

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE BRASCH, claiming as widow of RONALD BRASCH
and U.S. POSTAL SERVICE, BULK MAIL CENTER, Philadelphia, PA

*Docket No. 00-743; Submitted on the Record;
Issued February 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that the employee's death was causally related to his federal employment.

On June 19, 1995 appellant filed a death benefits claim (Form CA-5), alleging that the death of her husband on June 29, 1992 was causally related to his federal employment. By decision dated February 9, 1996, the Office of Workers' Compensation Programs denied appellant's claim. In a decision dated January 8, 1998, an Office hearing representative vacated the prior decision and remanded the case for additional development of the evidence. In a decision dated April 16, 1998, the Office determined that appellant had not established that the employee's death was employment related. By decision dated May 18, 1999, an Office hearing representative found that a conflict in the medical evidence existed and the case was remanded for resolution of the conflict.

In a decision dated September 21, 1999, the Office determined that the employee's death was not causally related to his federal employment.

The Board has reviewed the record and finds that appellant has not established that the employee's death was employment related.

A claimant 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. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a complete factual and medical background.¹ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.²

¹ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

² *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

In this case, the record indicates that the employee died on June 29, 1992; the death certificate reports the cause of death as myocardial infarction and coronary artery disease. Appellant has alleged two separate grounds for finding that the employee's death was employment related: (1) that stress at work contributed to the myocardial infarction; and (2) that the response of the employing establishment health unit to appellant's reported symptoms was inadequate and contributed to the employee's death.

With respect to the first allegation, the Office found that appellant had not established compensable work factors. Appellant's allegations of stress were essentially that the employing establishment refused to provide light duty for the employee from 1984 until sometime in 1989 or 1990 and that requests for sick leave were often denied or required medical documentation. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.³ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁴

With respect to light duty, the employing establishment indicated in a February 20, 1998 letter that the employee was, in fact, in a light-duty position in the rewrap section from 1985 until his death. With respect to leave matters, appellant has not submitted any probative evidence sufficient to establish error or abuse with respect to any specific administrative decision pertaining to sick leave requests. Based on the evidence of record, the Board finds that appellant has not substantiated a compensable factor of employment as contributing to a myocardial infarction.

As to the second allegation, the May 18, 1999 decision of the hearing representative properly concludes that this is a medical issue and the record contained conflicting medical opinions on the issue. A second opinion referral physician, Dr. J. Edward Pickering, had opined in a March 19, 1998 report that the response of the employing establishment health unit on June 29, 1992 was appropriate and did not contribute to the employee's death. An Office medical adviser, in a report dated February 27, 1998, also opined that the actions at the employing establishment health unit did not contribute to the employee's death. On the other hand, in a report dated June 17, 1998, Dr. George P. Valko, a specialist in family medicine, opined that when the employee reported symptoms at approximately 7:20 a.m. on June 29, 1992, an ambulance should have been called immediately; he found that the arrival of the ambulance at 7:55 a.m. resulted in a delay that contributed to the employee's death.

The Office referred the case record and a statement of accepted facts to Dr. Donald L. Kahn, a Board-certified cardiologist, selected as an impartial medical specialist.⁵ In a report dated August 5, 1999, Dr. Kahn stated in pertinent part:

³ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁴ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁵ Section 8123(a) of the Federal Employees' Compensation Act (5 U.S.C. § 8123(a)) provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the

“The supervisor responded appropriately by giving [the employee] oxygen at 2 lt/min and making arrangements to quickly transport him to the nearest hospital.

“The fact that [the employee] subsequently arrested, could not have been predicted nor prevented. Appropriate efforts at resuscitation were initiated but unsuccessful. It is extremely likely that this outcome would have occurred even if fire rescue was attending to [the employee] at the time of the initial collapse, or for that matter, if the arrest had actually occurred in the emergency room.

“In summary, it is my opinion that there was no inappropriate delay in getting help for [the employee] on June 29, 1992. The unfortunate outcome was predictable based upon his risk factors, the severity of his presentation and the very early deterioration/cardiac arrest.”

The Board finds that Dr. Kahn provided a reasoned medical opinion that the actions of the employing establishment health unit did not contribute to the employee’s death. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶ Dr. Kahn’s report is entitled to special weight and constitutes the weight of the evidence in this case.

On appeal, appellant argues that it was error for the Office not to provide a copy of Dr. Kahn’s report prior to the September 21, 1999 decision and allow her an opportunity to respond. This is not, however, a termination of compensation benefits that would require an opportunity to respond prior to termination.⁷ The Office’s obligation is to provide a decision that adequately explains the basis of the decision;⁸ in this case, the September 21, 1999 decision quotes extensively from Dr. Kahn’s report and clearly explains the basis for the decision. Appellant may obtain a copy of the report and offer a response through the appropriate appeal rights.

The decision of the Office of Workers’ Compensation Programs dated September 21, 1999 is hereby affirmed.

Dated, Washington, DC
February 8, 2001

employee, a third physician shall be appointed to make an examination to resolve the conflict; *see also Robert W. Blaine*, 42 ECAB 474 (1991).

⁶ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁷ *See Mary A. Howard*, 45 ECAB 646 (1994).

⁸ *See Federal (FECA) Procedure Manual, Part 2 -- Claims, Disallowances*, Chapter 2.1400.4 (March 1997).

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member