

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN J. PIETROCATELLI and U.S. POSTAL SERVICE,
POST OFFICE, Ironwood, MI

*Docket No. 01-385; Submitted on the Record;
Issued December 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on March 5, 1997 causally related to his accepted January 30, 1996 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained a recurrence of disability on March 5, 1997.

On April 3, 1996 appellant, then a 48-year-old fireman/laborer, filed a claim for an occupational disease alleging that on January 30, 1996 he first realized that his heart attack and significant coronary artery disease were caused or aggravated by his federal employment. Appellant stopped work on the date of injury.

By letter dated May 23, 1996, the Office of Workers' Compensation Programs accepted appellant's claim for myocardial infarction. Appellant received appropriate compensation and then accepted the light-duty position of modified custodian at the employing establishment and returned to work on March 3, 1997.

An internal report dated March 5, 1997 indicated that appellant advised the Office in a telephone conversation that on the previous day, he was experiencing chest pain while performing his work duties. The report also indicated that appellant telephoned again on March 5, 1997 and informed the Office that he had stopped work on that date.

By decision dated April 28, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on March 5, 1997 causally related to his January 30, 1996 employment injury. In a May 27, 1997 letter, appellant requested an oral hearing.

In an October 15, 1998 decision, the hearing representative vacated the Office's decision and remanded the case for further development because there was no medical evidence refuting

the March 21, 1997 opinion of Dr. Michael J. Lucca, a cardiologist and appellant's treating physician, that appellant's employment injury contributed to his current disability.

On remand, the Office referred appellant, a statement of accepted facts, medical records and a list of specific questions to Dr. Nicholas P. Wyskoarko, a Board-certified internist whose primary specialty is in cardiovascular disease, for a second opinion examination.

Dr. Wyskoarko submitted a December 16, 1998 report finding that appellant's underlying coronary artery disease was not aggravated by his employment. The Office found a conflict in the medical evidence between Drs. Lucca and Wyskoarko regarding whether appellant's current disability was caused by his January 30, 1996 employment injury.

By letter dated January 27, 1999, the Office referred appellant, a statement of accepted facts, medical records and a list of specific questions to Dr. Burton Friedman, a Board-certified internist, for an impartial medical examination. Dr. Friedman submitted a February 15, 1999 report finding that appellant's current disability was not causally related to his January 30, 1996 employment injury.

In a March 2, 1999 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on March 5, 1997 causally related to his January 30, 1996 employment injury. By letter dated March 12, 1999, appellant requested an oral hearing.

By decision dated September 16, 1999, the hearing representative vacated the Office's decision and remanded the case to obtain a supplemental report from Dr. Friedman clarifying his opinion regarding the causal relationship between appellant's current disability and his accepted employment injury.

On remand, Dr. Friedman submitted a December 28, 1999 supplemental report clarifying that appellant's disability was not causally related to his January 30, 1996 employment injury.

In a January 18, 2000 decision, the Office again denied appellant's recurrence claim. Appellant again requested an oral hearing.

By decision dated October 4, 2000, the hearing representative affirmed the Office's decision.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, to be entitled to further compensation the employee has the burden to establish by the weight of the substantial, reliable and probative evidence that he cannot continue to perform such light-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

¹ See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.²

In this case, appellant has shown no change in the nature and extent of his injury-related condition or of the light-duty requirements. The record shows that following the January 30, 1996 employment-related myocardial infarction, appellant accepted the light-duty position of modified custodian at the employing establishment and returned to work on March 3, 1997. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability on March 5, 1997 was caused by a change in the nature or extent of his light-duty job requirements. Further, appellant has not submitted sufficient medical evidence establishing that the accepted condition has materially changed or worsened since his return to work in 1997.

