

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK OSEGUEDA, claiming as widower of JOY LEA ROGERS and
DEPARTMENT OF STATE, Washington, DC

*Docket No. 00-168; Submitted on the Record;
Issued December 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of establishing that the employee's death on March 27, 1991 was causally related to her federal employment.

The Board has duly reviewed the case record and finds that appellant has not established that the employee's death was causally related to her federal employment.

On June 22, 1993 appellant filed a compensation claim, Form CA-5, alleging that the death of his wife (the employee) who died from a heart attack on March 8, 1991 in Istanbul, Turkey was employment related. In the attending physician's report, Form CA-5, dated January 31, 1994, the employee's treating physician at the time of her death, Dr. Aruk Turnaoglu, stated that the employee had unstable angina on admission on August 22, 1991 and that the direct cause of death was cardiac insufficiency following a myocardial infarction leading to cardiogenic shock. In response to the question what history or injury or employment-related disease was given to him, he answered "none apparent" and checked the "No" box that the employee's death was not related to any work injury, and stated that "no connection reported in medical history as related to us."

Appellant submitted medical evidence to support his claim. By decision dated September 29, 1994, the Office denied the claim, stating that the evidence of record failed to demonstrate "that the claimed death was causally related to the performance of duty." Appellant requested an oral hearing before an Office hearing representative, which was held on July 6, 1995. By decision dated October 19, 1995, the Office hearing representative affirmed the Office's September 29, 1994 decision. Appellant appealed the case to the Board. However, as the Office failed to transmit the case record to the Board, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record to be followed by an appropriate decision to protect appellant's appeal rights.¹

¹ Docket No. 96-985 (issued May 6, 1998).

By decision dated May 19, 1999, the Office reissued its denial of the claim, stating that the evidence of record failed to demonstrate that the claimed death was causally related to the performance of duty.

In a letter dated August 25, 1994, appellant stated that the employee's occupational stress began when she was the Social Secretary for the Ambassador of the United States mission in Geneva, Switzerland in 1979 and 1980. He stated that she filed a grievance against the ambassador for sexual harassment, was abruptly transferred and never received another promotion in the Foreign Service for the rest of her life. Appellant stated that at the American Embassy in Bangkok, Thailand in February 1982, the employee was hospitalized for a month for shingles, which resulted from stress at work. He stated that the employee had a heart attack on April 23, 1987 due to stress at work in the American embassy in Madrid, Spain where she had to work excessive overtime to meet a particular deadline.

At the hearing, appellant testified that the employee had a history of previous heart problems and had an angioplasty at Georgetown University Hospital in 1987. Appellant testified that the stress, which led to the employee's heart attack and death in 1991, resulted from the stress she experienced from her supervisor, Thomas Carolan, who was the American Consul to Turkey from mid-1989 to March 1991 in Istanbul, Turkey. Appellant who worked with the employee stated that she would come home "awfully depressed" from work, and say, "What a miserable day." He stated that, while at work, Mr. Carolan would scream at the employee and, on one occasion, while he was present, threw a telephone at her. Appellant stated that, in one instance, Mr. Carolan screamed at the employee because she had not finished something he thought should be done. Appellant stated he did not work with the employee everyday but Mr. Carolan screamed at her everyday. He also stated that he observed Mr. Carolan being abusive to the employee at least 10 times. Appellant stated that as a result of the stress she was experiencing, the employee went to the International Hospital in Istanbul in January 1991 where she stayed overnight. On March 8, 1991, when the employee had her heart attack, appellant stated that her friends told her that she did not "look well," and she was sent to the Admiral Bristol Hospital, where she passed away. Appellant knew of no special event, which might have occurred that week, or around that week at work.

In a statement dated May 25, 1993, Valeria P. Sentowski, the immediate supervisor at the American Consul in Istanbul, stated that Mr. Carolan was "in the habit of shouting, slamming the [tele]phone down, castigating FSN's [Foreign Service Nationals], and American employees in front of [the employee] and [her], swearing, throwing tantrums and being downright obnoxious." She stated that Mr. Carolan shouted often at the employee and told her, Ms. Sentowski, that he did not like or trust the employee.

In a statement dated "[a]fter January 1, 1993," the employee's friend, Barbara E. Coskun, would occasionally visit the employee at her office in Istanbul and stated that she observed Mr. Carolan's erratic behavior. She stated that once he threw a telephone across the room because "he was upset about something." Ms. Coskun stated that it was "very clear his only interests were in his residence and the Consulate's yacht, Hiawatha." Ms. Coskun stated that the employee and Ms. Sentowski stated that Mr. Carolan yelled often and "was often completely unreasonable." She stated that she observed that Mr. Carolan's behavior made the employee "very nervous and upset."

Appellant submitted medical evidence documenting that the employee was treated in Thailand for hypertension from March through October 1982, she was treated for high blood pressure in Bangkok on or around January 18, 1984, she was admitted at Georgetown University Hospital on May 13, 1987 for treatment of coronary artery disease and renal vascular disease, she was treated for cardiac problems in March and August 1988 following a heart attack in Madrid and underwent an angioplasty in 1988, and was further treated for coronary artery disease on July 6, 1989. Appellant testified that he was unable to obtain the employee's medical records documenting her treatment in Turkey prior to her death. In a letter dated January 26, 1996, appellant also stated that he tried to talk with Dr. Turnaoglu prior to the employee's death but Dr. Turnaoglu's English "was so poor" he was unable to communicate with him. A discharge summary from a hospital in Thailand dated from February 24 to March 3, 1983 stated that the employee had high blood pressure induced by anxiety and that she had been working hard and was under stress. The record showed that the employee's father died of a myocardial infarction at the age of 49.

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 her 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.² 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.³

In the present case, appellant did not submit medical evidence to establish that the employee's death on March 27, 1991 due to a myocardial infarction was due to stress at work caused by her supervisor, Mr. Carolan. In the Office's October 19, 1995 decision, the Office hearing representative stated that, in the absence of evidence to the contrary, he accepted that Mr. Carolan frequently shouted at the employee and other employees, that he had altercations with employees, that he slammed down telephones, castigated employees, swore and threw tantrums. Appellant's hearing testimony and statements in his August 25, 1994 letter and the two witness statements from Ms. Coskun and Ms. Sentowski dated January 1 and May 25, 1993, respectively, support that Mr. Carolan frequently yelled at the employees, yelled at the employee on occasion, and once threw a telephone at her or across the room. However, none of the medical evidence attributes the employee's death due to stress at her workplace. The only reference to the employee's employment is in the March 3, 1983 discharge summary from Thailand stating that her blood pressure was induced by anxiety and that she worked hard and was under stress. That medical evidence is insufficient to establish a causal connection between the employee's death on March 27, 1991 due to myocardial infarction and stress caused by her supervisor, Mr. Carolan. Further, in Dr. Turnaoglu's January 31, 1994 attending physician's report, Form CA-5, Dr. Turnaoglu stated that no work-related connection of the employee's heart condition was reported to him. Although appellant indicated that he tried to obtain additional medical records, the medical evidence in the record is insufficient to establish the requisite

² *Bertha J. Soule*, 48 ECAB 314, 316 (1997); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989); *Mary M. DeFalco (Gordon S. DeFalco)*, 30 ECAB 514 (1979).

³ *Gertrude T. Zakrajsek*, 47 ECAB 770, 773 (1996); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728, 733 (1991).

causal connection between the employee's employment and her death on March 27, 1991. Appellant has therefore failed to establish his claim.

The decision of the Office of Workers' Compensation Programs dated May 15, 1999 is hereby affirmed.

Dated, Washington, DC
December 5, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member