

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RENEE ROGOFF, claiming as widow of MARTIN H. ROGOFF and  
DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH CENTER,  
Greenbelt, Md.

*Docket No. 98-18; Oral Argument Held November 5, 1998;  
Issued February 11, 1999*

Appearances: *Renee Rogoff, pro se; Miriam D. Ozur, Esq.,*  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the employees' death due to colon cancer on May 8, 1992 was causally related to factors of his federal employment.

On May 26, 1992 appellant filed a claim for survivor benefits following the death of her husband, a 66-year-old microbiologist and director of the employing establishment's Western Regional Research Center until his death on May 8, 1992. The death certificate, dated May 9, 1992, indicated that the cause of death was cardiopulmonary arrest, hepatic failure, hepatic metastases secondary to carcinoma of the colon.

This is the second appeal in this case.

In support of her claim, appellant submitted evidence indicating the employee was under significant stresses in his position as director, which she asserted were responsible for the development and aggravation of his colon cancer. These stressful factors included: the employee was considered an outsider upon his appointment as director; the employee made personnel decisions which included reduction-in-force decisions; there was a tense atmosphere created by numerous grievances and union-related activities against the employee; the employee did not possess a sufficient support staff; and an anonymous complaint was filed against the employee alleging his mismanagement of funds as director.

In addition, appellant submitted excerpts from medical literature on the effects of stress on cancer.

With regard to the medical evidence submitted on the employee's behalf, appellant submitted a June 25, 1992 report from Dr. Mark A. Steves, a Board-certified surgeon and specialist in rectal and colon surgery, who had been the employee's treating oncologist. He stated that although the employee underwent several courses of intra-arterial chemotherapy for hepatic metastasis from a colon cancer primary, there was persistent growth which ultimately led to his death. Dr. Steves stated:

“Over the last several years of his employment, [the employee] was under a great deal of stress, the majority of this being related to his occupation. It is my sincere belief that this level of stress is very harmful to the human body, and in fact [the employee] did have a perforated ulcer in the fall of 1991 that had to be repaired. Peptic ulcer disease is a noted complication of acute and persistent stress. More importantly, prolonged stress certainly will not aid the human body in its ability to deal with and handle malignant growth.”

Dr. Steves submitted another report, dated July 27, 1993, in which he stated he had reviewed the medical literature describing the job stress to which the employee was exposed, and he commented:

“As with many of the diseases, no absolute statement can be made to the details of their development, but there are numerous laboratory and medical studies which point with high probability to stress caused and/or enhanced cancer formation. Furthermore, it is certain that prolonged stress will slow down and handicap the immune system in its fight against cancer formation and metastasis. Based on the circumstances surrounding [the employee's] job and illness, it is not an unreasonable conclusion that his death was at least hastened if not caused by the stressful job conditions.”

By decision dated April 14, 1994, the Office of Workers' Compensation Programs denied appellant's claim, finding that the evidence failed to establish that the employee's death was due to factors of his federal employment.

By letter dated April 25, 1994, appellant's attorney requested an oral hearing.

By decision dated December 20, 1994, the Office found that the evidence submitted was not sufficient to warrant modification of its prior decision. An Office hearing representative reviewed the evidence submitted and stated that appellant had failed to submit sufficient medical evidence to establish that the employee's death was due to factors of his federal employment.

By decision and order dated September 13, 1995, the Board set aside the April 14 and December 20, 1994 Office decisions and remanded the case to the Office for further medical development on the issue of whether the employee's colon cancer was causally related to the stressful factors of his federal employment. The Board instructed the Office, after further development, to issue a *de novo* decision.

The case file and a statement of accepted facts were sent to Dr. Barbara A. Conley, Board-certified in internal medicine and a specialist in medical oncology, who opined in a report

dated December 10, 1995 that there was no causal relationship between the employee's death and the onset of colon cancer. She stated:

“[The employee] had a very aggressive malignancy which progressed in a short time to death, despite treatment. While unfortunate, the course of [the employee's] disease is not remarkable. There are patients who progress and die from their disease in 1 [to] 2 years, and who become resistant to treatment after an initial response, whether or not they have been subjected to additional stress. Dr. Steves apparently does feel that [the employee's] stressful job prior to [his] transfer could have hastened [his] or led to the development of the rectal cancer to begin with. Dr. Steves notes that [the employee] was treated for a peptic ulcer previously, a condition known to be associated with stress.”

