U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAY FARB, claiming as widow of DANIEL H. FARB and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Los Angeles, Calif.

Docket No. 95-2224; Submitted on the Record;
Issued February 6, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the employee's March 2, 1977 myocardial infarction and his death on September 23, 1977, following another myocardial infarction, were sustained in the performance of duty.

This case has been before the Board on three prior occasions. In an August 2, 1985 decision,[1] the Board remanded the case, finding that a conflict in the medical evidence existed concerning whether the employee's March 2, 1977 myocardial infarction and his September 23, 1977 death, which followed a second myocardial infarction, were causally related to his federal employment. In an August 7, 1987 decision,[2] the Board set aside an August 13, 1986 Office of Workers' Compensation Programs decision, rejecting appellant's claim on the grounds that the impartial medical examiner to whom the Office had referred the employee's case record was associated with another physician previously involved in the case. The Board remanded the case to the Office for referral of the record to an impartial specialist, for a rationalized opinion regarding the cause of the employee's March 2, 1977 myocardial infarction and September 23, 1977 death. In a February 28, 1991 decision, the Board set aside a March 29, 1990 Office decision, finding that the decision contained an inadequate statement of reasons and findings.[3] The facts and background of the case contained in the three prior decisions are incorporated herein by reference.

Following the Board's February 28, 1991 decision, by letter dated July 12, 1991, the Office requested that Judge Barry Wesker furnish specific information regarding appellant's

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[1] Docket No. 85-1149.

[2] Docket No. 87-317.

[3] Docket No. 90-1572.

allegations. In a July 15, 1991 letter, the Office requested that the employing establishment provide similar information. An Office memorandum dated January 17, 1992 indicated that Judge Wesker did not respond. In a March 16, 1992 statement of accepted facts, the Office found that no employment factors had been established, finding that the employee's reaction to changes in the workplace constituted a desire to work in a specific environment and were self-generated. An Office memorandum dated March 17, 1992, indicated that copies of the following items, which were suggested in the Board's February 8, 1991 decision, were not obtainable: (1) a management survey taken from November 29 to December 3, 1976 concerning workplace problems; (2) the employee's December 2, 1976 resignation letter; (3) the employee's December 2, 1976 memorandum; (4) evidence documenting the employee's performance and employing establishment policies concerning staff and supply distribution; and (5) statements from the employee's supervisor and other employees concerning the employee's allegations of difficulties.

On May 12, 1992 the Office referred the medical record, statement of accepted facts and a set of questions to Dr. Richard L. Heppner, a Board-certified internist, for his reasoned opinion regarding the cause of appellant's March 2, 1977 heart attack and subsequent death on September 23, 1977. In a May 28, 1992 report, Dr. Heppner diagnosed advanced coronary atherosclerosis, myocardial infarction in December 1970, acute posterior infarction in March 1977, cardiogenic shock in September 1977, chronic congestive heart failure, aspiration pneumonia in March 1977, history of cigarette consumption, mild diabetes mellitus, aneurysm of the left ventricle and mitral regurgitation. He answered the question regarding occupational stress as follows:

> "Since all of the factors contributing to coronary atherosclerosis are not totally understood and since occupational stress is difficult to quantitate and therefore difficult to study, it is not easy to provide a definitive scientific answer to this question. To the best of my knowledge, there is no consensus about the independent contribution of occupational stress to the pathogenesis of coronary atherosclerosis and myocardial infarction. The epidemiologic studies cited in the record attest to the variations of opinion surrounding this issue.
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> "To that body of opinion, I will add my considered input based upon familiarity with medical literature and experience gained over the last 20 years of clinical practice. It is my belief that occupational stress rarely contributes to coronary atherosclerosis or myocardial infarction. In those unusual circumstances where psychologic stress may be playing a role, it often operates through aggravation of other well-established risk factors. For instance, individuals under a considerable degree of occupational stress sometimes are prone to smoke excessively or become noncompliant with dietary and exercise programs which may then aggravate or accelerate atherosclerotic tendencies. As an independent factor, occupational stress rarely contributes to atherosclerotic disease or myocardial infarction."

