U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLADYS E. STOREY, claiming as widow of LAURENCE G. STOREY and U.S. POSTAL SERVICE, POST OFFICE, Eastaboga, Ala.

Docket No. 97-1584; Submitted on the Record;
Issued May 25, 1999

DECISION and ORDER

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

The issues are: (1) whether the employee's death on October 17, 1995 was causally related to factors of his federal employment; (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing; and (3) whether the Office properly denied appellant's request for reconsideration.

On February 22, 1996 appellant, filed a claim for death benefits due to the death of her 53-year-old husband, the employee, on October 17, 1995. She indicated that the injury that caused the employee's death was cardiopulmonary arrest which appellant attributed to either job stress or a motor vehicle accident occurring on October 17, 1995 while the employee was delivering mail. In an affidavit dated February 22, 1996, she stated that in January 1995 the employee left his job due to stress but did not exhibit cardiac problems prior to his death. Appellant indicated that the employee was asked to return to the employing establishment in October 1995 because of a shortage of carriers. She stated that the employee was reluctant to return but felt an obligation to help the employing establishment. Appellant stated that at a time of the employee's return to work there had been a hurricane and the employee sometimes had to travel 20 miles or more outside his regular route because of fallen trees and downed power lines.

In a report dated October 17, 1995, the coroner noted that the employee was found sitting in the passenger side of his truck with no signs of life and that he had a massive myocardial infarction while leaving the driveway of a home on his mail route, that his truck then traveled across the road and struck two mailboxes, coming to rest against a fence. The coroner stated his opinion that death occurred suddenly from a massive myocardial infarction which had occurred prior to the motor vehicle crossing the roadway.

In an accident report dated October 17, 1995, the employing establishment stated that the employee had suffered a massive myocardial infarction on that date which caused his vehicle to roll into a mailbox and a ditch.

The county certificate of death dated October 25, 1995, listed the employee's immediate cause of death as cardiopulmonary arrest due to a myocardial infarction.

By letter dated December 5, 1995, appellant, through her representative, stated her belief that the employee's heart attack was a result of either the motor vehicle accident which occurred while he was delivering the mail and/or job stress. She stated that the employee had no preexisting condition of heart disease or high blood pressure and was in good physical condition. Appellant noted that the coroner was not a medical doctor and no autopsy had been performed on the employee.

By letter dated February 29, 1996, the employing establishment stated that in October 1995, after the employee returned to work, a hurricane had caused power outages, fallen trees and flooding but that no undue pressure regarding the performance of work was placed on any employee during this time. It noted that between August 1992 and January 1995, when the employee took his leave of absence, records showed that he worked an average of 18.63 hours per week. The employing establishment noted that the employee had often talked about his father having a blockage of heart vessels when he was approximately the employee's age and that his father had undergone heart bypass surgery and had died shortly after the surgery was performed. The employing establishment stated its position that the employee had died of a sudden massive myocardial infarction prior to his vehicle crossing the roadway.

By letter dated May 3, 1996, the employing establishment advised the Office that the employee had taken a leave of absence in January 1995 because he thought he was developing an ulcer and also because he wished to attend car shows and spend time with family members on Saturdays when he usually had to work. It stated that the employee had returned to work on September 27, 1995 because one of the carriers had been resigned and the employee was needed to deliver mail on his route until a replacement was found. The employing establishment noted that the employee worked 13 days during the 21-day period between September 27 and October 17, 1995. It noted that a hurricane had occurred on October 4, 1995 and that on October 5, 1995 the employee had to travel approximately 20 miles out of his way on his regular route because a road had been washed out but that this was the only day the employee had claimed detour miles.

In a letter dated May 9, 1996, Hayden Champion, one of the employee's neighbors, stated that the employee's overall health was good at the time of his death but that he had complained of job stress. He related that the employee often performed work for absentee workers, that he always finished delivering the mail in a shorter time than the carrier who shared his route and that this carrier falsely accused the employee of destroying mail in order to finish the route faster. Mr. Hayden related the employee's explanation that he was able to finish his work early because he often sorted mail the night before delivery. He related that the employee took his leave of absence in January 1995 because of job stress and reluctantly returned to work in order to assist the employing establishment.

