

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS WEINSTEIN, claiming as widow of ELLIOT H. WEINSTEIN and
U.S. POSTAL SERVICE, POST OFFICE, New York, NY

*Docket No. 02-2179; Submitted on the Record;
Issued January 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the employee's death on March 14, 1994 was causally related to his May 19, 1993 employment injury or factors of his federal employment.

This case has been on appeal before the Board. In an August 15, 1997 decision, the Board found that appellant had substantiated that the employee found his duties as a timekeeper stressful and remanded the claim for the Office of Workers' Compensation Programs to undertake additional development of the medical evidence.¹ In a February 15, 2001 decision, the Board found that appellant had established a compensable factor of employment and that there was a conflict of medical opinion evidence regarding whether this factor caused or contributed to the employee's fatal heart attack.² The Board remanded the claim for additional development of the medical evidence. The facts and circumstance of the case as set forth in the Board's prior decisions are incorporated herein by reference.

Following the Board's February 15, 2001 decision, the Office referred the record, a statement of accepted facts and list of specific questions to Dr. Israel Berkowitz, a Board-certified cardiologist, to determine the causal relationship between the employee's accepted employment injuries and work factor and his death. By decision dated June 22, 2001, the Office denied appellant's claim finding that Dr. Berkowitz did not support that the employee's death had a causal relationship to his employment.

Appellant, through her attorney, requested an appeal to the Board. In a decision dated May 30, 2002,³ the Board remanded appellant's claim to the Office for reconstruction and reassemblage of the record and an appropriate decision. By decision dated August 13, 2002, the

¹ Docket No. 95-355 (issued August 15, 1997).

² Docket No. 99-1084 (issued February 15, 2001).

³ Docket No. 02-94 (issued May 30, 2002).

Office denied appellant's claim on the grounds that the weight of the medical evidence established that the employee's death was neither causally related to the May 19, 1993 employment injury, nor to factors of his federal employment.

The Board finds that appellant has not met her burden of proof in establishing that the employee's death on March 14, 1994 was causally related to his May 19, 1993 employment injury or factors of his federal employment.

In its February 15, 2001 decision, the Board found that appellant had substantiated a compensable factor of employment, that the employee found his duties as a timekeeper stressful. The Board further found a conflict of medical opinion evidence between the employee's attending physician, Dr. Morris Stampfer, a Board-certified cardiologist and Dr. Jack Goldberg, a Board-certified cardiologist. Section 8123(a) of the Federal Employees' Compensation Act,⁴ provides: "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."

Following the Board's February 15, 2001 decision, the Office referred the record, a statement of accepted facts and a list of specific questions to Dr. Berkowitz to resolve the conflict of medical opinion. The statement of accepted facts specifically included the accepted work factor that "the employee's timekeeping duties at work caused him stress."

In his report dated May 10, 2001, Dr. Berkowitz noted reviewing the record and the statement of accepted facts. He described the employee's health including diabetes beginning at age 25, coronary artery disease since 1980 and coronary artery bypass grafting in 1987. Dr. Berkowitz noted that the employee experienced hyperlipidemia. He related the employee's history of injury of May 19, 1993, which the Office accepted resulted in back contusions and rib fractures. The employee returned to work on July 26, 1996. He underwent angiography in December 1993 for chest pain syndrome, which revealed distal occlusive disease. Dr. Berkowitz noted the events of March 14, 1994, the date of death. He stated:

"It is my medical opinion that [the employee's] death did not result from his duties as a timekeeper. [The employee] had a history of insulin-dependent diabetes mellitus, hyperlipidemia and underwent coronary artery bypass grafting several years prior to his death. Given these risk factors and the accelerated chest pain syndrome that he was apparently experiencing, I feel that [the employee's] terminal event was an unfortunate natural course of events and I do not feel that his job duties resulted in the terminal event."

Dr. Berkowitz also concluded that the May 19, 1993 employment injuries did not cause the employee's death. He opined that the employee's symptoms following May 19, 1993 were consistent with musculoskeletal pain and that there was no apparent relationship between this pain and the employee's cardiac condition.

⁴ 5 U.S.C. §§ 8101-8193, 8123(a).

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.⁵ Dr. Berkowitz based his report on an accurate history of injury, including the employee's medical history as well as his accepted employment injury and the accepted employment factor of stress due to his job duties. Dr. Berkowitz concluded that the employee had significant nonemployment-related risk factors for coronary disease including diabetes and hyperlipidemia as well as coronary artery bypass grafting and that these risk factors caused his death. He stated that he did not believe that the employee's employment duties nor his employment injury caused or contributed to his death. As Dr. Berkowitz provided medical reasoning for his conclusion that the employee's death was not due to his employment, that he had significant risk factors and accelerating chest pain syndrome, his report is entitled to the weight of the medical evidence and resolves the conflict between Drs. Stampfer and Goldberg. Therefore, the Office properly found that appellant had not established that the employee's death was due to his employment and properly denied her claim.

The August 13, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 17, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).