U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCES L. COLEMAN, claiming as widow of THOMAS A. COLEMAN and DEPARTMENT OF THE NAVY, LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

*Docket No. 95-1425; Submitted on the Record;*
*Issued January 12, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that the employee's death on October 22, 1994 was causally related to his accepted condition of low back strain for which he received compensation;[1] and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act.

On November 1, 1994 appellant, the employee's widow, filed a claim for death benefits. She indicated on her claim form that the cause of the employee's death was congestive heart failure and that "pain" was a contributory cause. She submitted a death certificate which was signed by Dr. Mark Castellanet, a Board-certified internist and the employee's treating physician for his heart condition at the time of death. Dr. Castellanet indicated that cardiopulmonary arrest was the immediate cause of death due to atherosclerotic heart disease of 20 years standing. He listed congestive heart failure and bacterial endocarditis as other significant conditions contributing to death but not related to the immediate cause of death.

In a letter dated November 2, 1994, Dr. Castellanet noted that he had been treating the employee for his cardiac condition for a number of years and that he had undergone successful bypass surgery and pacemaker insertion. Dr. Castellanet reported that the employee was quite stable, but then developed severe back pain and was thought to have developed a bacterial infection of his heart valve for which the "most likely" source was the employee's back. The physician concluded, "I suspect the inciting condition was the infection originating in his back as he was complaining of severe and unremitting pain in his back prior to the onset of infection."

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[1] Appellant's husband, a rigger, filed a notice of traumatic injury on October 5, 1978 and stopped work. The Office accepted his claim for low back strain, and he received compensation until his death on October 22, 1994.

In a decision dated November 17, 1994, the Office denied appellant's claim on the grounds that the medical evidence of record did not establish that the employee's death resulted from his work injury of October 4, 1978.

In a letter dated January 4, 1995, appellant requested a hearing in her claim. In a letter decision dated January 31, 1995, the Office denied the request because it was untimely. The letter stated that the decision was mailed to appellant on November 17, 1994, but appellant did not request a hearing until January 6, 1995. The letter indicated that she was not entitled to a hearing as a matter of right since she did not request a hearing within 30 days of the issuance of the decision. The Office also indicated that it had considered the matter in relation to the issue involved and that appellant's request was denied on the basis that she could address the issued by submitting medical evidence which showed that the employee's death resulted from the work injury he sustained on October 4, 1978.

The Board finds that appellant has not met her burden of proof in establishing that the employee's death on October 22, 1994 was causally related to his accepted condition of low back strain.

The Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] However, an award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation, or on an appellant's belief that the employee's death was caused, precipitated or aggravated by her employment.[3]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an employee's death was causally related to factors of employment. This burden includes the necessity of furnishing a rationalized medical opinion based on an accurate factual and medical background and supported by medical rationale explaining the nature of the cause and effect relationship between the employee's death and specific employment factors.[4]

The mere showing that an employee was receiving compensation for total disability at the time of death does not establish that his death was causally related to conditions resulting from the employment injury.[5] The mere fact that a disease manifests itself during a period of employment does not raise an inference that there was a causal relationship between the two. Neither the fact that the disease was diagnosed during such employment nor appellant's opinion

[2] 5 U.S.C. § 8102(a).

[3] *Juanita Terry*, 31 ECAB 433 (1980).

[4] *Kathy Marshall*, 45 ECAB 827 (1994).

[5] *Elinor Bacorn*, 46 ECAB ___ (Docket No. 94-268, issued July 5, 1995); *see Joan Leveton*, 34 ECAB 1368 (1983).

that an injury accepted by the Office ultimately caused the employee's death is sufficient to establish the required causal relationship.[6]

In the present case, appellant has not submitted sufficient medical evidence to establish that the employee's death was causally related to his accepted employment injury. Relevant to this issue, appellant submitted a death certificate and a medical report by Dr. Castellanet, the employee's treating physician at the time of death. On the death certificate, Dr. Castellanet did not relate the employee's death in any way to his accepted back injury condition or to factors of his federal employment. In a medical report dated November 2, 1994, Dr. Castellanet indicated that he suspected that the employee sustained an infection originating in his back which led to a bacterial infection of the heart, a deterioration of the employee's heart condition and heart failure. This report is of limited probative value since Dr. Castellanet's conclusion that he suspected the inciting condition originated from an infection in the employee's back and that this was the "most likely" source is speculative.[7] Moreover, while Dr. Castellanet has inferred that the infection might have originated in the employee's back, he does not explain whether this infection is in any way related to the employee's accepted employment injury or how such an infection would progress to affect appellant's heart condition. Thus, appellant has not established that the employee's death was causally related to his accepted employment injury of low back strain.

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[8] As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[9]

In this case, the Office issued its decision denying death benefits on November 17, 1994. The first request for a hearing in the record is dated January 5, 1995. Since this request was not within 30 days of the Office's decision dated November 17, 1994, appellant's letter requesting a hearing was untimely pursuant to section 8124(b)(1) of the Act. Therefore, appellant is not entitled to a hearing as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, the Office advised appellant that it considered her request in relation to the issue involved, and the hearing was denied on the basis that she could address this issue by submitting evidence which showed that the employee's death

[6] *Martha A. Whitson*, 43 ECAB 1176 (1992).

[7] *Charles A, Massenzo,* 30 ECAB 844 (1978).

[8] 5 U.S.C. § 8124(b)(1).

[9] *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner,* 36 ECAB 238 (1984).

resulted from his work injury of October 4, 1978. Appellant was advised that she may request reconsideration with additional evidence. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[10] There is no evidence of an abuse of discretion in the denial of a hearing in this case.

The decisions of the Office of Workers' Compensation Programs dated January 31, 1995 and November 17, 1994 are hereby affirmed.

Dated, Washington, D.C.
January 12, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

[10] *Daniel J. Perea*, 42 ECAB 214 (1990).