In this case, the Office found a conflict of medical opinion between Dr. Lucca, appellant's treating physician and Dr. Wyskoarko, an Office physician, on whether appellant's current disability was causally related to his January 30, 1996 employment injury. In a December 28, 1999 report, Dr. Friedman provided a history of appellant's employment injury, medical treatment and return to work in March 1997 as well as his findings on physical and objective examination. Dr. Friedman concluded:

"It is my impression and diagnosis at this time that [appellant] does not have arteriosclerotic heart disease. By history, he has suffered a myocardial infarction with very little evidence on the electrocardiogram and has suffered no evidence of left ventricular dysfunction as a result of the myocardial infarction. He does, indeed, have angina with mild exertion, which is stable and has not gotten any worse since that time."

To the Office's question whether appellant's coronary artery disease was aggravated by the January 30, 1996 employment injury and if so, was such aggravation temporary or permanent, Dr. Friedman responded:

"It is my impression and it is unchanged from my impression when he was seen by me previously, that he does, indeed, have arteriosclerotic heart disease and that the work at the time that he had the myocardial infarction was responsible for the myocardial infarction, although that infarction could have occurred and can occur under any circumstances. So I believe that the result is temporary and it is very difficult to put an end to when the temporary becomes chronic, but I think that one would guess and I would give him approximately three months for adequate healing of that myocardial infarction."

² *James P. Roberts*, 31 ECAB 1010 (1980).

In response to the Office's question of whether appellant's work stoppage on March 5, 1997 resulted from his January 30, 1996 employment injury or events at work on March 3 or 4, 1997, Dr. Friedman stated:

"It happened that when he went to work and had angina in the work that he was doing, but I do not feel that the work was responsible for the angina. He, indeed, has arteriosclerotic heart disease and work may give him chest pain as it did, as well as anything else he may do in his daily activities."

In support of his recurrence claim, appellant submitted test results dated July 19, 1999 and a July 7, 2000 echocardiogram report regarding his heart condition. This evidence is insufficient to meet appellant's burden because it failed to address whether appellant sustained a recurrence of his symptoms due to his accepted January 30, 1996 employment injury resulting in disability for light-duty work on March 5, 1997.

Similarly, Dr. Lucca's July 19, 1999 report failed to address the relevant issue. Dr. Lucca diagnosed arteriosclerotic cardiovascular disease that was aggravated by appellant's January 30, 1996 employment injury resulting in acute inferior wall myocardial infarction on that date, unstable angina pectoris, congestive cardiac failure, obstructive airways disease and external hemorrhoids. He opined that the circumstances of January 30, 1996 aggravated appellant's coronary artery disease to the point that acute myocardial infarction occurred. Dr. Lucca noted other myocardial infarctions suffered by appellant that were ameliorated by angioplasty and the stent. He stated that if it were not for the events of January 30, 1996, this never would have occurred, at least at that time and in that manner. Dr. Lucca noted a review of appellant's medical records and disagreed with physicians who believed that appellant's hard work and cold weather may have caused his coronary artery disease. He concluded that the coronary artery disease was preexisting and was aggravated by these events. Inasmuch as Dr. Lucca did not address whether appellant sustained a recurrence of his symptoms due to his accepted January 30, 1996 employment injury resulting in disability for light-duty work on March 5, 1997, his report is insufficient to meet appellant's burden.

In a July 20, 2000 report, Dr. Lucca indicated a review of appellant's echocardiogram report and opined that in comparing this report with a previous February 1996 report, there appeared to be some mild worsening of appellant's overall function. He stated at that time, there were only abnormalities involving the basilar to mid-inferior wall, but now there were abnormalities in the septum of the heart. Dr. Lucca concluded that this had worsened somewhat since 1996. He failed to provide any medical rationale explaining how the worsening of appellant's heart condition was due to his accepted January 30, 1996 employment injury resulting in disability for light-duty work on March 5, 1997. Thus, his report is insufficient to meet appellant's burden.

Dr. Friedman's impartial medical opinion was based on a proper background and contained rationale for the conclusion that appellant's current disability was not causally related to his January 30, 1996 employment-related myocardial infarction. The report of Dr. Friedman, therefore, constitutes the weight of the medical evidence. Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability on

March 5, 1997 causally related to his January 30, 1996 employment injury, he has failed to meet his burden of proof.

The October 4 and January 18, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 3, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member