

**United States Department of Labor
Employees' Compensation Appeals Board**

DANIEL J. FLAHERTY, Appellant
(Claiming as widower of JACQUELINE A.
FLAHERTY)

and

DEPARTMENT OF AGRICULTURE,
AGRICULTURAL STABILIZATION &
CONSERVATION SERVICE, Washington, DC,
Employer

Docket No. 03-867
Issued: May 19, 2004

Appearances:
Daniel J. Flaherty, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 21, 2003 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated October 1, 2002 and February 5, 2003 which denied appellant's request for death benefits finding that the employee's death was not causally related to her federal employment or to her accepted employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that the employee's death was causally related to factors of her federal employment.

FACTUAL HISTORY

This is the second appeal before the Board related to this case. In the prior appeal, the Board reversed the September 11, 1998 decision of the Office finding that there was sufficient relevant and credible evidence for the Office to further develop the case record for compensable factors, and whether these factors were causally related to the employee's disability. The facts and the circumstances of the case are set forth in this decision and are hereby incorporated by reference.¹

The employee dies on May 14, 1999.

Thereafter, on June 18, 1999 the Office accepted the employee's claim for chronic post-traumatic stress disorder due to harassment by a supervisor.

On February 11, 2002 appellant filed a Form CA-5 claim for widower's benefits alleging that the employee's death on May 14, 1999 was causally related, either by causation or aggravation, to factors of her federal employment. On the claim form appellant indicated that the cause of the employee's death was cardiac failure.

On an attending physician's report dated November 1, 2001, Dr. Philip Volastro, a Board-certified internist and rheumatologist, noted as history of employment-related disease that "[The employee] was under extraordinary stress at work -- a hostile work environment, excessively demanding work load, anxiety provoking [sic] [and] depressing for [the employee]." He noted the employee's diagnosis as "chronic post-traumatic stress syndrome," and noted her cause of death as "arteriosclerotic heart disease." Dr. Volastro commented on contributory causes of the employee's death as "severe emotional distress from work environment, requiring cessation of work and psychiatric treatment. Cigarette smoking also a contributing factor." He checked "yes" to the question of whether the employee's death was due to the chronic post-traumatic stress disorder, and he noted that "the effect of the intense and relentless work stress she experienced had a profound effect on her daily living and was a major contributor of her angina and arteriosclerotic heart disease that eventually caused her demise."

Appellant provided a copy of the June 18, 1999 decision from the Office accepting the employee's claim for chronic post-traumatic stress disorder. In an attached February 11, 2001 statement, appellant alleged that the employee's condition was a direct result of the callous and inhumane treatment she suffered at the hands of her employer. Appellant noted that the abuse and harassment suffered at work by the employee was documented during the extensive legal proceedings which preceded acceptance of the employee's employment-related emotional condition claim.

Also submitted was the employee's death certificate which noted as the immediate cause of her death, "cardiac failure resulting in pulmonary failure and multiorgan failure."

¹ Docket No. 97-150 (issued December 3, 1998).

On March 26, 2002 the Office requested that a second opinion specialist, Dr. C. Gordon Hale, a Board-certified cardiologist, review the employee's records and provide an opinion as to the cause of her death.

By report dated April 12, 2002, Dr. Hale reviewed the employee's medical charts, letters from doctors and medical progress notes, and noted that the cause of her death was listed as cardiac failure resulting in pulmonary failure and multiorgan failure. In response to the Office's question as to the cause of the employee's death, Dr. Hale wrote "I have nothing to add to the diagnoses listed on the death certificate." He noted that medical records from early 1993 until the time of her death in May 1999 were not available. Dr. Hale stated that "The cause of [the employee's] atherosclerotic cardiovascular disease was multifactorial, including hypertension, hyperlipidemia and cigarette smoking. Her work-related stress may have aggravated her symptoms, but it was not the cause of the disease process."

In a letter dated June 5, 2002, the Office requested the employee's medical records from appellant's attorney for the period December 1993 to May 1999.

By an additional report dated September 13, 2002, Dr. Hale reviewed the additional medical reports, chart notes and letters, and noted as follows: "In answer to the specific question, was [the employee's] death the result of the accepted work-related post-traumatic stress disorder or due to any preexisting nonwork-related problems, I would respond that [the employee's] death from cardiac and multiorgan failure with complicating acute myocardial infarction was due to her arteriosclerotic heart disease and unrelated to her work-related post-traumatic stress disorder." He noted that "[the employee] had many well-recognized risk factors for atherosclerotic cardiovascular disease including hypertension, hyperlipidemia and cigarette smoking. I believe these were the underlying causes of the disease processes which led to her death." However, no further medical rationale was provided.