In an affidavit dated May 23, 1996, appellant stated that the employee, a relief carrier, had taken a leave of absence in January 1995 because of problems for the past 10 years with the regular carrier, Chester Sweeney, problems which she described as "backstabbing and just constant belittling and irritation." Appellant stated that Mr. Sweeney often telephoned the

employee at 10:00 or 11:00 p.m. asking him to substitute for him the next day because Mr. Sweeney did not feel like working. She related that Mr. Sweeney often neglected to inform the employee about changes in the route such as a patron making a request to hold mail, that when patrons commented that they received their mail earlier in the day when the employee delivered it Mr. Sweeney told them that the employee was not performing all his tasks and he, Mr. Sweeney, had to correct mistakes the employee made. Appellant stated that the employee's supervisor did not assist in resolving the problems. She stated that the employee stopped working in January 1995 because Mr. Sweeney, for whom the employee had been substituting during a vacation, that Mr. Sweeney took during the Christmas holiday, insisted that the employee substitute for him additional days although the employee had plans to visit relatives. She stated that the employee did not want to return to work in October 1995 but felt it was an emergency situation and was told he would be working for just three or four days substituting for Mr. Sweeney beginning on September 27, 1995 until a new relief carrier could be hired. However, the employee continued working until his death on October 17, 1995 because no carrier had yet been hired.

By decision dated August 28, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that the employee's death was sustained in the performance of duty.

By letter dated September 30, 1996, appellant requested an examination of the written record by an Office hearing representative.

By decision dated October 24, 1996, the Office's Branch of Hearings and Review denied appellant's request for a review of the written record on the grounds that appellant's request was postmarked September 30, 1996 and the Office's decision was dated August 28, 1996 and therefore her request was not made within 30 days of the Office's decision and she was not, as a matter of right, entitled to an oral hearing or a review of the written record. The Branch of Hearings and Review conducted a limited review of the evidence and determined that the request could equally well be addressed by requesting reconsideration and submitting additional evidence.

By letter dated January 8, 1997, appellant requested reconsideration. She contended that the Office's decision was actually rendered on September 1, 1996 and enclosed a photocopy of the decision sent to her in which a line is crossed through the typed date of August 28, 1995 and the date of September 1, 1995 handwritten in its place with the initials "SS." In her request for reconsideration appellant did not submit any new evidence or argument regarding the issue of causal relationship between the employee's death and his job.

By decision dated March 27, 1997, the Office denied appellant's request for reconsideration on the grounds that she had not raised substantive legal questions nor included new and relevant evidence sufficient to warrant a review of its prior decision.

The Board finds that appellant has not met her burden of proof to establish that the employee's death on October 17, 1995 was causally related to factors of his federal employment.

In a claim for death benefits under the Federal Employees' Compensation Act,[1] the claimant for benefits has the burden of proof to establish the necessary elements of his or her claim.[2] The claimant must prove by the weight of the reliable, probative and substantial evidence the existence of a causal relationship between an employee's death and factors of his or her federal employment.[3]

Congress has provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained in the performance of duty. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." The Board has recognized that the phrase "in the course of employment" relates to whether the injury or death occurred at a time when the employee may reasonably be said to be engaged in the master's business.[4] "In the course of employment" deals primarily with the work setting, the locale and time of the employee's performance of his work assignment. "Arising out of the employment" encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury.[5]

In the present case, the evidence of record fails to establish that the employee's death on October 17, 1995 arose out of his employment. Although the evidence establishes that the employee died at a time when he may reasonably be said to be performing his work duties, during his assigned work hours and at a place where he may reasonably be said to be performing his duties, the driveway of a home where he was delivering mail, the evidence does not establish that his death was caused by his employment, *i.e.*, the employee's cardiopulmonary arrest did not arise out of the performance of his federal employment nor in connection with any requirement imposed by his work.

The certificate of death dated October 25, 1995 identified the employee's cause of death as cardiopulmonary arrest due to a myocardial infarction.

