U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANA DEVINE, claiming as widow of JAMES P. DEVINE and U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, Pa.

Docket No. 96-2366; Submitted on the Record;
Issued October 5, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that the employee's myocardial infarction on January 24, 1992 and subsequent death on February 2, 1992 were causally related to his employment.

On January 28, 1992 appellant filed a claim for an occupational disease, Form CA-2, alleging that on January 24, 1992, when the employee, then a 53-year-old mail handler, was lifting a mailbag, he experienced numbness in his left elbow and arm and suffered a heart attack. The employee was hospitalized that day and died on February 2, 1992. The employee's death certificate dated February 4, 1992 stated that the immediate cause of death was acute renal failure and skeletal-muscle necrosis of the lower extremities. It stated that the other significant conditions were diffuse micro-embolization and acute myocardial infarction. By letter dated September 9, 1992, the employing establishment stated that the employee worked 4 hours overtime on 6 of the 12 days preceding his illness. The employing establishment stated that appellant was performing his regular duties prior to January 24, 1992. The Office of Workers' Compensation Programs stated in its statement of accepted facts that the employee's usual work included lifting sacks, letter trays and flat tubes and that the mail ranged in weight from 15 to 30 pounds. In a letter to his sister dated January 23, 1992, the employee stated that he had 1 day off in 47 days and all but 5 of those days were 12-hour days. He stated he finally had two days off in a row.

The Office referred the case record and a statement of accepted facts to a second opinion physician, Dr. Jack E. Pickering, a Board-certified internist with a subspecialty in cardiovascular disease, for an evaluation. In a report dated January 26, 1993, Dr. Pickering reviewed the employee's history of injury, noting that he worked 4 hours overtime 6 of the 12 days prior to his illness and death and stated that while he was on a coffee break the employee noted substernal chest pain, which he initially thought was indigestion and that the pain then became associated with elbow numbness, nausea and diaphoresis. Dr. Pickering reviewed the employee's medical history noting that he had a history of smoking 2 or 3 packs of cigarettes a day for more than 40

years, drank 2 pots of coffee daily and that his father died at age 64 from myocardial infarction and one of his 4 siblings died from a myocardial infarction at age 43. He stated that appellant had evidence of acute renal failure and ischemic bowel and from this multi-system failure, he expired on February 2, 1992. Dr. Pickering opined that the employee's myocardial infarction was related to the preexisting risk factors of a family history of coronary disease and heavy cigarette usage and was not caused by his employment as a mail handler. He stated that appellant's employment neither precipitated, aggravated, accelerated or caused the January 24, 1992 myocardial infarction.

By decision dated February 19, 1993, the Office denied the claim, stating that the fact of injury was not established.

Appellant requested an oral hearing before an Office hearing representative, which was held on February 1, 1995. Appellant testified that the employee's work load tended to increase at Christmas time and usually decreased after January 1 but in January 1992 the work continued. She testified that the employee worked 12-hour days for 30 days prior to his heart attack except for 1 day, which he took off. Appellant stated that the employee was "unusually tired" the week before his heart attack and he gave up his social or religious activity after Thanksgiving as he knew he would be working.

Appellant submitted a medical report from Dr. Richard A. Narvaez, a Board-certified internist with a subspecialty in cardiovascular disease, dated August 26, 1994. In his August 26, 1994 report, Dr. Narvaez reviewed appellant's history of injury and his medical history, noting that the employee had cardiac risk factors of smoking 2 to 3 packs of cigarettes per day for greater than 40 years and a family history of coronary artery disease and carcinoma. He also stated that the employee was under "a great deal of stress," addressing the employee's January 23, 1992 letter to his sister, in which he stated that he had a heavy work load with only 1 day off in 47 days and all but 4 were 12-hour days. Dr. Narvaez stated generally that job-related factors appeared to influence the induction or exacerbation of coronary artery disease including perceived job stress, ambiguity, job autonomy, job change, employment and retirement. He stated that the employee had some predisposing factors for the development of an acute myocardial infarction. Dr. Narvaez stated that "stress does contribute to the induction or exacerbation of coronary artery disease" although the exact role is not clearly defined. He stated that it is not clear the degree to which stress plays a role with preexisting cardiac risk factors.

By decision dated April 19, 1995, the Office hearing representative affirmed the Office's February 19, 1993 decision.

By letter dated April 15, 1996, appellant requested reconsideration of the decision and submitted a report from Dr. Garo S. Garibian, a Board-certified internist with a sub-specialty in cardiovascular disease, dated April 15, 1996. In his April 15, 1996 report, Dr. Garibian reviewed the employee's history of injury, noting that on January 24, 1992 he experienced chest pains while

lifting a mailbag and was subsequently sent to the hospital where he was found to have an acute inferior wall myocardial infarction. He stated:

> "There is no question in my mind that his physical activities during his expected work schedule were the direct cause of his myocardial infarction. As the records have repeatedly stated this patient had no prior history of any chest pain and no prior history of coronary artery disease or any heart disease. The presence of risk factor stated in his medical records is irrelevant to this particular case since risk factors are used by epidimiologists for statistical purposes but do not in themselves guarantee that one will have heart disease."