Dr. Conley further stated:

“Of the articles presented in the package I received, and other reading I have done, there is not a definite link between stress and the development or the rate of progression of cancer. Epidemiologic studies have demonstrated an association between stress and the development of colorectal cancer, but this does not prove cause and effect. It is reasonable to assume that outside events produce different internal responses in different people. However, the manifestations of those changes are not known. However, it is known that colon cancer develops more frequently in people who have certain genetic lesions, particularly deletion or mutation of tumor suppressor genes. There is no information given to me whether there is cancer in [the employee's] family which may have predisposed [him] to develop rectal cancer. This factor may be far more important than mental stress in the progression and development of the cancer.”

Dr. Conley concluded:

“[A]lthough there is some evidence that ‘stress’ is associated with a higher rate of colorectal cancer development, the mechanism by which this may occur is totally unknown. Reaction to stress may just be a symptom which is present in patients who develop colon cancer. The effects of ‘stress’ on the immune system, as well as the mechanism by which alterations in the immune system may allow the development or progression of a cancer are, at present, poorly understood. It is difficult, if not impossible to predict what might of [sic] happened to [the employee's] health had he not been under intense stress for several years prior to his diagnosis of cancer. Certainly, other patients who are not obviously under severe stress could have had a course similar to [the employee's]. At the present time, factors such as genetic predisposition, seem to be operative even in patients without a family history of cancer. It is also fairly well accepted that a diet high in fat and low in fiber predisposes to colorectal cancer. It is not possible to point to one factor in this case which caused or hastened [the employee's] death from rectal cancer.”

In a decision dated January 27, 1996, the Office denied appellant's claim as the evidence failed to establish that the employee's death was due to factors of his federal employment.

By letter dated February 22, 1996, appellant requested an oral hearing.

A hearing was held on August 19, 1996, at which appellant submitted an August 5, 1996 affidavit from Dr. Steves wherein he described appellant's history and cited various medical studies which "make it virtually certain for a medical scientist that severe stress retards the efficiency of the immune system, the vitality or impairment of which in its fight against cancer is a major deciding factor in the rate of remission or growth to fatality."

Dr. Steves further stated:

"There is also another factor which strengthens the causal relation between the prolonged stressful conditions to which [the employee] was exposed and his death on May 8, 1992. While his body with a weakened immune system was fighting cancer, he came down with a perforated peptic ulcer which needed a corrective surgery in the fall of 1991 further weakening his body in this fight. Peptic ulcer is a well-known and documented complication of acute and persistent stress. To put it in layman's term [sic] without the perforated ulcer and the need for yet another surgery for its repair, it would have taken longer for the cancerous growth and metastasis to cause his death regardless of how his cancer was initiated."

Dr. Steves concluded:

"Based on these facts and my professional expertise, I can make a rational, sound and logical conclusion which strongly suggest[s] to any qualified medical scientist that if we eliminated from [the employee's] assignment just the extremely stressful working environment to which he was exposed in years prior to his death and every other factor in his private and professional life would have remained the same, he would not have died on May 8, 1992.

"Whether he would have developed colorectal cancer which metastasized to his liver, could be further discussed if needed, but it is my understanding that according to the rulings of [the Board] 'to hasten disability of death is the same as to cause it, therefore, this is a moot question.'"

At the conclusion of the hearing, the Office hearing representative issued a summary decision in which he vacated the December 27, 1995 decision and ordered the case remanded back to the district office. The hearing representative found that a conflict of medical evidence as to whether the employee's death was causally related to the onset of colon cancer existed between Dr. Conley and Dr. Steves, and instructed the district office on remand to refer the case to an impartial medical examiner in order to resolve the conflict.

