

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATSY HODGES, claiming as widow of DONALD HODGES and  
DEPARTMENT OF THE ARMY, FORT SILL, Okla.

*Docket No. 97-1264; Submitted on the Record;  
Issued January 21, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether the employee's death on June 11, 1994 was causally related to his accepted employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that the employee sustained a myocardial infarction (MI) in the performance of duty on August 2, 1974. The employee stopped working and did not return to work. The record indicates that the employee died on June 11, 1994. On July 5, 1994 appellant filed for compensation by widow (Form CA-5).

By decision dated January 23, 1995, the Office denied the claim on the grounds that the medical evidence did not establish that the employee's death was causally related to his federal employment. Appellant requested reconsideration and by decision dated April 5, 1996, the Office denied modification of its prior decision. Appellant again requested reconsideration, which was denied by the Office without merit review in a decision dated November 6, 1996.

The Board has reviewed the records and finds that the case is not in posture for decision due to a conflict in the medical evidence.

In this case, appellant has submitted reports from three treating physicians who support causal relationship between the employee's death and his federal employment. In a report dated August 12, 1996, Dr. William P. Jolly, a Board-certified internist, indicated that he had treated the employee since 1994 and since the original MI was work related, it appeared that subsequent cardiac events related to the coronary artery disease should be considered arising from the same disease spectrum. The physician who signed the death certificate, Dr. Richard T. Brittingham, a Board-certified internist, provided reports dated June 21, 1994 and July 15, 1996, stated that the employee's death was attributable to sudden death syndrome and coronary artery disease and

there was causal relationship between the heart attack and coronary artery disease.<sup>1</sup> In a report dated January 19, 1995, Dr. Patrick K.C. Chun, a Board-certified internist, opined that the employee died as a result of his accepted work-related condition. In a report dated August 16, 1996, Dr. Chun stated that he agreed with Drs. Jolly and Brittingham that the employee had a cardiac arrest and died as a result his prior work-related MI.

On the other hand the record contains opinions from an Office medical adviser and two Office referral physicians that the employee's death was not employment related. In a memorandum dated October 26, 1994, an Office medical adviser opined that the employee's death was caused by the underlying heart disease, not the employment injury. In a report dated November 18, 1994, Dr. Peter Louis, a Board-certified internist, reviewed medical records and opined that the employee's death was due to the natural history of coronary heart disease and not to employment factors.<sup>2</sup> In a report dated April 3, 1996, Dr. Georgina Sehapayak, a cardiologist, also opined that the employee died as a result of the underlying coronary heart disease, but not the MI.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.<sup>3</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.<sup>4</sup>

The Board accordingly finds that there is a conflict in the medical evidence under section 8123(a). The Office should refer the relevant factual and medical records to an appropriate specialist for a reasoned opinion as to whether the employee's death on June 11, 1994 was causally related to his federal employment. After such further development as the Office deems necessary, it should issue an appropriate decision.

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<sup>1</sup> Dr. Brittingham also checked a box "yes" that the employee's death was causally related to employment on the Form CA-5.

<sup>2</sup> Although the Office referred to Dr. Louis as an impartial specialist in its April 5, 1996 decision, there is no evidence to support this statement. The referral letter to Dr. Louis does not indicate that the purpose is to resolve a conflict, the January 23, 1995 Office decision does not refer to Dr. Louis as an impartial specialist, nor is there any probative evidence that Dr. Louis was properly selected as an impartial specialist to resolve a conflict.

<sup>3</sup> *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

<sup>4</sup> *Gertrude T. Zakrajsek (Frank S. Zakrajsek)*, 47 ECAB 770 (1996).

The decisions of the Office of Workers' Compensation Programs dated November 6 and April 5, 1996 are set aside and the case remanded for further development consistent with this decision of the Board.

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member