United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
	)	**Docket No. 06-1839**
and	)	**Issued: December 18, 2006**
DEPARTMENT OF HOMELAND SECURITY, U.S. BORDER PATROL, Tucson, AZ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated September 2, 2005 which denied his claim for an occupational disease and a May 10, 2006 decision which denied merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues on appeal are: (1) whether appellant has met his burden of proof in establishing that he sustained a heart condition in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration without a merit review.

FACTUAL HISTORY

On February 1, 2005 appellant, then a 52-year-old transportation assistant, filed an occupational disease claim alleging that he developed a heart condition while performing his work duties. He became aware of his condition on November 27, 2002. Appellant stopped work on November 10, 2004 and did not return.

In support of his claim, appellant submitted a February 1, 2005 statement. In December 2002, he was involved in the transition of his agency into the Department of Homeland Security. During this time, appellant was responsible for performing his job and a coworker's position until December 2003. In 2003 he worked 800 hours of overtime and in 2004 he worked 1,000 hours of overtime. Appellant indicated that he underwent two heart surgeries in November 2004. He submitted a performance evaluation dated September 30, 2004 which noted that he performed outstanding for the rating period July 13, 2003 to September 30, 2004. A discharge summary for a hospital admission from November 15 to 26, 2004 noted appellant's treatment for mitral valve insufficiency and shortness of breath. Appellant was diagnosed with mitral regurgitation and atrial fibrillation.

In an operative report dated November 15, 2004, Dr. Gulshan K. Sethi, a Board-certified surgeon, performed a mitral valve repair with quadrilateral resection of the posterior leaflet of the mitral valve and a mitral annuloplasty. He diagnosed mitral insufficiency and atrial fibrillation. In an operative report dated November 22, 2004, Dr. George Mason Garcia, a Board-certified cardiologist, performed an implantation of a permanent pacemaker and diagnosed sick sinus syndrome. In a report dated December 15, 2004, he noted that appellant underwent open heart surgery for repair of a severely diseased mitral valve. Dr. Garcia advised that appellant was totally disabled from his cardiac condition and could not continue to work in a stressful environment. A report from Dr. Sethi, dated December 15, 2004, noted that surgery was a success; however, he stated that appellant faced a long road to recovery and recommended that appellant not return to a stressful work environment.

In an undated letter, Keith P. Moyer, appellant's manager, did not dispute appellant's description of his work duties and confirmed that in 2004 appellant worked over 1,000 hours of overtime. He advised that appellant's workload was "extremely heavy" when the agency transitioned into the Department of Homeland Security and that appellant performed two jobs from December 2002 to December 2003.

In a letter dated March 18, 2005, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed heart condition to specific employment factors.

Appellant submitted a treatment note from Dr. Patricia Merrill, a neurologist, dated November 3, 2004. Dr. Merrill treated appellant for chest pressure, nausea, shortness of breath and sweating. An electroencephalogram dated January 20, 2005 revealed independent bilateral fronto-temporal sharp theta with a left-sided predominance, suspicious for a seizure disorder. In a December 28, 2004 report, Dr. Cathyrn P. Cohen, a Board-certified ophthalmologist, treated appellant for blurred vision and diplopia. Appellant submitted an April 19, 2005 report from Dr. Garcia who repeated that appellant was diagnosed with severe mitral regurgitation that required open heart surgery and mitral valve repair. Dr. Garcia noted that appellant worked for the Border Patrol and his duties were extensive and included performing the duties of a coworker in addition to his own job. He opined that appellant's heavy exertion during this time contributed to his diagnosed conditions of mitral regurgitation and cardiomyopathy. Appellant submitted an undated statement reiterating his job duties and a position description.

On May 18, 2005 the Office referred appellant for a second opinion to Dr. Peter H. Spooner, a Board-certified cardiologist. The Office provided Dr. Spooner with appellant's medical records, a statement of accepted facts as well as a detailed description of his employment duties.

In a June 13, 2005 report, Dr. Spooner noted examining appellant and reviewing the medical records. He noted a history of appellant's condition. Dr. Spooner noted an essentially normal physical examination with blood pressure of 110/62, respirations 18, pulse 74 and regular, his chest was clear auscultation, his cardiovascular examination revealed no murmur, gallop or rub, no carotid, abdominal aortic or renal bruits. He diagnosed dyspnea without overt evidence of volume overload on examination, fatigue, palpitations, mitral regurgitation, status post mitral valve repair, history of atrial fibrillation and bradycardia history status post pacemaker placement. Dr. Spooner recommended a stress echocardiogram to evaluate appellant's overall cardiovascular function as well as the status of the mitral valve repair. Appellant was referred for a stress echocardiogram on June 15, 2005. In a report of the same date, Dr. Spooner noted that testing revealed normal resting left ventricular systolic function with well-functioning mitral valve annuloplasty and no mitral regurgitation, average exercise tolerance, chronotropic incompetence with history of previous pacemaker placement.

