

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL J. HEELAS, claiming as widow of THOMAS A. HEELAS
and U.S. POSTAL SERVICE, POST OFFICE, Jamestown, NY

*Docket No. 98-2543; Submitted on the Record;
Issued May 18, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the employee's March 13, 1995 heart attack and death were causally related to his federal employment.

On March 5, 1996 appellant, filed a claim for death benefits due to the death of her 46-year-old husband, the employee, on March 13, 1995.

In a death certificate dated March 14, 1995, the cause of death for the employee was listed as coronary thrombosis.

In a coroner's report dated December 7, 1995, the coroner noted that appellant had been in the postal vehicle when he suddenly had trouble seeing and collapsed while being helped out of the vehicle. The coroner indicated that death occurred due to a coronary thrombosis.

In an autopsy report dated December 5, 1995, Dr. Donald J. Furman, the attending Board-certified clinical and anatomic pathologist, opined that the employee's death was due to coronary thrombosis of the left anterior descending coronary artery and that a myocardial infarction had not become recognizable by microscope. Under final anatomic diagnoses, Dr. Furman noted a thrombosis of the left anterior descending coronary artery, left ventricle hypertrophy, arterosclerosis of the aorta and coronary arteries, severe pulmonary emphysema and passive congestion in the lungs with edema." In a letter dated May 1, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim and advised her as to the information required to support her claim.

By decision dated June 27, 1996, the Office denied appellant's claim on the basis that the evidence did not establish that the employee's death was causally related to factors of his employment.

In a letter dated July 10, 1996, appellant requested a hearing before an Office hearing representative.

A hearing was held on November 20, 1996 at which appellant was represented by counsel, allowed to testify and submit evidence, which included a November 14, 1996 deposition from Dr. James J. Cirbus, a physician Board-certified in cardiovascular disease and internal medicine.

In a transcript dated November 16, 1996, Dr. Cirbus, based upon a review of the emergency room report, autopsy report and June 27, 1996 Office decision, testified that the employee's thrombosis was due to the breaking off of plaque in left anterior descending artery. Dr. Cirbus opined that factors such as the stress from starting his new job and performing the duties after a year of retirement and the warm weather would have increased the employee's "risk of having an acute coronary event such as this and, therefore, I guess logically I would assume that it contributed to" the employee's death.

By decision dated January 22, 1997, the Office hearing representative found the opinion of Dr. Cirbus to be "couched in somewhat speculative terms," but determined that the opinion was sufficient to require further development of the medical evidence as to whether the employee's death was causally related to factors of his employment.

In a letter dated February 25, 1997, to Dr. David T. Nash, a physician Board-certified in internal medicine, the Office requested Dr. Nash's opinion as whether the employee's death was employment related and enclosed a copy of the employee's medical records and statement of accepted facts for his review.

In a report dated March 21, 1997, Dr. Nash opined, based upon a review of the medical records, statement of accepted facts and list of questions, that the employee's death was due to multivessel coronary arterosclerotic disease, which was unrelated to his employment. In addition, Dr. Nash determined that the employee's federal employment neither caused nor contributed to his death on the basis of his review of the medical evidence and statement of accepted facts supplied by the Office. Dr. Nash also concluded that the employee was probably a cigarette smoker and that the employee probably "had a lipid abnormality as well as hypertension." In conclusion, Dr. Nash indicated:

"[T]he employee had, in all likelihood, multiple cardiac risk factors, including left ventricular hypertrophy almost certainly due to hypertension not diagnosed or not, emphysema, in all likelihood related to cigarette smoking, although the history is not presented to me and clearly evidence of lipid abnormality in terms of both multivessel disease at a young age and cholelithiasis."

Regarding the temperature at the time of the employee's death, Dr. Nash indicated that there was no "evidence that the temperature was extraordinarily excessive."

In response to a request for clarification on whether the weather contributed to the employee's heart attack, Dr. Nash opined that temperatures in the 70s would not have caused or contributed to the employee's death.

By decision dated June 6, 1997, the Office denied the claim for benefits on the basis that the evidence failed to establish that the employee's federal employment caused or contributed to his death. In support of this decision, the Office determined that the opinion of Dr. Cirbus was

speculative and relied upon the opinion of Dr. Nash who determined that the employee's death was unrelated to his federal employment.

Appellant requested an oral hearing before an Office hearing representative through her counsel in a letter dated June 17, 1997.

By decision dated April 24, 1998, the Office hearing representative set aside the June 6, 1997 decision denying benefits on the basis that Dr. Nash made speculative comments about the employee's smoking and he failed to consider whether the employee's nervousness about working on March 13, 1993 would have caused or contributed to his death. On remand, the hearing representative instructed the Office to question appellant about the employee's smoking, high blood pressure and cholesterol. The Office was instructed to incorporate this information into an amended statement of accepted facts which would be sent to Dr. Nash for a supplemental opinion.

In response to an Office inquiry letter dated May 11, 1998, appellant's counsel indicated that the employee had not been seen by any specialist in the two years prior to his death, that employee had been a cigarette smoker, quit for the period 1970 to 1982, then resumed smoking averaging a pack of cigarettes per day and that employee had not been treated for hypertension or high cholesterol nor did he suffer from any lung conditions.