The case file and statement of accepted facts were reviewed by Dr. Dal Yoo, Board-certified in internal medicine and a specialist in medical oncology, who submitted a report dated June 26, 1997. In this report Dr. Yoo stated:

“I will not go into the details of this unfortunate [appellant’s] medical background, which was complicated by metastatic liver disease originating from his gastrointestinal tract. As you may be aware, once liver metastasis occurs, it is virtually an incurable disease in general, although surgical resection offers the best hope in a small number of cases. The main important point seems to center around whether [appellant’s] stress-related work environment had any direct causal relationship to his development of the cancer. Despite some of the preliminary medical literature evidence, largely dealing with experimental setting, to the best of my knowledge, I do not believe that stress, *per se*, can directly cause a malignancy at this time. Several studies including your enclosed bibliography, have shown that stress may be an important contributing factor either during the process of pathogenesis, or clinical course of malignancy with or without definitive treatment for the cancer. Therefore, I humbly disagree with the other oncologist’s assertion that [appellant’s] stress was directly and causally related to his cancer at this point in time.

“It is very unfortunate that [appellant] passed away from his incurable metastatic cancer, and I sympathize and empathize with his background, but again, specific causal relationship between the stress and cancer at the moment is plausible, but not convincingly proven in my opinion.”

In a decision dated July 30, 1997, the Office denied appellant’s claim, finding that the evidence failed to establish that the employee’s death was due to factors of his federal employment.

By letter dated September 17, 1997, appellant’s representative requested an oral argument before the Board, which was scheduled for November 5, 1998.

Prior to the oral argument the Director filed a motion seeking a remand of the case to the Office for further development based on the Director’s contention that Dr. Yoo’s opinion was not sufficiently well rationalized and therefore not entitled to the special weight of an impartial medical specialist pursuant to section 8123(a).<sup>1</sup> Accordingly, the Director contended that Dr. Yoo’s report was not sufficient to resolve the conflict in medical evidence between Dr. Steves and Dr. Conley. The Director therefore requested that the Office remand to obtain a supplemental report from another impartial specialist for a rationalized medical opinion to resolve the conflict of whether the employee’s death was caused or accelerated by stressful 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 federal employment.

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<sup>1</sup> 5 U.S.C. § 8123(a).

This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.<sup>2</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>3</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

In the present case, there is a conflict in the medical evidence between Dr. Conley, Office referral physician adviser, and Dr. Steves, the employee's physician, as to whether the employee's death was causally related to the onset of his colon cancer. Dr. Steves, the employee's treating oncologist, has consistently maintained that the employee's death due to colon cancer was hastened by stressful factors of employment. In contrast, Dr. Conley, the Office referral physician, opined that there was no conclusive evidence in the record establishing that stress or any other single factor caused or hastened the employee's death.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."<sup>7</sup> Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. However, under Board case precedent, the exclusion of a medical report obtained from a designated impartial medical specialist is required under specific circumstances. When the Office secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. However, when the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the physician is unable to clarify or elaborate on his original report or if the supplemental report is

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<sup>2</sup> *Kathy Marshall*, claiming as widow of *Dennis Marshall*, 45 ECAB 827 (1994).

<sup>3</sup> *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> Section 8123(a) of the Federal Employees' Compensation 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." *See Dallas E. Mopps*, 44 ECAB 454 (1993).

also vague, speculative or lacks rationale, the Office must refer appellant to a second impartial medical specialist for a rationalized medical report on the issue in question.<sup>8</sup>

In the instant case, the Board finds that Dr. Yoo's opinion is not sufficient to resolve the conflict in medical evidence, as his opinion is not well rationalized and he has not clarified or elaborated the specific background upon which he based his opinion. As the Director noted, it is not clear from his report whether Dr. Yoo even considered Dr. Steves' August 5, 1996 affidavit or Dr. Conley's December 20, 1995 report, as these reports were not included in the statement of accepted facts, and Dr. Yoo did not indicate which medical reports he reviewed. Accordingly, Dr. Yoo's opinion is excluded from the record and the case is hereby remanded for further development. On remand the Office will refer appellant to a new impartial medical examiner, and prepare a new statement of accepted facts which contains both Dr. Steves' August 5, 1996 report and Dr. Conley's December 20, 1995 report. The new referee specialist will be instructed to provide a well-rationalized opinion, to specifically determine the outstanding issue in the case, *i.e.*, whether the employee's death of colon cancer was causally related to stressful factors of his federal employment, and to clearly indicate the specific background upon which he based his opinion. After such development as it deems necessary, the Office shall issue a *de novo* decision.

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<sup>8</sup> *Terrance R. Stath*, 45 ECAB 412 (1994).

The Office's decision of July 30, 1997 is therefore set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

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

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member