, the Office requested Dr. Walters to clarify whether the onset of appellant's disability on September 30, 1994 was causally related to his myocardial infarction of February 11, 1992.

In a November 14, 1997 letter, Dr. Walters stated that appellant's myocardial infarction of February 1992 was anteroseptal and his myocardial infarction of May 1995 was inferior. He noted that these two areas of the heart are served by different arteries. Dr. Walters stated that appellant's disability on September 24, 1994 was because of angina and at that time a cardiac catheterization was undertaken which showed triple vessel coronary disease. The infarct of February 1992 had healed at that point and his symptoms that required his stopping work were that of angina which was related to his progressive coronary artery disease. Dr. Walters thus concluded that the problem which caused appellant's disability on September 30, 1994 was the progressive nature of appellant's coronary disease resulting in a situation where, because of the narrowing of the coronary arteries, he would experience angina under emotional pressure. This progression of the coronary artery disease was not related to his myocardial infarction of February 11, 1992, but was due to the fact that he had a triple vessel disease, which under the stress of emotional triggers, would give him angina. The heart attack did not cause the progressive coronary disease that resulted in angina, so they were not in that sense related.

In a December 8, 1997 letter, Dr. Sheikh opined that appellant was totally disabled and should not be required to place himself in any position that may provoke recurrence of stress, resulting in another acute myocardial infarction.

The Office issued a notice of proposed termination on January 9, 1998. In response, appellant stated his disagreement with Dr. Walters. Appellant also resubmitted Dr. Gaffney's September 14, 1995 report and enclosed summary excerpts from Dr. Dean Ornish's book entitled "Reversing Heart Disease."

In a decision dated February 9, 1998, the Office terminated appellant's compensation and medical benefits finding that the weight of the medical evidence, as represented by the opinion of Dr. Walters established that the accepted condition, the 1992 myocardial infarction had healed and that the onset of disability in September 1994 was the result of the symptoms of appellant's angina as a result of the narrowing of appellant's coronary arteries and that the narrowing of the coronary arteries were the result of the progression of appellant's coronary artery disease and not the 1992 myocardial infarction or his employment. By decision dated September 17, 1998 and finalized on September 18, 1998, an Office hearing representative affirmed the February 9, 1998 termination decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 9, 1998.

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f 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.”<sup>5</sup> The opinion of the physician selected by the Office, called an impartial medical examiner or independent medical specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>6</sup> In this case, the Office found a conflict in medical opinion to exist between Drs. Salimi and Sheikh, and Dr. Nash.

To resolve the conflict in the medical opinion the Office referred this claim to Dr. Walters for an impartial medical evaluation. In a May 26, 1997 report, he opined that the myocardial infarction of May 1995 was not related to the myocardial infarction of February 1992, but was due to the progressive disease in appellant’s coronary arteries. This was due to the fact that appellant was a male with low HDL, high triglycerides and a positive family history. Dr. Walters opined that the May 1995 myocardial infarction was not related to appellant’s work environment as appellant had been away from work for eight months when he experienced the second myocardial infarction. In a subsequent report of November 14, 1997, he stated that appellant’s disability on September 24, 1994 was not related to the myocardial infarction of February 11, 1992, but was due to the fact that appellant had triple vessel disease which resulted in angina which, in turn, was related to appellant’s progressive coronary artery disease. Dr. Walters stated that the myocardial infarction of February 1992 had healed and that the symptoms which required appellant to stop working were that of angina, which were due to appellant’s progressive coronary artery disease. The Board finds that Dr. Walters’ opinion is based on a complete and accurate factual background and is sufficiently well rationalized to be accorded special weight. His opinion thus constitutes the weight of the medical evidence and establishes that appellant’s injury-related disability had ceased by February 9, 1998 as the Office previously found.

The additional argument and evidence submitted by appellant is insufficient to overcome the special weight accorded to Dr. Walters’ opinion as the impartial medical specialist. Although appellant attributed his May 27, 1995 myocardial infarction to financial stress and uncertainty in the Office’s handling of his case, an appellant’s reaction to actions or inactions by the Office in consideration of a claim are not considered a factor of employment giving rise to coverage under the Act.<sup>7</sup> The September 14, 1995 report of Dr. Gaffney was before the Office when the January 9, 1998 notice of proposed termination was issued and was considered. Inasmuch as Dr. Gaffney’s report merely states that appellant’s case is completely justified without providing supporting any medical rationale for his conclusion, the report is of limited probative value in this case.<sup>8</sup> Similarly, the excerpts from Dr. Ornish’s book, *Reversing Heart Disease*, have no evidentiary value in this case.<sup>9</sup>

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<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>7</sup> *See, e.g., Ralph O. Webster*, 38 ECAB 521 (1987); *Virgil Hilton*, 37 ECAB 806 (1986); *Buck Green*, 37 ECAB 374 (1986), respectively. *See also Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *See Patrick P. Curren*, 47 ECAB 247 (1995) (finding a medical opinion based on average healing time to be of limited probative value).

<sup>9</sup> *See Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980) (newspaper

The decisions of the Office of Workers' Compensation Programs dated September 17, 1998 and finalized September 18, 1998 and February 9, 1998 are hereby affirmed.

Dated, Washington, D.C.  
February 18, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved).