

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMA E. KROPACZEWSKI, claiming as the widow of FRANK KROPACCEWSKI and DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND PACIFIC, Oakland, Calif.

*Docket No. 97-1233; Submitted on the Record;
Issued April 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that her husband's death on March 11, 1993 was causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs, by its January 22, 1997 decision, abused its discretion by refusing to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128.

On August 23, 1996 appellant filed a claim for death benefits, (Form CA-5), and submitted a certificate of death (overseas) dated March 11, 1993, indicating that the employee died from a myocardial infarction while on board a naval ship. Also submitted with appellant's claim was a marriage contract indicating her marriage to the employee on December 19, 1991 and a survivor annuity statement by the Office of Personnel Management (OPM) which revealed that appellant was awarded a survivor annuity for the employee's two minor children.

By letter dated October 2, 1996, the employing establishment controverted appellant's claim stating that the employee's death was due to his age and general health, that no factors of the employee's federal employment were identified as causally related to his death and that appellant is not the employee's legal spouse.

By letter dated October 23, 1996, the Office requested detailed factual and medical information from appellant.

By letter dated November 8, 1996, appellant responded to the Office's request for information, stating that the employing establishment medical examinations revealed normal findings until early 1986 when several disabilities were noted with a finding of hypertension. Appellant went on to say that, "[I] believed that the cause of death of my husband was service related or incurred and aggravated by his employment since 1966." Appellant also stated that at the time of her marriage to the employee she was unaware of his previous marriage. Submitted

with appellant's letter were employing establishment health records covering the period March 19, 1986 through March 11, 1993.

By decision dated November 26, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the death of the decedent was causally related to factors of his federal employment.¹

By letter dated December 13, 1996, appellant requested reconsideration of the Office's November 26, 1996 decision. In support of the request appellant stated that "during the cour[s]e of employment, employee had a documented illness of hypertension, particularly in 1990 and have history of hypertension and obesity. The cause of death, presumed myocardial infarction (impression) believed was manifested by hypertension and obesity, problem of overweight which more likely develop various medical problems, including high blood pressure, heart disease and joint problems." She also stated that "As to the legality of marriage, our marriage is absolutely legal..." Appellant submitted a federal employees health benefits registration form identifying her as the employee's spouse and a form from the Office of Personnel Management indicating that her request for reconsideration of her claim for benefits was under review.

By decision dated January 22, 1997, the Office denied appellant's December 12, 1996 request for reconsideration on the grounds that the evidence submitted in support was repetitious in nature and insufficient to warrant review of the prior decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that the employee's death was causally related to factors of his federal employment.

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death on March 11, 1993 was causally related to factors of his federal employment.² This burden includes the necessity of furnishing medical evidence, based on a proper factual and medical background of the employee, which contains a physician's opinion supporting a causal relationship between the employee's fatal heart attack on March 11, 1993 and specific factors or conditions of his federal employment. The medical evidence submitted consists of the employee's certificate of death listing the direct, leading cause of death as presumed myocardial infarction, and antecedent causes as history of hypertension and obesity; and the employing establishment's health records covering the period March 19, 1986 through March 11, 1993 revealing a history of hypertension beginning in 1990 and a history of obesity. None of the medical evidence submitted provided a physician's rationalized medical opinion causally relating the employee's death on March 11, 1993 to factors of his federal employment. By letter dated October 23, 1996, the Office advised appellant of the specific type of evidence needed to establish her claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

¹ The Board notes that no finding was made on whether appellant is the employee's legal widow.

² *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

The Board also finds that the refusal of the Office, in its January 22, 1997 decision, to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁴

In her request for reconsideration dated December 13, 1996, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or a fact not previously considered by the Office. Appellant restated her opinion that the employee's history of hypertension and obesity contributed to his death. Appellant also submitted a statement from the OPM and a health benefits registration form neither of which addressed the relevant issue of whether the employee's death on March 11, 1993 was causally related to factors of his federal employment. Therefore, the evidence was repetitious, irrelevant and immaterial and insufficient to warrant review of the Office's November 26, 1996 decision.

As appellant's December 13, 1996 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

³ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128.

⁴ 20 C.F.R. § 10.138(b)(2).

The decisions of the Office of Workers' Compensation Programs dated January 22, 1997 and November 26, 1996 are affirmed.

Dated, Washington, D.C.
April 21, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member