

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAE HEAD, claiming as widow of PAUL J. HEAD and U.S. POSTAL
SERVICE, MAIN POST OFFICE, Brooklyn, N.Y.

*Docket No. 97-1145; Submitted on the Record;
Issued March 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that her husband's death on May 28, 1994 was causally related to his July 22, 1976 myocardial infarction (MI) for which he received compensation.¹

Appellant, the employee's widow, filed a claim for death benefits on October 30, 1994. On the form, Dr. S.E. Kirkley, an internist, stated that the cause of death was acute MI with contributory causes of arteriosclerosis and coronary artery disease. He checked a box to indicate that the employee's death was related to his 1976 MI and added that the employee continued to have angina from 1976 until his death and in the months before his death had to limit his activities due to angina.

By decision dated November 4, 1996, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the employee's death was causally related to the originally accepted condition. The Office noted that the employee's 1976 claim was accepted for MI but not for the underlying conditions of coronary artery disease and arteriosclerosis and that the medical evidence failed to establish how the one MI could have caused the fatal episode in May 1994.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that the employee's death was causally related to his July 22, 1976 MI.

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained

¹ Appellant's husband, a supervisor, filed a notice of traumatic injury on August 27, 1976 and did not return to work. The Office of Workers' Compensation Programs accepted the condition of MI and paid compensation until the employee's death.

while in the performance of duty.² However, an award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation, or an appellant's belief that the employee's death was caused, precipitated or aggravated by her employment.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an employee's death was causally related to factors of employment. This burden included the necessity of furnishing a rationalized medical opinion based on an accurate factual and medical background and supported by medical rationale explaining the nature of the cause and effect relationship between the employee's death and specific employment factors.⁴

That an employee was receiving compensation for total disability at the time of death does not establish that his death was causally related to conditions resulting from the employment injury.⁵ The mere fact that a disease manifests itself during a period of employment does not raise an inference that there was a causal relationship between the two. Neither the fact that the disease was diagnosed during such employment nor appellant's opinion that an injury accepted by the Office ultimately caused the employee's death is sufficient to establish the required causal relationship.⁶

In the present case, the employee's attending physician provided an opinion that his death was causally related to his 1976 MI, which this condition was accepted by the Office. The death certificate completed by Dr. Kirkley also indicated that the employee's death was due to acute MI secondary to arteriosclerotic coronary artery disease. By letter dated October 23, 1995, the Office requested additional information, including a report which addressed to what extent the necrosis or death of the muscle was caused by the 1976 MI, what residuals of the necrosis did the employee sustain and how were these residuals due to the 1976 MI and not any preexisting heart disease and how was the 1976 MI connected with the employee's fatal MI. In a report dated November 15, 1995, Dr. Kirkley indicated that while he was not present for the 1976 MI, the employee had an inferior scar embedded on his electrocardiogram (EKG) which indicated it was a transmural infarct. He reported that the employee initially did not have angina; however, following the employment injury he had angina until his death. Dr. Kirkley also indicated that he had noted atherosclerotic heart disease on several annual reports for the employment and that the history of coronary artery disease is one of progression of the plaque and stenosis to the point where it causes an additional infarction.

The Office referred the medical records to a second opinion physician, Dr. Lawrence Kanter, a Board-certified internist. In a report dated June 21, 1996, Dr. Kanter indicated that he reviewed the two EKG's and they revealed some changes that were suggestive but not clearly

² 5 U.S.C. § 8102(a).

³ *Juanita Terry*, 31 ECAB 433 (1980).

⁴ *Kathy Marshall*, 45 ECAB 827 (1994).

⁵ *Elinor Bacorn*, 46 ECAB 857 (1995); see *Joan Leveton*, 34 ECAB 1368 (1983).

⁶ *Martha A. Whitson*, 43 ECAB 1176 (1992).

diagnostic of an MI and that without further information, he could not find that the employee had ever sustained an MI. He concluded that “given this information, since it is unclear if [the employee] ever had a[n] MI, this event in no way could contribute to his death on May 28, 1994.”

While appellant did submit a report by Dr. Kirkley, which relates the employee’s death to the 1976 MI, Dr. Kirkley does not provide a full explanation for his conclusions. Rather, he indicates that a second MI was caused by the progression of coronary artery disease and that this condition was noted in earlier reports submitted to the Office. Nonetheless, this condition was not an accepted condition related to the employee’s original injury. However, Dr. Kanter clearly indicated that the employee’s 1976 MI could not have contributed in any way to his death. His opinion was based on a review of medical records including objective tests that were conducted in 1976 and 1994. As he has fully explained the basis for his conclusion that the employee’s death was not related to his 1976 employment injury, Dr. Kanter’s report is rationalized and constitutes the weight of the medical evidence. Therefore, appellant has not met her burden of proof in establishing that the employee’s death was causally related to his accepted employment injury.

The decision of the Office of Workers’ Compensation Programs dated November 4, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 18, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member