

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of AMALIA GORENA, claiming as widow of JUAN GORENA and  
DEPARTMENT OF THE TREASURY, U.S. CUSTOMS SERVICE, El Paso, TX

*Docket No. 98-2569; Submitted on the Record;  
Issued June 12, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the employee's death on June 6, 1993 was causally related to his September 14, 1992 employment injury.

On July 21, 1993 appellant filed a claim for benefits alleging that the June 6, 1993 death of her 52-year-old husband, the employee, was causally related to his September 14, 1992 employment injury.<sup>1</sup>

By decision dated March 28, 1994, the Office denied appellant's claim on the grounds that the evidence did not establish that the employee's death on June 6, 1993 was causally related to his accepted employment injury.

In a letter received by the Office on April 19, 1994, appellant requested a hearing before an Office hearing representative. By decision dated April 19, 1995 and finalized April 20, 1995, an Office hearing representative set aside the Office's April 19, 1994 decision and remanded the case for resolution of a conflict in medical opinion regarding the cause of the employee's death.

By decision dated August 2, 1995, the Office denied appellant's claim for death benefits based on the opinion of Dr. Raymond Alexander, a Board-certified internist selected to resolve the conflict in medical opinion.

On August 29, 1995 appellant, through her attorney, requested a hearing. By decision dated February 26, 1997, the hearing representative set aside the August 2, 1995 Office decision. The hearing representative found that the Office had improperly asked Dr. Alexander whether the accepted employment injury contributed to the employee's death rather than whether the

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<sup>1</sup> The Office of Workers' Compensation Programs accepted that appellant sustained cervical, thoracic, lumbar and right knee strain, and an aggravation of his preexisting gastrointestinal condition, hepatitis C, as a result of a traumatic injury on September 14, 1992.

employment injury caused, aggravated, accelerated or precipitated the employee's death. The hearing representative therefore remanded the case for referral of the case record to a second impartial medical specialist.

By decision dated May 9, 1997, the Office denied appellant's claim for death benefits based on the opinion of Dr. Steven Cordas, an osteopath to whom it referred the case record for an impartial medical evaluation.

On June 6, 1997 appellant requested a hearing, which was held on April 22, 1998. In a decision dated June 9, 1998 and finalized June 10, 1998, the hearing representative affirmed the Office's May 9, 1997 decision.

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

In the present case, the Office referred the case to Dr. Cordas, an osteopath, for an impartial medical evaluation and opinion regarding whether the employee's death was caused, accelerated or aggravated by the September 14, 1992 employment injury. On the basis of Dr. Cordas' opinion, the Office denied appellant's claim for death benefits. The Board notes, however, that there is no indication in the record that Dr. Cordas is a Board-certified medical specialist. The Office's procedures require that an impartial medical specialist be a Board-certified physician unless the physician has special qualifications for performing the examination as documented by the Office medical adviser.<sup>2</sup> Therefore, Dr. Cordas' opinion cannot be accorded the special weight of an impartial specialist.<sup>3</sup> Thus, the record contains an unresolved conflict in medical opinion regarding the cause of the employee's death. Accordingly, the case is remanded to the Office for the referral of the case record and a statement of accepted facts to a Board-certified impartial medical specialist for an opinion on whether the employee's September 14, 1992 employment injury caused, aggravated or accelerated his death on June 6, 1993.

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (March 1994).

<sup>3</sup> See *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs dated June 9, 1998 and finalized June 10, 1998 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.  
June 12, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member