Dr. Garibian opined that the employee's myocardial infarction resulted directly from the physical activity of appellant's job, specifically lifting the mailbag, because: "(1) the employee was lifting a mailbag immediately prior to his experiencing chest pain; (2) physical activity, specifically isometric exercise such as lifting, increases the work load of the heart, which can result in myocardial ischemia … and (3) isometric exercise such as lifting has been shown to cause coronary vasoconstriction, which can lead to a ruptured plaque and intracoronary thrombus, which was the immediate cause of the employee's myocardial infarction." He added, "As a corollary to this there is no doubt in my mind that if this patient were not engaged in physical activities that he would not have sustained this myocardial infarction." Dr. Garibian also stated that stress plays a major role in contributing to a myocardial infarction but hesitated to raise the issue of stress because it was a much more difficult factor to quantify. Dr. Garibian stated that in this case, "one does not even need to evoke stress as a factor since [the employee's] myocardial infarction was directly a result of his lifting a mailbag, which is much more direct than through the stress factors." Dr. Garibian disagreed with Dr. Pickering's opinion that the employee's death resulted from a multi-system failure, which was not causally related to his employment as a mail handler but to his preexisting risk factors of family history of coronary disease and heavy cigarette usage. Dr. Garibian stated that although the employee did have multi-system failure prior to his death including diffuse microembolization of his lower extremity, ischemic bowel and acute renal failure, these were a direct result of his acute myocardial infarction and or the immediate treatment of his myocardial infarction. He stated that they could not be considered independent causes of his death and the employee's death was the result of his myocardial infarction.

By decision dated July 18, 1996, the Office denied appellant's reconsideration request.

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 on a proper factual and medical background.[1] The medical evidence required to establish causal relationship is rationalized medical opinion evidence explaining how the accepted employment-related condition caused or contributed to the employee's death.[2] The

[1] *Irene Baster*, 47 ECAB ____ (Docket No. 94-1721, issued June 12, 1996); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989); *Mary M. DeFalco (Gordon S. DeFalco)*, 30 ECAB 514 (1979).

[2] *Irene Baster*, *supra* note 1; *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728, 733 (1991).

mere showing that an employee was receiving compensation at the time of death does not establish that the employee's death was causally related to his employment.[3]

The Board finds that the case is not in posture for decision due to a conflict in the medical opinion.

Section 8123(a) of the Federal Employees' Compensation Act[4] provides that "[i]f there is 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."

In the present case, appellant submitted the medical reports of Dr. Narvaez dated August 26, 1994 and Dr. Garibian dated April 15, 1996 to support her claim. Dr. Narvaez's August 26, 1994 report, addressed the employee's risk factors for coronary disease and noted that stress at work could contribute to or exacerbate coronary artery disease, the exact mechanism of which was difficult to measure. He did not specifically relate stress on the employee's job to his myocardial infarction.[5]

In his April 17, 1996 report, however, Dr. Garibian stated that the employee's myocardial infarction and resulting death resulted from the physical activity from the job because the employee was lifting a mailbag prior to the onset of the chest pain, Dr. Garibian stated that the presence of risk factors in employee's medical record was irrelevant as isometric exercise, such as lifting, could result in myocardial ischemia and cause coronary vasoconstriction. For this reason, Dr. Garibian stated it was his medical opinion that the employee's myocardial infarction and death resulted from his physical activities at work. Dr. Garibian stated that the employee had multi-system failure, including diffuse microembolization of his lower extremity, ischemic bowel and acute renal failure, which were all the direct result from the myocardial infarction sustained at work.

In his April 15, 1996 report, Dr. Pickering opined that the employee's myocardial infarction was related to the multiple preexisting risk factors including a family history of coronary disease and heavy cigarette usage. Dr. Pickering reviewed the history of overtime work performed and the nature of the employee's work duties. He noted that the episode of substernal chest pain commenced while the employee was on a coffee break and addressed subsequent medical intervention. Dr. Pickering concluded that the employee's employment neither precipitated, aggravated nor caused the January 24, 1992 myocardial infarction.

The Board finds that Dr. Garibian's opinion that the employee's work activities precipitated his myocardial infraction is in conflict with Dr. Pickering's opinion that the employee's myocardial infarction resulted solely from his smoking and his family history of coronary disease. The case, therefore, requires remand for an impartial medical specialist to

[3] *Elinor Bacorn (David Bacorn),* 46 ECAB 857, 860-61 (1995).

[4] 5 U.S.C. § 8123(a).

[5] *Kathy Marshall,* 45 ECAB 827, 833-34 (1994); *see William S. Wright,* 45 ECAB 498, 504 (1994).

resolve the conflict in the medical opinions. On remand, the Office should refer the case record with a statement of accepted facts to an appropriate medical specialist pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated July 18, 1996 is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
October 5, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member