

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS WEINSTEIN, claiming as widow of ELLIOT H. WEINSTEIN and
U.S. POSTAL SERVICE, POST OFFICE, New York, NY

*Docket No. 99-1084; Submitted on the Record;
Issued February 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the employee's death on March 14, 1994 was causally related to the May 19, 1993 employment injury.

The Office of Workers' Compensation Programs accepted the employee's claim for a contusion resulting from a fall off a truck at work on May 19, 1993. The medical evidence contemporaneous to the fall stated that the employee had multiple rib fractures but within two months returned to his regular duties and a nurse who spoke to him on August 23, 1993 stated that the employee told her that he was working without any problem and did not require medical treatment. The employee was hospitalized in December 1993 and received medical treatment on February 6, 1994 for cardiac problems. On April 8, 1994 appellant filed a claim for death benefits, stating that the employee died on March 14, 1994 from a heart attack.

This case is on appeal to the Board for the second time.¹ In its August 15, 1997 decision, the Board found that the employee's alleged difficulty in commuting to work did not constitute a compensable factor of employment because the employee was not required to travel on the job. The Board found that appellant's allegation that overwork contributed to the employee's death also did not constitute a compensable factor of employment because the employing establishment refuted the allegation and appellant did not submit sufficient evidence supporting that the reduction-in-force resulted in an increased workload for the employee. The Board found, however, that appellant established a compensable factor of employment in that the employee was a timekeeper and performing his timekeeping duties caused him stress. The Board also found that the reports of the employee's treating physician, Dr. Morris Stampfer, a Board-certified internist with a specialty in cardiovascular disease, which stated that the employee's timekeeping duties contributed to his death raised an uncontroverted inference of

¹ Docket No. 95-355 (August 15, 1997). The facts and history surrounding the prior appeal are set forth in the prior decision and are hereby incorporated by reference.

causal relationship between the employee's death and the accepted factor of employment. The Board remanded the case for referral to an appropriate medical specialist for a second opinion.

On remand the Office referred the record to Dr. Jack A. Goldberg, a Board-certified internist with a specialty in cardiovascular medicine, for a second opinion. In a report dated January 19, 1998, Dr. Goldberg considered the employee's history, reviewed the medical records and opined that the employee's death was not precipitated by the usual pressures of his employment, "but was an unfortunate but common progression of coronary artery disease in a diabetic, hyperlipidemic patient." He stated:

"The patient was having active angina prior to his demise, and a fatal outcome would not have been unexpected in this situation. There is nothing to suggest aggravation or acceleration of his condition due to unusual work factors."

By decision dated January 22, 1998, the Office denied appellant's claim, stating that the weight of the medical evidence did not establish that the employee's death was causally related to factors of federal employment.

By letter dated January 27, 1998, appellant requested an oral argument before an Office hearing representative which was held on June 25, 1998. At the hearing, Dr. Stampfer testified that the employee told him that a number of positions had been reduced and the same work was expected from a small pool of people and, therefore, individual assignments were more pressured and strenuous. He opined that "the increased pressure involved in [his] work would have increased his anxiety level, increased the level of circulating catecholamines, which are hormones that stimulate the heart, previous to undue demand or focus, are to be fostered more vigorously, which artery disease could not be met." Dr. Stampfer stated that the employee's fall in May 19, 1993 and the increased stress at work contributed to his death. He opined that the employee's May 19, 1993 fall at work contributed to his death because it changed the level of his cardiac symptoms. He stated that the employee had significant worsening of his angina with more frequent episodes and he had to ride to work instead of walk so his commuting became limited. Dr. Stampfer stated that "anything that disrupts a person's equilibrium can worsen his angina." He stated that "external stresses to the body, emotional and physical, can worsen the progress of arteriosclerosis and can be symptomatic in attributing to myocardial infarction."

In his June 25, 1998 report, which he submitted at the hearing, Dr. Stampfer reiterated that, since the May 19, 1993 fall, the employee had worsening angina pectoris and was limited in his commuting. He stated that "[i]t is accepted medical knowledge that people with coronary disease and angina may suffer worsening symptoms following injuries to other parts of the body or after exacerbation of other illnesses." Dr. Stampfer stated that he identified the fall from the truck in May 19, 1993 as a turning point in the employee's condition, after which his symptoms became significantly worse. He concluded that the fall from the truck initiated a downward spiral in his condition, which combined with the stress of his job led to his fatal myocardial infarction.

At the hearing, appellant testified that her husband's condition went "downhill" after the May 19, 1993 fall. She stated that he no longer could walk a mile to and from the metro and he would come home "in agony." Appellant testified that his stress at work seemed to increase

around that time as well. Appellant testified that her husband told her that he felt more pressure to complete the time cards as he had more to complete in less time which was stressful to him.

By decision dated January 13, 1999, the Office hearing representative affirmed the Office's January 22, 1998 decision.

The Board finds that the case is not in posture for 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. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.² The medical evidence required to establish causal relationship is rationalized medical opinion evidence explaining how the accepted employment-related condition caused or contributed to the employee's death.³ The mere showing that an employee was receiving compensation at the time of death does not establish that the employee's death was causally related to his employment.⁴

Section 8123(a) of the Federal Workers' Compensation Act provides that, where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.⁵ In the present case, a conflict exists between the opinion of Dr. Stampfer, decedent's treating physician and the opinion of the referral physician, Dr. Goldberg, as to whether decedent's heart attack on March 14, 1993 resulted from factors of his federal employment. The case will, therefore, be remanded for the case record with a statement of accepted facts to be referred to an impartial medical specialist to determine whether the employee's duties as a timekeeper or the work-related May 19, 1993 fall or both contributed to his death. Upon such further development as it deems necessary the Office shall issue a *de novo* decision.

² *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989); *Mary M. DeFalco (Gordon S. DeFalco)*, 30 ECAB 514 (1979).

³ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728, 733 (1991).

⁴ *Elinor Bacorn (David Bacorn)*, 46 ECAB 857, 860-61 (1995).

⁵ 5 U.S.C. § 8123(1).

The decision of the Office of Workers' Compensation Programs dated January 13, 1999 is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
February 15, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member