

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLEN STEWART, claiming as a widow of MACK R. STEWART and
DEPARTMENT OF INTERIOR, GEOLOGICAL SURVEY, Atlanta, GA

*Docket No. 99-842; Submitted on the Record;
Issued February 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the employee's death on November 5, 1993 was causally related to his November 28, 1967 employment injury.

On November 28, 1967 the employee, then a 43-year-old hydrologist, sustained traumatic encephalopathy, quadraparesis, closed skull injuries, multiple fractures of the upper and lower extremities and multiple lacerations resulting from a motor vehicle accident. The employee received continuous care in a nursing home beginning November 1, 1968.

The employee died on November 5, 1993 and appellant, his widow, filed a claim for survivor's benefits (Form CA-5) contending that the employee's death was causally related to his accepted employment injury.

By decision dated April 5, 1994, the Office of Workers' Compensation Programs denied the claim on the grounds that the evidence did not establish that the employee's death was causally related to his employment injury.

By letter dated April 18, 1994, appellant, through her representative, requested a hearing before an Office hearing representative. In a decision dated March 29, 1995, the hearing representative set aside the Office's April 5, 1994 decision and remanded the case for further development. After obtaining the opinion of an Office referral physician, in a decision dated June 12, 1995, the Office denied appellant's claim on the grounds that the medical evidence did not support that the employee's November 5, 1993 death was causally related to his November 28, 1967 employment injury.

In a decision dated September 5, 1995, a hearing representative affirmed the Office's June 12, 1995 decision and, by decision dated June 6, 1996, the Office denied modification of its June 12, 1995 decision.

Appellant appealed to the Board. In an order remanding case dated June 24, 1997,¹ the Board remanded the case for reconstruction of the case record to be followed by an appropriate decision. On November 23, 1998 the Office reissued its June 6, 1996 decision denying appellant's request for reconsideration of her claim.

The Board finds that the case is not in posture for decision due to a conflict in medical opinion.

In this case, the death certificate lists the cause of death as arteriosclerotic cardiovascular disease. Dr. Harold M. Voss, a Board-certified internist and the employee's former attending physician, provided an opinion on the reverse side of appellant's claim for survivor's benefits on the cause of the employee's death. Dr. Voss found that the employee directly died of arteriosclerotic heart disease (AHD) and listed "quadraplegia secondary to brain trauma" as a contributory cause. He checked "yes" that the cause of death was related to the employee's employment injury and provided as a rationale that "[the employee was] in [a] vegetative state 20 [plus] years with no exercise [and] recurrent infections accelerating arteriosclerosis."

In a deposition provided on January 11, 1995, Dr. Voss related that he treated the employee from 1985 until his death and noted that the employee was bedridden, had quadriplegia, could not communicate and was fed through a tube. He discussed the employee's recurrent infections. Dr. Voss opined that the employee's death was related to his employment injury. He stated:

"I think the fact that [the employee] was -- [w]ell, he was essentially immobile for 20 plus years with no exercise, no nothing other than the fact that he was just lying there getting nutrition, and I think that certainly contributed to the fact that any heart disease or, you know, any other disease would be accelerated under that circumstance."

In response to the question whether the employee had any factors predisposing him to a heart condition, Dr. Voss noted that the employee was hospitalized in 1993 with a low serum albumin and at that time his cholesterol was low. Regarding the low serum albumin, Dr. Voss opined that he "thought that was due to [the employee's] chronic problems of recurrent infections and that sort of thing. So I think the vegetative state was really the primary thing and the lack of exercise."

