

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MANUEL B. O'KEEFE and DEPARTMENT OF THE NAVY,  
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 96-2481; Submitted on the Record;  
Issued January 11, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that the employee's death on November 14, 1995 was causally related to factors of his federal employment.

The Board finds that the case is not in posture for 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.<sup>1</sup> This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>2</sup>

In the present case, the employee, then a 46-year-old painter, was engaged in masking preparations for spray painting a barge at approximately noon on November 14, 1994 when he fell into the water.<sup>3</sup> The employee was retrieved from the water by coworkers in an unconscious state and was found by paramedics at the scene to be in cardiac arrest. The employee was taken to a hospital for emergency medical treatment and he passed away at the hospital on the afternoon of November 14, 1994. On January 5, 1995 appellant, the employee's widow, filed a claim alleging that she was entitled to receive survivor's benefits from the Office of Workers' Compensation Programs. By decision dated June 8, 1995, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that the employee's death on November 14, 1994 was causally related to factors of his federal employment and, by decision dated March 7, 1996, the Office denied modification of its June 8, 1995 decision.

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

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

<sup>3</sup> Appellant complained of chest pain and grabbed his chest just prior to collapsing and falling in the water.

It is a well-settled principle of workers' compensation law, and the Board has so held, that an injury resulting from an idiopathic fall -- where a personal, nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface and there is no intervention or contribution by any hazard or special condition of employment -- is not within the coverage of the Federal Employees' Compensation Act.<sup>4</sup> Such an injury does not arise out of a risk connected with the employment and, therefore, it is not compensable.<sup>5</sup> The question of causal relationship in such cases is a medical one, and must be resolved by medical evidence.<sup>6</sup> In the present case, the Board has reviewed the medical evidence and notes it reveals that the employee fell from the barge due to an idiopathic condition. Both Dr. Nazir Habib, an attending Board-certified internist, and Dr. Maurice Eliaser, a Board-certified cardiologist, to whom the Office referred the case record, indicated that the employee's fall into the water was not due to a condition caused by the performance of his painting job duties, but rather was due to some form of acute, nonwork-related cardiac condition.<sup>7</sup>

The Office procedure manual provides that if the incident was due to an idiopathic condition, the record must clearly show whether the fall was to the immediate supporting surface or whether some special condition, hazard or instrumentality of the work contributed to or intervened as a cause of the injury. If some factor of the employment intervened or contributed to the injury resulting from the fall, the employee has coverage under the Act for the results of the injury but not for the idiopathic condition which caused the fall.<sup>8</sup> This case involves the presence of a special condition, hazard or instrumentality in that the employee did not fall to an immediate supporting surface, but rather fell from a height into a special condition, hazard or instrumentality of his employment, *i.e.*, a body of water beneath the platform on which he was standing. The question remains whether the fact that the employee fell into the water contributed to his death and this question necessitates an examination of the relevant medical evidence.

In a report dated October 30, 1995, Dr. Habib noted that, after the employee was pulled from the water, paramedics determined that he was in cardiac arrest with ventricular fibrillation. He indicated that the employee received aggressive resuscitation at the hospital which led to the return of his blood pressure but not his consciousness. Dr. Habib stated that an electrocardiogram revealed evidence of acute myocardial infarction or damage in the anterior and

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Amrit P. Kaur*, 40 ECAB 848, 853 (1989); *Robert J. Choate*, 39 ECAB 103, 106 (1987). The Office procedure manual refers to an idiopathic fall as a fall caused by a personal and nonoccupational pathology, such as a myocardial infarction, fainting spell or epileptic seizure. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.9a (August 1992).

<sup>6</sup> *John D. Williams*, 37 ECAB 238, 240 (1985); *Rudolph Golz*, 33 ECAB 129, 133 (1981).

<sup>7</sup> A November 15, 1994 certificate of death listed the immediate cause of death as acute myocardial infarction due to arteriosclerotic heart disease. No autopsy was performed on the employee.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.9b (August 1992).

inferior leads and that x-ray testing revealed diffuse lung damage. He noted that the employee succumbed after suffering another cardiac arrest and stated:

“In retrospect, it seems that the patient was having chest pain most likely due to coronary ischemia and coronary atherosclerosis. This resulted in coronary ischemia or myocardial infarction, leading to sudden cardiac arrest. The patient as a result had syncope or passed out and fell into the water where he aspirated contents of his stomach, as well as water. The patient’s electrocardiogram was consistent with coronary ischemia or myocardial infarction. The patient, however, also developed respiratory distress or aspiration pneumonia, due to aspiration of gastric contents and water. This added to the patient’s coronary ischemia and cardiac arrhythmia and led to the patient’s rapid death in spite of aggressive interventions.”

In a report dated February 9, 1996, Dr. Habib noted that the employee sustained a cardiac arrest secondary to myocardial infarction and stated:

“As a complication of this, the patient had aspiration of water and gastric contents resulting in severe lung injury which contributed to the patient’s mortality. The exact relative contribution of these events cannot be extricated with any accuracy, as each individual incident is associated with significant mortality. I reiterate that the patient’s demise was due to a combination of these events.”

In contrast, Dr. Eliaser indicated in a February 20, 1996 report that the employee’s fall into the water on November 14, 1994 did not contribute to his death. He noted that the diagnostic testing results of myocardial infarction with ventricular fibrillation were “consonant with the medically well-accepted syndrome of instantaneous death, most frequently associated with ventricular fibrillation, either with or without an acute demonstrable myocardial infarction, preceded by loss of consciousness.” Dr. Eliaser indicated that the employee’s clinical course after he was pulled from the water was consistent with a lethal cardiac dysrhythmia, with or without acute infarction, but that his clinical course was not consistent with drowning. He noted that he could not make a definite assessment whether water was in the alveoli as would be expected in drowning or in the more proximate airways as would be expected in an acute cardiac episode. Dr. Eliaser indicated that the employee’s acute circulatory collapse would still allow for some respiratory activity and account for aspiration of some water and gastric contents. He stated that respiratory failure secondary to aspiration could not be validated as a contributory cause of death in the absence of an autopsy and noted, “It is medically reasonable to state that, in all probability, the ultimately fatal course of the November 14, 1994 cardiac episode was not significantly deleteriously altered by the fall into the water.”

Section 8123(a) of the Act provides in pertinent part: “If there is 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.”<sup>9</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial

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<sup>9</sup> 5 U.S.C. § 8123(a).

medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.<sup>10</sup>

The Board notes that there is a conflict in the medical evidence between the government physician, Dr. Eliaser, and the employee's physician, Dr. Habib, regarding whether an employment factor, the employee's fall into the water, contributed to his death. Therefore, there is a conflict in the medical evidence regarding whether the employee's death on November 14, 1994 was causally related to factors of his federal employment.

Consequently, the case will be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between the government physician, Dr. Eliaser, and the employee's physician, Dr. Habib, regarding whether employment factors contributed to the employee's death on November 14, 1994. On remand the Office should refer the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant's claim.

The decision on the Office of Workers' Compensation Programs dated March 7, 1996 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
January 11, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> *William C. Bush*, 40 ECAB 1064, 1975 (1989).