In a report dated October 17, 1995, the coroner stated his opinion that the employee had a massive myocardial infarction resulting in death which occurred before his vehicle traveled across the driveway and struck two mailboxes.

Appellant stated that the motor vehicle accident on October 17, 1995 may have occurred before the employee's cardiopulmonary arrest and that the accident may have precipitated the heart attack. However, none of the medical opinion evidence of record addresses this contention. There is no medical evidence of record indicating any cause, aside from the heart attack, for the employee's vehicle leaving the roadway on October 17, 1995.

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *Darlene Menke (James G. Menke, Sr.*), 43 ECAB 173 (1991).

[3] *Martha A. Whitson (Joe E. Whitson*), 43 ECAB 1176 (1992).

[4] *See Eric J. Koke,* 43 ECAB 638 (1992).

[5] *Id.*

Appellant also asserted that the employee's cardiopulmonary arrest could have been caused by job stress. She and a neighbor, Mr. Champion, related problems that the employee had experienced in dealing with the regular carrier, Mr. Sweeney. However, the employee had not worked between January 1995 and the end of September 1995 and there is no evidence that he had any contact with Mr. Sweeney during that time. Appellant also did not allege, nor is there any evidence, that the employee experienced any difficulties with Mr. Sweeney between September 27, 1995 and his death on October 17, 1995. Furthermore, even if the employee's difficulties with Mr. Sweeney prior to his taking a leave of absence in January 1995 were deemed a compensable factor of employment, the record in this case contains no medical evidence establishing that the employee sustained any stress-related condition caused by problems with Mr. Sweeney which contributed to his death on October 17, 1995. An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[6] Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the injury was sustained in the performance of duty.[7] As part of this burden, appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[8] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[9] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated a medical condition is sufficient to establish causal relationship.[10]

Appellant also attributed the employee's cardiopulmonary arrest to stress caused by having to make detours on his route due to hurricane damage. However, the employing establishment stated that the only day that the employee had to make detours was October 5, 1995, the day following the hurricane. The employing establishment also noted that the employee worked only 13 of the 21 days between his return to work on September 27, 1995 and his death on October 17, 1995. There is no evidence of record explaining how the employee's cardiopulmonary arrest on October 17, 1995 could have been caused by having to make detours in his route on a single day, October 5, 1995.

The evidence of record does not implicate any factor of the employee's federal employment as a direct or proximate cause of death. As it has not been determined that the employee's death on October 17, 1995 arose out of his federal employment, his death is not compensable.

---

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

[7] *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[8] *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[9] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[10] *Joseph T. Gulla*, *supra* note 9.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for an examination of the written record under section 8124 of the Act.[11]

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on her claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.[12] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[13]

The evidence reflects that the Office issued its decision denying appellant's claim on August 28, 1996. Thereafter, appellant submitted a September 30, 1996 request for review of the record by an Office hearing representative. The Office properly found appellant's request was untimely filed. The Office, having found that appellant's request for an examination of the written record was untimely, conducted a limited review of the evidence and determined that the request could equally well be addressed by requesting reconsideration and submitting additional evidence. Therefore, the Office did not abuse its discretion, in its October 24, 1996 decision, in denying appellant's request for an examination of the written record.

[11] 5 U.S.C. § 8124.

[12] *See* 5 U.S.C. § 8124(a).

[13] *See Charles J. Prudencio*, 41 ECAB 499, 501 (1990); *see also* 20 C.F.R. § 10.131.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office.[14] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[15]

In her request for reconsideration, appellant did not show that the Office had erroneously applied or interpreted a point of law, nor did she submit relevant and pertinent evidence not previously considered by the Office. While appellant submitted a photocopy of the August 28, 1996 decision with the date crossed out and the date September 1, 1996 handwritten, the evidence is not sufficient in this case to show the amendment was made by the Office claims examiner. Therefore the Office properly denied, in its March 27, 1997 decision, appellant's January 8, 1997 request for reconsideration.

The March 27, 1997 and October 24 and August 28, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
May 25, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[14] 20 C.F.R. § 10.138(b)(1).

[15] 20 C.F.R. § 10.138(b)(2).