By letter dated July 22, 1998, the Office requested Dr. Nash to review the enclosed medical evidence and revised statement of facts. In the revised statement of accepted facts, the Office noted that the employee had been retired thirteen months from his former job with the police force prior to starting work with the employing establishment, that the weather at the time of the employee's death was warm for that time of year, being in the low to mid 60s and slightly humid, that the employee had not been treated for hypertension, high cholesterol or lung problems, that the employee did not have a family physician and that the preemployment physical did not indicate any heart problems nor were the employee or appellant aware of any heart problems. Lastly, the revised statement of facts noted that the employee had smoked cigarettes, had quit for the period 1970 to 1982 and then resumed smoking about one pack of cigarettes per day.

By report dated July 28, 1998, Dr. Nash opined, based upon a new statement of accepted facts and additional medical evidence regarding the employee's work activities and smoking history, that the employee's death was unrelated to the delivery of mail or the employee's concern over starting a new job. In reaching this conclusion, Dr. Nash noted that the "autopsy findings revealed that the patient had multivessel coronary artery disease and had a coronary thrombosis in the left anterior descending artery. Significantly, the heart weighed 495 grams; there was a plaque in the left anterior descending artery with a 3.5 cm thrombus. The right coronary artery showed a narrowed area of approximately 25 percent. The left ventricle was thick with a thickness of 22 mm and without fibrosis ... his lungs showed emphysematous blebs and extensive bullous emphysema in the upper lobes."

The physician further indicated that based upon all the material he reviewed that it was "apparent to me that this gentleman had arteriosclerotic heart disease with multivessel disease" and that although the employee was young, it was "apparent that he had arteriosclerotic disease far advanced for his relative youth." Lastly, Dr. Nash opined that the employee's death was due

to his myocardial infarction, which was caused by his arterosclerotic disease and thrombosis, which were unrelated to the employee's concern over starting his new job.

By decision dated August 3, 1998, the Office denied appellant's claim for benefits on the basis that the evidence failed to establish that the employee's death was related to his federal employment. In reaching this decision, the Office relied upon Dr. Nash's July 28, 1998 supplemental report, which opined that the employee's death was unrelated to his federal employment.

The Board finds that appellant has not met her burden of proof to establish that the employee's March 13, 1995 heart attack and death were causally related to his federal employment.

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ However, an award of compensation in a survivor's claim may not be based on surmise, conjecture, or speculation, or on appellant's belief that the employee's death was caused, precipitated or aggravated by his employment.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to factors of his employment.³ This burden includes the necessity of furnishing a rationalized medical opinion based on an accurate factual and medical background and supported by medical rationale explaining the nature of the cause and effect relationship between the employee's death and specific employment factors.⁴

In the present case, the medical evidence of record relevant to the cause of the employee's death includes the reports of Dr. Nash, an Office referral physician and Dr. Cirbus, appellant's physician. Dr. Cirbus in a November 16, 1996 transcript opined that factors such as stress from starting a new job after a year of retirement and warm weather would have increased the employee's "risk of having an acute coronary event such as this and, therefore, I guess logically I would assume that it contributed to" the employee's death. The Board finds Dr. Cirbus' opinion insufficient as it is speculative and, therefore, of limited probative value in supporting that the employee's death was due to employment facts.⁵

In a July 28, 1998 supplemental report, Dr. Nash again reiterated his conclusion that the employee's death was due to factors unrelated to his employment. In support of this conclusion, Dr. Nash supported his findings by referral to the autopsy report, a revised statement of accepted facts and medical records, were the basis of his conclusion that the employee's death was

¹ 5 U.S.C. § 8102(a).

² *Juanita Terry (Rex Terry)*, 31 ECAB 433, 434 (1980).

³ *Judith L. Albert (Charles P. Albert)*, 47 ECAB 810 (1996).

⁴ *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827, 832 (1994).

⁵ *William S. Wright*, 45 ECAB 498 (1994).

unrelated to factors of his employment as the employee's death was caused by his arterosclerotic disease and thrombosis. Regarding the diagnoses of arterosclerotic disease and thrombosis, Dr. Nash noted despite appellant indicating that the employee had not been treated for heart disease, the autopsy findings, including a heart weight of 495 grams, plaque and a 3.5 centimeter thrombus in the left anterior descending artery, the approximately 25 percent narrowed area in the right coronary artery and the 22 millimeter thickness in the left ventricle clearly indicate that the employee "had arterosclerotic disease far advanced for his relative youth." Dr. Nash also concluded that the employee's federal employment did not aggravate or contribute to the employee's arterosclerotic disease and thrombosis. As Dr. Nash provided a well-reasoned report, supported by medical rationale and the objective evidence, to establish that the employee's death was unrelated to factors of his employment, the Board finds that Dr. Nash's opinion to represent the weight of the evidence that the employee's death was not due to factors of his federal employment. Inasmuch as appellant has failed to submit rationalized medical evidence establishing that the employee's death on March 13, 1995 was caused by his federal employment factors, she did not satisfy her burden of proof to establish her right to survivorship benefits.

The decision of the Office of Workers' Compensation Programs dated August 3, 1998 is affirmed.

Dated, Washington, D.C.
May 18, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member