By decision dated October 1, 2002, the Office denied appellant's claim for widower's benefits finding that the report from Dr. Hale had greater probative value than the opinion of Dr. Volastro. The Office stated that Dr. Hale explained how the employee's death was caused by nonwork-related factors.

Appellant disagreed with this denial and requested a review of the written record by an Office hearing representative.

By decision dated February 5, 2003, the Office hearing representative affirmed the October 1, 2002 decision of the Office finding that Dr. Volastro failed to provide a reasoned medical opinion as to how work stress, which ended in 1992, materially worsened the arteriosclerotic heart disease that eventually caused her death in May 1999. The hearing representative found that Dr. Hale provided a specific opinion that the employee's death was due to her arteriosclerotic heart disease and her nonwork-related factors.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his or her federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his or her federal employment. Appellant's unsupported belief is insufficient to establish causal relationship.² Causal relationship is medical in nature and can be established only by medical evidence.³

ANALYSIS

In this case, appellant's treating physician, Dr. Volastro, a Board-certified internist, who had been treating her for all of her conditions, including her diagnosed atherosclerotic heart disease, angina, hypertension, hyperlipidemia, abdominal aortic aneurysm, arthritis, depression, and anxiety for many years, and who was aware of her ongoing employment-related post-traumatic stress disorder and its effects, due to accepted harassment and abuse in her working environment, stated: "[The employee] was under extraordinary stress at work -- a hostile work environment, excessively demanding work load, anxiety provoking [sic] [and] depressing for [the employee]." Dr. Volastro commented on contributory causes of the employee's death as "severe emotional distress from work environment, requiring cessation of work and psychiatric treatment. Cigarette smoking also a contributing factor." He checked "yes" to the question of whether the employee's death was due to the chronic post-traumatic stress disorder, and he explained that "the effect of the intense and relentless work stress she experienced had a profound effect on her daily living and was a major contributor of her angina and arteriosclerotic heart disease that eventually caused her demise."

Therefore, Dr. Volastro supports appellant's claim that the employee's ongoing employment-related chronic post-traumatic stress disorder affected her other medical conditions and was a major contributor to and hastened her death.

In Dr. Hale's first report, he noted: "The cause of [the employee's] atherosclerotic cardiovascular disease was multifactorial, including hypertension, hyperlipidemia and cigarette smoking. Her work-related stress may have aggravated her symptoms, but it was not the cause of the disease process." Therefore, this report actually supports appellant's contention that the employee's work-related stress contributed to her arteriosclerotic heart disease and death, even though it was not the cause, *per se*.

In his subsequent report, Dr. Hale noted that "[the employee's] death from cardiac and multiorgan failure with complicating acute myocardial infarction was due to her arteriosclerotic

² See *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001); *Leonora A. Bucco (Guido Bucco)*, 36 ECAB 588 (1985); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111 (1982).

³ *Mary J. Briggs*, 37 ECAB 578 (1986); *Umberto Guzman*, 25 ECAB 362 (1974).

heart disease and unrelated to her work-related post-traumatic stress disorder.” He merely noted that “[the employee] had many well-recognized risk factors for atherosclerotic cardiovascular disease including hypertension, hyperlipidemia and cigarette smoking. I believe these were the underlying causes of the disease processes which led to her death.” He did not, however, explain why he felt this, and he did not discuss contribution, aggravation or acceleration. Moreover, no further explanation was provided as to why he changed his opinion from his April 12, 2002 report in which he stated that “the employee’s work-related stress may have aggravated her symptoms, but it was not the cause of the disease process.”

However, in this case, there is a conflict in medical opinion regarding contribution factors of the employee’s death.

The Federal Employees’ Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “If there is a 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.”

That was not done in this case.

As the opinions of Dr. Volastro are at a variance with the opinions of Dr. Hale, there exists a conflict in medical opinion evidence which must be resolved before this case can be decided.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 5, 2003 and October 1, 2002 be and hereby are set aside and the case be and hereby is remanded for further development in accordance with this decision and order of the Board.

Issued: May 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member