

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELENE LUSTER, claiming as widow of BERNARD H. LUSTER and
DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY
ADMINISTRATION, Newark, N.J.

*Docket No. 97-1415; Submitted on the Record;
Issued July 7, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the employee's May 1, 1992 heart attack and death were sustained in the performance of duty.

The Board has duly reviewed the case record on appeal and finds that appellant has failed to meet her burden of proof in establishing that the employee's heart attack and death on May 1, 1992 occurred in the performance of duty.

Appellant submitted a claim for compensation alleging that her husband's death by cardiac arrest on May 1, 1992 was causally related to factors of his federal employment. By decision dated July 14, 1995, the Office of Workers' Compensation Programs rejected appellant's claim, finding that she failed to meet her burden of proof to establish her claim. On June 11, 1996 appellant requested reconsideration before the Office and submitted medical reports in support of her claim. On August 7, 1996 the Office issued a decision denying appellant's request for modification, finding that the evidence submitted in support thereof failed to establish a causal relationship between the employee's heart attack and employment factors. On October 28, 1996 appellant requested reconsideration of the Office's August 7, 1996 decision. In a decision dated January 27, 1997, the Office denied modification of the August 6, 1996 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 employment.¹ This

¹ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.²

In support of her claim, appellant submitted several medical reports. The April 25, 1995 medical report, from Dr. Jeffrey A. Matos, however, has no probative value inasmuch as he noted that he “was not involved with his care at the time of his death,” and therefore, he “cannot make detailed statements about that time period.” In an April 27, 1995 medical report, Dr. Harry Shapiro stated that the employee had been under his care from 1976 until 1980. He noted the employee’s aggressive and hereditary cardiovascular disease which he noted placed the employee in great risk. Although Dr. Shapiro stated that the effects of stress are well known on people with cardiovascular disease, he did not provide a rationalized medical opinion establishing a causal relationship between the employee’s condition and his employment factors. Therefore, this report is of limited probative value in establishing appellant’s claim to benefits.³ In a January 15, 1996 medical report, Dr. Harold S. Parnes, appellant’s son-in-law who is Board-certified in radiology, stated that he believed that employee’s death was caused by the stress that the employee felt as a result of his position as a chief administrative law judge. However, this report is also of limited probative value in that it is speculative with respect to whether the employees position as chief administrative law judge caused the cardiac arrest and death.⁴ Dr. Parnes noted that the employee had a heart attack in the 1970’s and that chest x-rays taken several weeks prior to his death were normal. In a May 30, 1996 medical report, Dr. Rowland D. Goodman, Board-certified in internal medicine, noted appellant’s employment history, stating that appellant’s position as a chief administrative law judge was stressful and that appellant had prior history of a 1973 acute myocardial infarction complicated by cardiac arrest. He opined that stressful working conditions caused the May 1, 1992 cardiac arrest and subsequent death. In a June 4, 1996 medical report, Dr. Goodman reviewed the April 30, 1988 hospital reports and noted diagnostic findings made at that time. Neither of these reports, however, provide rationalized medical opinion evidence that the employee’s heart attack was causally related to his work. His findings are speculative and thus are of limited probative value.⁵ Further, the September 20, 1996 medical report, from Dr. Goodman lacked a rationalized medical opinion establishing a causal relationship between the employee’s heart attack and his employment. The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant’s burden of proof.⁶

As appellant failed to submit the necessary rationalized medical opinion evidence to support that the employee’s May 1, 1992 heart attack and death were caused by factors of federal employment, the Office properly denied her claim.

² *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

³ *Arlonia B. Taylor*, 44 ECAB 591(1993).

⁴ *William S. Wright*, 45 ECAB 498 (1994).

⁵ *Id.*

⁶ *Supra* note 3.

The January 27, 1997 and August 7, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.⁷

Dated, Washington, D.C.
July 7, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The Board notes that subsequent to the Office's January 27, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).