Appellant also submitted a report dated March 26, 1996 from Dr. John C. Sams, a Board-certified internist, who noted that the employee was in a motor vehicle accident on November 18, 1967 that "was catastrophic and left [him] functionally dead." He stated, "On

¹ Docket No. 96-2226 (issued June 24, 1997).

reviewing the limited data I have seen, I find it overwhelming that the evidence strongly favors [the employee's] demise as a direct consequence of his injuries." Dr. Sams related:

"[The employee] became a chronically ill, anemic, recurrently infected, noncommunicating individual. This stress led to UGI [upper gastrointestinal] bleeding in 1991. His compromised status led to an infected feeding tube in 1992. His death in 1993 was called ASHD [arteriosclerotic heart disease] due only to the fact that [] the patient died [] [and] an EKG [electrocardiogram] showed nonspecific evidence of any old septal infarct. I would contend that there were many possible explanations for his death, and they all relate strongly to his antecedent condition. Infection with sepsis has to be high on the list. Pulmonary embolus is frequent with bedridden patients and would rate higher in probability than a myocardial infarction (heart attack) in my opinion. All these relate directly to the condition caused by the head injury. Even if the cause of demise was heart disease, the probability is that if [the employee] were able to communicate, he could have complained, and the medical establishment could have responded to his symptoms, which would likely have prevented his demise, IF HE HAD NOT HAD HIS ACCIDENT. (Emphasis in the original.)

"Since no autopsy was performed, the accurate diagnosis as to the ultimate demise of [the employee] will never be obtainable. The overwhelming odds dictate that [the employee's] accident[-]generated condition led to multiple risk factors, all of which contributed to his demise."

On April 26, 1995 the Office referred the medical records and statement of accepted facts to Dr. Peter Louis, a Board-certified internist, for an opinion on the cause of the employee's death. In a report dated May 20, 1995, Dr. Louis discussed the final medical report of Dr. Voss on the employee dated October 7, 1993 and the employee's medical records. He stated:

"At the time of his death, on November 5, 1993, [the employee] was 69 years old and nearly 26 years removed from the automobile accident of November 28, 1967. During the latter part of his nursing home stay, the [employee] was mute, noncommunicative, and therefore was unable to communicate any complaint of chest pain or discomfort if any.

"Therefore, based on the information present in the available medical record and in particular, the medical report dated October 7, 1993, by Dr. Voss, in which he stated that the [employee] had the same ongoing problems with organic brain syndrome with quadripareisis secondary to traumatic injury, recurrent urinary tract infections secondary to catheter drainage and arteriosclerotic heart disease. However, Dr. Voss went on to state that the [employee], at that time, October 7, 1993, seemed reasonably comfortable. His urine was clear and there seemed to be no sign of significant infection at his PEG [feeding tube] site. The [employee] was stable from the complications he sustained from his work[-]related injuries as stated in the statement of accepted facts. Therefore remains the problem of the arteriosclerotic heart disease as evidenced by an enlarged heart on chest x-ray,

prolonged QT interval and the reported septal infarct on EKG dated January 14, 1992.

"Therefore, based on the information present in the available medical record, in particular[], the evidence of a septal infarct on a previous ECG [electrocardiogram], one may medically conclude the primary cause of death was a result of the natural history of arteriosclerotic heart disease, that is, a malignant arrhythmia or sudden myocardial infarction in this 69[-]year[-]old male. Further, one may medically conclude, based on the information present in the available medical record, there is no medical evidence to support that the [employee's] work accident on November 28, 1967, caused or contributed to his this diagnosis or to his death on November 5, 1993."

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.² When there are opposing medical 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.³

The Board finds that there is a conflict in the medical opinion between appellant's physicians, Dr. Voss and Dr. Sams, who found that the employee's employment injury contributed to his death and the opinion of the Office's referral physician, Dr. Louis, who found that the employee's death was not related to his prior employment injury. On remand, the Office should refer the relevant factual and medical records to an appropriate specialist for a reasoned opinion regarding whether the employee's death on November 5, 1993 was causally related to his November 28, 1967 employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

² 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

³ *Gertrude T. Zakrajsek* (Frank S. Zakrajsek), 47 ECAB 770 (1996).

The decision of the Office of Workers' Compensation Programs dated November 23, 1998 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
February 2, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member