When questioned about the role occupational psychologic stress played in the employee's cardiac illness, the physician replied:

> "After examination of the record, it appears as if the [employee] alleges frustration and humiliation in his workplace contributed to his myocardial infarction in March 1977. It is further claimed that his particular personality profile would be intolerant of these frustrations and therefore, he would be particularly vulnerable to his altered occupational status. After careful consideration of the records and opinions of all of the reviewers, I am unconvinced that the psychological environment in which [the employee] was operating after his occupational reassignment played a contributory role to his progressive atherosclerotic coronary artery disease. I make this statement with reasonable medical certainty. I do not believe that it can be stated with reasonable medical certainty, after examination of all the facts, that the psychologic factor was an aggravating or causative factor in his coronary disease. Indeed, it is well established that atherosclerotic coronary disease is often a progressive syndrome and in my opinion, the natural history of his atherosclerotic disease would account for all of the clinical events experienced by this individual without implicating additional work-related psychological stresses."

Dr. Heppner concluded, with reasonable medical certainty, that the employee would have followed a similar clinical course even without the reported occupational stresses.

By decision dated January 12, 1993, the Office, giving determinative weight to the opinion of Dr. Heppner, denied the claim on the grounds that the employee's heart attacks and subsequent death were not sustained in the performance of duty. On August 29, 1994 appellant filed an appeal with the Board.

On December 4, 1994 the Director, filed a motion to dismiss, stating that, as appellant's appeal to the Board was not timely filed, the Board had no jurisdiction to review the claim. The Director stated, however, that a copy of the January 12, 1993 decision had not been mailed to appellant's authorized attorney. By order dated December 30, 1994, the Board granted the Director's motion and dismissed the appeal. On March 27, 1995 the Office reissued the January 12, 1993 decision. The instant appeal follows.

The Board finds that appellant has not met her burden of proof.

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or her claim,[5] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[6] that the claim

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[6] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

was timely filed within the applicable time limitation period of the Act,[7] that an 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.[8] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.[10] Likewise, appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based upon a proper factual and medical background.[11]

Causal relationship is a medical issue[12] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[13] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14] Nonetheless, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[15]

In this case, following the Board's February 28, 1991 remand, the Office referred the medical record, statement of accepted facts and a set of questions to Dr. Heppner, a Board-certified internist, for his reasoned opinion regarding the cause of appellant's March 2, 1977 heart attack and subsequent death on September 23, 1977. In a May 28, 1992 report, Dr. Heppner diagnosed, *inter alia*, advanced coronary atherosclerosis and concluded, with

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[7] 5 U.S.C. § 8122.

[8] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[9] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *See Robert A. Gregory*, 40 ECAB 478 (1989).

[11] *See Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

[12] *Mary J. Briggs*, 37 ECAB 578 (1986).

[13] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams, supra n*ote 9.

[14] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

[15] *Larry Warner*, 43 ECAB 1027 (1992).

reasonable medical certainty, that the employee would probably have followed a similar clinical course even without the reported occupational stresses. 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.[16]

While appellant cited factors that could be compensable, such as overwork,[17] as contributing to the employee's cardiac condition and death, her burden of proof is not discharged by the fact that she has identified an employment factor which may give rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient evidence to substantiate her allegation that the employee was, in fact, overworked.[18] The record does not contain such evidence. Furthermore, rationalized medical evidence must establish that the identified compensable employment factors were causally related to the employee's condition.[19] The Board finds that the opinion of Dr. Heppner, the impartial specialist who resolved the conflict of medical opinion regarding the employee's cardiac condition and death, constitutes the weight of the medical evidence on these issues. Dr. Heppner's comprehensive report was based on a complete and accurate history and he clearly explained why he believed that the employee would have followed a similar clinical course even without the reported occupational stresses.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that the employee's March 2, 1977 myocardial infarction and subsequent death occurred during a period of employment, nor the belief that his cardiac condition and death were caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence and, as the weight of the medical evidence rests with Dr. Heppner's opinion, the Office properly denied appellant's claim for compensation.[20]

[16] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

[17] *See Frank A. McDowell*, 44 ECAB 522 (1993).

[18] *Id.*

[19] *See Victor J. Woodhams*, *supra* note 9.

[20] *Kathy Marshall (Dennis Marshall)*, *supra* note 11.

The decision of the Office of Workers' Compensation Programs dated March 27, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 6, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member