U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTHA A. FORD, claiming as widow of FELTON FORD and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Atlanta, GA

Docket No. 01-62; Submitted on the Record;
Issued September 4, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that the employee's death was causally related to his federal employment.

The employee worked as an air traffic controller from June 3, 1957 until July 1974 when he was medically disqualified. The Office of Workers' Compensation Programs accepted the employee's claim for hypertension and cardiovascular disease and paid appropriate compensation since January 1, 1975. On May 8, 1998 the employee died of an acute myocardial infarction. The Office received appellant's claim for death benefits on July 6, 1998.

In a report dated October 11, 1974, appellant's treating physician, Dr. Luther E. Smith, stated that in September 1968 appellant had mild elevated blood pressure with abnormal electrocardiogram (EKG) with changes compatible with some ischemia. He stated that appellant had been under treatment since that time with control of his blood pressure and return of his cardiogram to normal. Dr. Smith stated that in July 1974 appellant's blood pressure was elevated and was not controlled by medication and, therefore, he was unfit for his duty in his job.

In his report dated November 17, 1975, Dr. Smith note that the EKG had showed changes suggestive of ischemia, but stated that with control of the employee's blood pressure through medicine, the EKG changes had returned to normal.

In a report dated October 11, 1982, Dr. Smith reiterated that the employee's ischemic heart disease was under control and noted that the EKG taken on October 7, 1982 showed no change since an EKG performed in 1980.

In a report dated April 29, 1986, Dr. Smith stated that an EKG he obtained showed changes compatible with some anterior lateral ischemia and showed progression of these changes since the employee's previous EKG. He reiterated his diagnoses of hypertension and ischemic heart disease.

In a report dated April 15, 1987, Dr. Smith stated that when the employee left his job, the EKG showed ischemic changes, which subsequently disappeared when the employee left his occupation. He stated that the EKG remained abnormal but appellant's high blood pressure had been controlled through medication.

In an attending physician's report dated June 10, 1998, the employee's treating physician, Dr. John G. Thompson, a Board-certified internist, stated that the direct cause of the employee's death was cardiac arrest due to acute myocardial infarction. He stated that the contributory cause of death was systemic arterial hypertension. Dr. Thompson checked the "yes" box that the employee's death was due to systemic hypertension and coronary artery disease and stated that the employee's death was "clearly a cardiovascular event."

In a report dated July 24, 1998, the district medical adviser noted that the cause of the employee's death was an acute myocardial infarction many years after the employee's retirement. He stated that it was well known that the cause of an acute myocardial infarction is the inexorable progression of coronary artery disease over many years. The district medical adviser stated that it "is only related in that the case here hypertension is one of the many risk factors added together as a burden on the patient" and that "there was smoking, family history of hypertension (stroke) and cancer." The district medical adviser considered that in 1988 the employee had multiple visits to the physician and the verification of hypertension, cardiovascular disease, chronic obstructive pulmonary disease and postoperative cancer of the thyroid. He stated that "even then the echocardiogram revealed good contractibility of the heart and the EKG revealed no pattern of previous myocardial infarction." He concluded that "there is a risk factor relationship [and] the death was not directly related nor resulted from the July 15, 1974 accepted condition."

To resolve the conflict in the medical evidence between Dr. Thompson's and the district medical adviser's opinions as to whether the employee's death was work related, the Office referred the employee to an impartial medical specialist, Dr. Lawrence J. Kanter, a Board-certified internist with a specialty in cardiovascular medicine. In his report dated January 22, 1999, Dr. Kanter considered the employee's history of injury, medical history and cause of death and considered that on March 14, 1988 the employee had an extremely positive treadmill exercise test that was indicative of myocardial ischemia in the inferior and lateral portion of his heart. He stated the employee had severe coronary artery disease and that the coronary artery disease caused his death 10 years later, in 1998. Dr. Kanter stated that the employee's hypertension, "albeit a contributor to coronary artery disease, was not the cause of his death," and stated that it was also a familiar problem and was aggravated by his 30-pack years of cigarettes. He concluded that the employee died of the process of coronary artery disease, which was familial and aggravated by previous cigarette abuse. Dr. Kanter stated that "hypertensive cardiovascular disease, although present was extremely well controlled and was not a significant contributor to his coronary artery disease and subsequent demise."