In a report dated June 17, 2005, Dr. Spooner stated that appellant's heart condition was not medically connected to factors of employment. He advised that appellant's work conditions may have aggravated, precipitated or perhaps even accelerated his condition. Dr. Spooner advised that appellant had mitral regurgitation which was not caused by physical activity; however, physical activity could aggravate the previously unrecognized condition, precipitate congestive heart failure secondary to mitral regurgitation or even accelerate his cardiac condition. He was unable to determine whether the aggravation was temporary or permanent because appellant underwent corrective surgery of the mitral valve. Dr. Spooner advised that the surgical repair of the mitral valve appeared to be a good repair without significant underlying mitral regurgitation. He indicated that appellant had a pacemaker and experienced abnormal heart rhythm and atrial fibrillation which occurred intermittently and caused symptoms of fatigue and shortness of breath. Appellant's echocardiogram looked reasonable with good heart function and a well-repaired mitral valve. Dr. Spooner noted that appellant continued to have subjective complaints of shortness of breath, weakness and chest pain which could be secondary to atrial fibrillation. Regarding physical limitations, appellant could perform a brief period of aerobic exercise; however, he was uncertain whether appellant could do this on a recurrent basis.

Appellant submitted an electroencephalogram report from Dr. Horace Noland, a Board-certified neurologist, which revealed suspicious rhythmical sharp slowing in the left hemisphere. In a report dated May 25, 2005, Dr. Noland diagnosed atypical epilepsy. He opined that the stress appellant experienced in his daily work, including excessive amounts of overtime, contributed to his lowered seizure threshold.

In a letter dated August 4, 2005, the Office requested that Dr. Spooner clarify his opinion as to whether there were any objective medical findings which supported that appellant's diagnosed cardiac condition was causally related to the physical activities he performed at work. In a supplemental report dated August 11, 2005, Dr. Spooner advised that there were no objective medical findings that conclusively supported that appellant's diagnosed cardiac

condition was related to the physical activities at the employing establishment. Since appellant's condition has been surgically corrected, the objective findings that may have been present at the onset of his condition were no longer present. Dr. Spooner opined that it was "possible, in retrospect, to theorize that physical activity could aggravate the previously unrecognized condition." He gave examples of how increased physical activity could cause worsened mitral regurgitation which could lead to shortness of breath, chest pain and congestive heart failure. Dr. Spooner also explained how mitral regurgitation could precipitate atrial fibrillation. Regarding whether appellant's condition was accelerated by physical activity at work, Dr. Spooner stated that he had "no way of knowing, at this time, whether this was indeed the situation in this case."

In a decision dated September 2, 2005, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by his employment duties.

In a letter dated February 10, 2006, appellant requested reconsideration and submitted additional medical evidence. In a report dated January 13, 2006, Dr. Garcia noted that objectively appellant's echocardiograms have shown improvement in his mitral regurgitation and in function; however, he noted that appellant was classified as a "New York Heart Association Class 3" and should not seek gainful employment due to his condition.

By decision dated May 10, 2006, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or his 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 the 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The

[1] *Gary J. Watling*, 52 ECAB 357 (2001).

medical evidence required to establish causal relationship is generally 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 implicated 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.[2]

ANALYSIS -- ISSUE 1

On February 1, 2005 appellant filed an occupational disease claim alleging that he developed a cardiac condition while in the performance of duty. The employing establishment did not dispute appellant's description of his work duties, noting that appellant worked over 1,000 hours of overtime in 2004 and that his workload was "extremely heavy" when the employing establishment merged with another agency. The Office denied appellant's claim finding that the medical evidence did not establish that appellant developed the diagnosed condition as a result of his employment duties.

Appellant submitted an April 19, 2005 report from Dr. Garcia who opined that appellant's heavy exertion at work contributed to his diagnosed conditions of mitral regurgitation and cardiomyopathy.

The Office also requested information from a second opinion physician, Dr. Spooner, in order to determine the relationship between appellant's claimed cardiac condition and the factors of employment. In a report dated June 17, 2005, Dr. Spooner noted that appellant's diagnosed condition was not medically connected to appellant's factors of employment. However, Dr. Spooner also advised that appellant's work conditions may have aggravated, precipitated or even accelerated his cardiac condition. Dr. Spooner advised that appellant had mitral regurgitation which was not caused by physical activity; however, physical activity could aggravate a previously unrecognized condition, precipitate congestive heart failure secondary to mitral regurgitation or even accelerate the condition. In his August 11, 2005 report, he also indicated that activity in the workplace could aggravate several cardiac conditions. The Office denied the claim, characterizing the report of Dr. Spooner as speculative. It also noted that it was not established as factual that appellant performed "heavy physical labor in his employment that would have produced the increased demands on cardiac function referenced by Dr. Spooner."

Since the Office referred appellant to Dr. Spooner, it has the responsibility to obtain an opinion that adequately addresses the relevant issue presented in the case.[3] On remand, the Office should secure a medical report containing a reasoned medical opinion on the issue of whether appellant's cardiac condition was caused or aggravated by his work duties.

[2] *Solomon Polen*, 51 ECAB 341 (2000).

[3] *See Mae Z. Hackett*, 34 ECAB 1421 (1983).

CONCLUSION

The Board finds that the case is not in posture for decision.[4]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2005 is set aside and the case remanded to the Office for further action consistent with this decision.

Issued: December 18, 2006
Washington, DC

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

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

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

[4] The Board finds that it is unnecessary to address the second issue in this case in view of the Board's disposition of the first issue.