

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARNESTINE DANAT, claiming as widow of ALFRED W. DANAT and
DEPARTMENT OF THE ARMY, ARMY MISSILE SUPPORT COMMAND,
Redstone Arsenal, AL

*Docket No. 01-1571; Submitted on the Record;
Issued March 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden of proof to establish that the employee's death on December 30, 1999 was causally related to his March 26, 1975 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a merit review under 5 U.S.C. § 8128.

On March 26, 1975 the employee, then an equipment specialist, was injured in the performance of duty when he fell while repairing an antenna. The Office accepted the claim for a cervical strain, right leg strain and permanent aggravation of bilateral chondromalacia patella and osteoarthritis. The conditions not accepted as work related include: diabetes; cerebrovascular accident; hypertension; proctectomy; and degenerative disc disease of cervical and lumbar spine. The employee received a schedule award for 27 percent permanent impairment of the left leg and 23 percent permanent impairment of the right leg. At the time of his death on December 30, 1999, the employee was receiving compensation on the permanent rolls for wage-loss disability. The cause of death listed on the death certificate of January 2000 is "End Cardiomyopathy, secondary to Ischemic Heart Disease [IHD], secondary to ASVD."

In a March 3, 2000 letter, the Office advised appellant that the evidence of record did not appear to establish that the employee's death was caused by the accepted work injury. Appellant was informed of her right to file a claim for survivor's benefits if she felt her husband's death was related to his employment.

On May 1, 2000 appellant filed a Form CA-5 survivor's claim for compensation benefits.

In support of her claim, appellant submitted copies of treatment notes dating from July 28, 1995 to March 20, 1998 and the results of diagnostic tests performed on March 6, April 6 and July 6, 1998.

In an attending physician's report dated May 1, 2000, Dr. Douglas C. Ginas, a family practitioner, opined that the direct cause of the claimant's death was "cardiopulmonary arrest." Dr. Ginas stated: "[The employee's] poor overall health along with his other medical conditions certainly led to his ultimate death." He further stated:

"[The employees'] to walk along with increased problems with COPD [chronic obstructive pulmonary disease] and eventually CHF [congestive heart failure] and steadily declining ability to care for himself feel led to his death. [He] literally became bed bound secondary to pain and inability to ambulate. Dr. Kendall Black's opinion should also be heavily relied upon here as he knew [the employees'] much longer than I did."

On May 26, 2000 the Office requested additional information from Dr. Black and received a May 31, 2000 report from the physician that stated as follows:

"[The employee] sustained a back injury in 1975 and had continued to have pain up to the time of his death. The doctor that pronounced [him] was not familiar with his condition and therefore I am of the opinion that his death could have possibly been caused as an indirect result of his on-the-job injury and problems that followed."

The Office forwarded a copy of the case record to the district medical adviser, Dr. Lawrence E. Geeslin, for review. In an August 4, 2000 report, Dr. Geeslin stated:

"There is no relationship whatsoever between the [accepted condition] and the death certificate disease. Furthermore, as far back as [May 18, 1998] a Dr. Gerras has listed the diagnoses of diabetes, congestive heart failure and 'recent TIA [transient ischemic attack]' which of themselves indicate CHD [coronary heart disease], IHD, ASHD and generalized arteriosclerosis including cerebrovascular arteriosclerosis. Included in the record are the findings of a CT [computerized tomography] showing cortical atrophy and lacunar infarcts all of this confirms that the diagnoses of the death certificate are probably accurate."

In a decision dated August 17, 2000, the Office denied compensation on the grounds that appellant failed to establish that the employee's death was causally related to the March 26, 1975 employment injury.

On September 29, 2000 appellant requested reconsideration and submitted three witness statements from friends and neighbors who attested to the employee's disability prior to his death. She also submitted copies of evidence previously of record.

In a December 28, 2000 decision, the Office denied appellant's request for reconsideration on the merits.

The Board finds that appellant did not meet her burden of proof to establish that the employee's death on December 30, 2000 was causally related to the March 26, 1975 employment injury.

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

In this case, appellant has not shown that the employee's death was due to his work injury. Although Dr. Black opined that the employee's death "could have possibly been caused as an indirect result of his job injury," this opinion is speculative and lacks any rationale to explain the causal relationship between the employee's accepted neck, leg and knee conditions and his ischemic heart disease which ultimately resulted in a cardiomyopathy on December 30, 1999. Likewise, Dr. Ginis did not provide any rationale for his opinion that appellant's inability to walk led to his death from congestive heart failure.

The opinion of the district medical adviser is also of no support to appellant's claim since he stated that there is no relationship between the employee's accepted work-related conditions and the cause of death as listed on the death certificate.

An award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation or on appellant's belief that the employee's death was caused, precipitated or aggravated by his employment injury. A claimant's opinion that an injury accepted by the Office ultimately caused the employee's death is insufficient to establish causal relationship.³ Because appellant has failed to provide a reasoned medical opinion to establish that the employee's death was due to his work injury, the Office properly denied her claim for survivor benefits.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁴ The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁵ When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Evidence that does not address the

¹ *Bertha J. Soule (Ralph G. Soule)*, 48 ECAB 314 (1997).

² *Soule, supra* note 1; *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176 (1992).

³ *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

⁴ 5 U.S.C. § 8128; *see Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ 20 C.F.R. § 10.606(b) (1999).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

particular issue involved also does not constitute a basis for reopening a case.⁷ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁸

In this case, appellant's reconsideration request did not show that the Office erred in applying or interpreting a specific point of law. She did not advance a relevant legal argument nor did she submit any new and relevant evidence. Because appellant did not satisfy one of the three requirements of section 8128, the Office properly refused to perform a merit review.

The decisions of the Office of Workers' Compensation Programs dated December 28 and August 17, 2000 are hereby affirmed.

Dated, Washington, DC
March 5, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).