By decision dated May 6, 1999, the Office denied appellant's claim, stating that the weight of the evidence was with Dr. Kanter's opinion and established that the employee's death was not causally related to the July 15, 1974 employment injury or due to the accepted condition of hypertensive cardiovascular disease.

Appellant requested an oral hearing before an Office hearing representative, which was held on October 28, 1999. At the hearing, appellant testified described the employee's symptoms of heart trouble since 1968 stated that the employee was never overweight and that he did not smoke much and stopped smoking in 1965. She also described his activities after he retired and how he restricted them to accommodate his health. Appellant thought that the employee's mother died of congestive heart failure and stated that his sisters and brothers died of cancer.

Appellant submitted a medical report dated November 15, 1999 from Dr. Jerry M. Franklin, a Board-certified internist with a specialty in cardiovascular medicine. He stated that the employee's coronary artery disease was causally related to his employment as an air traffic control specialist. Dr. Franklin explained that due to the fact that stress causes hypertension and hypertension causes coronary artery disease and "in some text books stress is recognized as a causative factor for coronary disease with or without hypertension." He stated that the employee's death by acute myocardial infarction was causally related to his hypertensive vascular disease and his coronary artery disease. Dr. Franklin reiterated that hypertension causes damage to the arteries which causes the onset of coronary artery disease "and of course, coronary artery disease creates death of heart muscle and arrhythmia, both of which can lead to death."

By decision dated January 21, 2000, the Office hearing representative found that Dr. Kanter's opinion was equivocal in that he stated that the employee's hypertensive cardiovascular disease was not a significant contributor to his coronary artery disease and subsequent death and, therefore, a conflict existed between his opinion and those of Drs. Thompson and Franklin as to whether the employee's death was work related. The Office hearing representative remanded the case for the Office to refer the case record to another impartial medical specialist to resolve the conflict.

The Office referred the case record to the impartial medical specialist, Dr. Peter D. Kuhlman, a Board-certified internist with a specialty in cardiovascular medicine. In his report dated April 20, 2000, Dr. Kuhlman considered the employee's work and medical history and noted that it was accepted that the employee's hypertensive cardiovascular disease was work related. He stated:

> "I definitely feel that [the employee's] death from a myocardial infarction [in] 1998 was definitely not work related. This patient retired [24] years prior to his death. There is not documented evidence of any significant coronary ischemia when he worked as an air traffic controller. It appears he never had any angina pectoris (which is a sign of coronary ischemia) until 1988 which was 14 years after his retirement. There was mention of an abnormal EKG but in 1976 it was documented that any changes on the EKG resolved with control of his blood pressure indicating that those changes were from hypertensive cardiovascular disease and not from coronary ischemia."

Dr. Kuhlman stated that the employee eventually developed ischemic heart disease "but that obviously manifested itself many years later after his retirement and after he was far removed from his work-related condition." He stated that "[t]here is no question that

hypertension is one of the risk factors to develop atherosclerosis and a myocardial infarction but it is a mulifactorial disease process."

Dr. Kuhlman stated that the employee was a smoker in the past and had hyperlipidemia with cholesterol as high as 250 at times and had a positive family history. He stated:

> "Also, some degree of atherosclerosis is going to occur in everyone in this Western civilized society. I believed that his atherosclerosis and eventual myocardial infarction in 1998 just reflected a natural progression of his underlying process of diffuse atherosclerosis that was definitely exacerbated by other problems described above. I definitely do not feel it was related to his work-related condition."

