

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL T. FRALIX (widow of MARK S. FRALIX) and DEPARTMENT OF
THE NAVY, CHARLESTON NAVAL SHIPYARD, Charleston, SC

*Docket No. 99-1503; Submitted on the Record;
Issued September 1, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the employee's April 26, 1997 death was causally related to his federal employment.

The Board has reviewed the case record on appeal and finds that appellant failed to meet her burden of proof of establishing that the employee's death on April 26, 1997 was causally related to his federal employment.

On May 5, 1997 appellant submitted a claim for compensation by widow, Form CA-5, alleging that her husband's death on April 26, 1997 was causally related to his June 16, 1988 accepted employment injury, a lumbar strain and a permanent aggravation of spondylolithesis. By decision dated August 12, 1997, the Office of Workers' Compensation Programs rejected appellant's claim on the basis that she failed to establish that her husband's accepted employment injuries resulted in his death. On August 18, 1997 appellant requested an oral hearing. By decision dated June 22, 1998, the Office hearing representative affirmed the Office's August 12, 1997 decision denying benefits. On January 4, 1999 appellant requested reconsideration. By decision dated January 25, 1999, the Office denied modification of the June 22, 1998 decision.

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.¹ This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.²

¹ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

² *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

In support of her claim, appellant submitted medical reports from Dr. R. Duren Johnson, a Board-certified pathologist. On April 30, 1997 Dr. Johnson completed a death certificate and a report addressing the cause of the employee's death. On the death certificate, he listed the immediate cause of death as bilateral bronchitis and pneumonia due to probable streptococcus pneumoniae. He listed multiple sclerosis with chronic back injury as other significant conditions contributing to death, but not resulting in the underlying causes described above. Dr. Johnson further explained in his report of the same date that appellant's multiple sclerosis process, which lead to his disability, also led to a series of alterations in his immune system or ability to fight off bacterial disease, which lead to his death. In an autopsy report dated May 7, 1997, Dr. Johnson stated that his examination was consistent with death secondary to respiratory failure and insufficiency following sepsis from bilateral diffuse pneumonia, secondary to streptococcus pneumoniae. He stated that it was likely the deceased suffered from acute and ulcerative epiglottitis and tracheobronchitis, which evolved into a hyperacute and florid bilateral pneumonia with streptococcus pneumoniae. He stated that this produced bilateral pulmonary congestion and edema leading to respiratory insufficiency and respiratory failure. Dr. Johnson indicated that the respiratory failure combined with the likely sepsis from the pneumonia led to death. He stated that underlying his findings, as well as the deceased's previous disabling back injury, was the disease process of multiple sclerosis. Dr. Johnson indicated that the multiple sclerosis led to a series of alterations in the deceased's immune system and breathing which decreased his ability to fight off the bacterial disease which led to death. He concluded that the cause of death was respiratory failure secondary to bilateral tracheobronchitis and pneumonia, secondary to streptococcus pneumonia, secondary to multiple sclerosis with chronic back pain. Dr. Johnson repeated his conclusions in his report dated November 27, 1998. Although he indicated that multiple sclerosis contributed to both the employee's death and his accepted employment injury, he does not conclude that the employee's accepted back injury contributed to his death. Consequently, Dr. Johnson's reports are insufficient to meet appellant's burden of establishing that her husband's death was causally related to his employment.

Appellant also submitted reports from Dr. Linda C. Daily, a treating physician and a doctor of osteopathy. On May 5, 1997 Dr. Daily indicated that she treated the employee for multiple sclerosis and permanent chronic spondylosis. She stated that the direct cause of death was bilateral bronchitis and pneumonia with probable streptococcus pneumoniae. Dr. Daily stated that multiple sclerosis and permanent chronic spondylosis were contributing causes to the death. She checked "yes" to indicated that the employee's death was due to multiple sclerosis and permanent chronic spondylosis. In this regard, Dr. Daily indicated that appellant suffered from multiple sclerosis with a history of falls and chronic back injury leading to disability so that he sustained an unusual, rapid and fatal presentation of pneumonia. On December 1, 1998 she concluded that because of his underlying multiple sclerosis and back pain, the employee was susceptible to developing pneumonia which led to his death. Because Dr. Daily provided no rationale for her opinion that the employee's accepted back injury resulted in his death, her opinion is also insufficient to meet appellant's burden of establishing that her husband's death was causally related to his employment.³

³ *Arlonia B. Taylor*, 44 ECAB 591 (1993).

The only remaining medical opinion of record, which addressed whether the employee's accepted back injury was causally related to his death, was the August 1, 1997 opinion of the Office medical adviser. The medical adviser, however, concluded that the employee's death had no relation whatsoever to the accepted conditions. As appellant failed to submit the necessary rationalized medical opinion evidence to support that the employee's death was caused by factors of his federal employment, the Office properly denied the claim.

The decisions of the Office of Workers' Compensation Programs dated January 25, 1999 and June 22, 1998 are affirmed.

Dated, Washington, D.C.
September 1, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member