

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT NELLUMS, claiming as widow of REBECCA J. NELLUMS and
DEPARTMENT OF THE ARMY, Fort Knox, Ky.

*Docket No. 97-337; Submitted on the Record;
Issued September 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the employee sustained an injury in the performance of duty on October 23, 1995; (2) whether the employee's death on October 27, 1995 was causally related to the employment incident on October 23, 1995; and (3) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On October 23, 1995 the employee, then a 47-year-old military pay technician, was enroute to her office from processing a class of student military personnel when she struck several objects, including a parked car with her personal privately owned vehicle. The employee subsequently died on October 27, 1995.

On November 1, 1995 the employing establishment's supervisor where the employee worked filed a claim for continuation of pay on behalf of the employee noting that she had been involved in an automobile accident on October 23, 1995 while in the performance of duty and had died on October 27, 1995. Continuation of pay was requested from October 23 through 27, 1995

On December 15, 1995 the Office notified appellant, the widower of the employee, that the employee's death may be compensable under the Federal Employees' Compensation Act,¹ and noted that it had forwarded appropriate claim forms to the employing establishment and asked that it contact him to assist him in filing a compensation claim.

On December 27, 1995 the Office received a copy of the death certificate which indicated that the employee had died on October 27, 1995 due to cardiovascular collapse and hyperintensive hemorrhage. The manner of death was listed as "natural." Time of injury was answered with a question mark.

¹ 5 U.S.C. §§ 8101-8193.

The Office also received a November 2, 1995 duty status report from Dr. Greg R. Wheeler, a neurological surgeon, which noted that the employee had had a preexisting hypertensive condition; was admitted to the hospital on October 23, 1995 and died on October 27, 1995 due to nonwork-related hyperintensive intercranial hemorrhage. Dr. Wheeler further noted that a computerized tomography (CT) scan of the head obtained on admission to the emergency room showed a “massive right based ganglion hemorrhage with intraventricular component most likely secondary to hypertension.” Dr. Wheeler noted the emergency surgery performed to treat the hypertensive hemorrhage and the difficulty he encountered in controlling the employee’s hypertension. Dr. Wheeler reported that the employee was poorly responsive to treatment and that a subsequent CT scan showed reaccumulation of her hypertensive hemorrhage. He noted that after four days of supportive care, the employee expired.

An October 31, 1995 medical report from Dr. Wheeler noted that the employee’s cause of death was “cardiovascular collapse secondary to cerebral herniation syndrome secondary to hyperintensive hemorrhage.”

In a decision dated March 11, 1996, the Office denied appellant’s claim for compensation benefits on the grounds that the evidence of record failed to establish that the employee sustained an injury in the performance of duty as alleged although the record supported the incident occurred at the time, place and in the manner alleged. In an attached memorandum, the Office noted that the duty status report of Dr. Wheeler revealed that the employee had a preexisting condition of hypertension which was not work related and that her severe hypertensive hemorrhage was not caused or aggravated by her employment activity. Appeal rights accompanying this decision advised that appellant had 30 days in which to request an oral hearing.

In a letter received by the Office on April 25, 1996, appellant, through counsel, requested an oral hearing on the Office’s March 11, 1996 decision denying his claim for compensation benefits.

By letter decision dated July 10, 1996, the Office denied appellant’s request for a hearing because his request was not received within 30 days of the decision. The Office further denied appellant’s request for the reason that the issue involved could be equally well resolved by requesting reconsideration from the District office and submitting evidence not previously considered by the Office in its March 11, 1996 decision denying benefits.

The Board finds that the employee did not sustain an injury in the automobile accident on October 23, 1995 and that the employee’s death on October 27, 1995 was not causally related to her federal employment.

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee sustained an injury in the performance of duty and that the employee’s death was causally related to factors of her federal employment.² This burden

² *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994); *Rose P. Stagner (Roland C. Stagner)*, 44 ECAB 806 (1993).

includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.³

In this case, none of the medical reports establishes that the employee sustained an injury in the employment incident on October 23, 1995 when she was involved in an automotive accident involving her own privately owned vehicle. Although the incident occurred at the time, place and in the manner alleged, the medical evidence of record points towards the employee's hypertensive condition as the cause of her medical difficulties on October 23, 1995 and subsequent death on October 27, 1995 without any contribution from her employment duties or factors of her employment. Dr. Wheeler, the only physician whose reports appear in the case record, noted that appellant had a preexisting hypertensive condition which was not work related, and that her death was not attributable to work factors. He explained that diagnostic testing upon admission to the emergency room revealed a massive right based ganglion hemorrhage, most likely secondary to hypertension. As appellant did not provide a reasoned medical opinion establishing causal relationship between the employee's death and compensable factors of her federal employment, appellant has not sustained his burden of proof to establish that the employee's death was causally related to factors of federal employment.⁴

Further, the Board finds that the Office properly denied appellant's request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing before an Office representative states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁵

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after

³ *Id.*

⁴ Neither the fact that a condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions, is sufficient to establish causal relationship; *see Ruby I. Fish*, 46 ECAB 276 (1994).

⁵ 5 U.S.C. § 8124(b)(1).

reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁶

In this case, the Office issued its decision denying appellant's claim on March 11, 1996. Appellant requested an oral hearing in a letter received by the Office on April 25, 1996. Because appellant did not request a hearing within 30 days of the Office's March 11, 1996 decision, he was not entitled to a hearing under section 8124 as a matter of right. The Office also exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that he could have his case further considered on reconsideration by submitting relevant medical evidence. Consequently, the Office properly denied appellant's hearing request.

The decisions of the Office of Workers' Compensation Programs dated July 10 and March 11, 1996 are affirmed.

Dated, Washington, D.C.
September 10, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Henry Moreno*, 39 ECAB 475, 482 (1988).