Dr. Kuhlman noted that no physician recommended aspirin or prn nitroglycerin when the employee was working or in the first few years when he retired. He further stated that even if the employee's coronary artery disease was accepted as a work-related condition, the fact that the employee's myocardial infarction and death occurred 24 years later and he never developed any symptomatic coronary artery disease until almost 14 years after his retirement, made him feel that the employee's death was not work related. Dr. Kuhlman stated that "the other risk factors described disease and then the natural progression of atherosclerosis eventually was going to become manifest in this gentleman whether he was working or not." He stated that the employee "lived an average life-span and probably a year or two longer than the average man lives in this country."

By decision dated June 22, 2000, the Office found that Dr. Kuhlman's opinion constituted the weight of the evidence and affirmed the Office's January 21, 2000 decision.

A claimant 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 complete factual and medical background.[1] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.[2]

The Board finds that appellant has not established that the employee's death was employment related.

In this case, to resolve the conflict between the opinion of the employee's treating physician, Dr. Thompson and the district medical adviser as to whether the employee's death was due to the accepted conditions of hypertension and cardiovascular disease or due to coronary artery disease, the Office referred appellant to the impartial medical specialist, Dr. Kanter. In his January 22, 1999 report, Dr. Kanter stated that the employee died due to coronary artery disease and that the employee's hypertensive cardiovascular disease, although present and extremely

[1] *Jacqueline Brasch* (*Ronald Brasch*), 52 ECAB _____ (Docket No. 00-743, issued February 8, 2001); *Carolyn P. Spiewak* (*Paul Spiewak*), 40 ECAB 552 (1989).

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

well controlled, was not a significant contributor to the employee's coronary artery disease and subsequent demise.

In his November 15, 1999 report, Dr. Franklin stated that generally stress causes hypertension and hypertension causes coronary artery disease and opined that the employee's death by acute myocardial infarction was causally related to his hypertensive vascular disease and his coronary artery disease. He stated that hypertension causes damage to the arteries, which causes the onset of coronary artery disease and coronary artery disease creates death of heart muscle and arrhythmia, both of which can lead to death.

Because Dr. Kanter's opinion was equivocal in stating that the employee's hypertension did not contribute to his death but also stated that it was not a significant contributor, the Office hearing representative remanded the case to another impartial medical specialist, Dr. Kuhlman.

In his April 20, 2000 report, Dr. Kuhlman stated that there was no documented evidence of significant coronary ischemia when appellant worked as an air traffic controller. He stated that the abnormal EKG mentioned in 1976 documented that any changes on the EKG resolved with control of the employees' blood pressure indicating that those changes were from hypertensive cardiovascular disease and not from coronary ischemia. Dr. Kuhlman stated that the employee eventually developed ischemic heart disease but that was obviously manifested many years after his retirement and was far removed from his work-related condition. He opined that the employee's atherosclerosis and eventual myocardial infarction in 1998 reflected a natural progression of his underlying process of diffuse atherosclerosis that was exacerbated by his other problems of smoking and hyperlipidemia with cholesterol. Dr Kuhlman opined that appellant's myocardial infarction was not related to his employment.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[3] Dr. Kuhlman's opinion that appellant's myocardial infarction was not work related is complete and well rationalized.[4] As the impartial medical specialist, his opinion constitutes the weight of the evidence. Dr. Franklin's opinion that appellant's myocardial infarction resulted from his hypertensive vascular disease is not sufficiently rationalized to counter Dr. Kuhlman's opinion. The rationale Dr. Franklin provided that hypertension generally causes damage to the arteries, which causes the onset of coronary artery disease and that coronary artery disease creates death of the heart muscle and arrhythmia, both of which can lead to death, does not state that process was specific to appellant. His opinion is, therefore, not probative.[5]

[3] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[4] Although on appeal appellant contended that Dr. Kuhlman erroneously determined that the employee's prior medical records, going as far back as 1974, did not show ischemic heart disease, he opined that those earlier records did not show "significant" ischemic heart disease. His conclusion that the ischemic heart disease was controlled when appellant left his employment in 1974 is consistent with many of Dr. Smith's reports.

[5] *See Durwood H. Nolin*, 46 ECAB 818, 821 (1995).

The June 22, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 4, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member