

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN J. HORN, claiming as widow of JERRY L. HORN and
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK

*Docket No. 00-275; Submitted on the Record;
Issued March 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the employee's death was causally related to his accepted employment injury, thereby entitling appellant to survivor benefits.

This is the second appeal in this case.¹ By decision and order dated October 2, 1998, the Board found that the medical evidence of record was sufficient to warrant further development of the claim and remanded the case to the Office of Workers' Compensation Programs. The facts of this case are set forth in the Board's October 2, 1998 decision and are herein incorporated by reference.

The Board finds that this case is not in posture for a determination of whether the employee's death was causally related to his accepted employment injury.

On January 14, 1999 the Office referred the case record and a statement of accepted facts to Dr. Peter Louis, a Board-certified internist specializing in cardiology, for an opinion as to whether the employee's death on August 19, 1994 was causally related to his accepted employment injury. The statement of accepted facts stated that the accepted employment injury was a "temporary aggravation of preexisting neurosis with obsessive-compulsive base."

In a report dated January 29, 1999, Dr. Louis, who noted that the accepted employment injury provided by the Office was a "temporary aggravation of preexisting neurosis with obsessive-compulsive base," found that the employee's death was not causally related to his accepted employment injury.

By decisions dated February 18 and July 1, 1999, the Office denied appellant's claim for survivor's benefits on the grounds that the medical evidence did not establish that the employee's death on August 19, 1994 was causally related to his accepted employment injury.

¹ See Docket No. 96-1974 (issued October 2, 1998).

However, the January 8, 1999 statement of accepted facts submitted to Dr. Louis by the Office contained a significant factual error in that it stated that the accepted employment injury in this case was a temporary aggravation of a preexisting anxiety neurosis with an obsessive-compulsive base. In its October 2, 1998 decision, the Board noted that an April 6, 1995 report of an Office medical adviser was based upon an inaccurate factual background as the Office had incorrectly advised him that the accepted employment injury was a temporary aggravation of a preexisting anxiety neurosis. The Board found that the evidence of record established that the employee had severe anxiety neurosis with an obsessive-compulsive base, rather than an aggravation of a preexisting anxiety neurosis.²

In its February 18 and July 1, 1999 decisions denying appellant's claim, the Office relied upon the report of Dr. Louis in finding that the employee's death was not causally related to his accepted employment injury, thereby precluding appellant's entitlement to survivor's benefits. As the January 29, 1999 report of Dr. Louis was based upon an inaccurate factual background, the Office improperly relied upon his opinion in rendering its February 18 and July 1, 1999 decisions.

On remand, the Office should prepare a new statement of accepted facts and obtain a supplemental opinion explaining the 19-year span of the causal relationship posited by Dr. Yee Se C. Ong, a Board-certified specialist in cardiovascular diseases, Dr. Joe G. Savage, a psychologist and Dr. A.S. Dahr, a specialist in cardiovascular diseases, in their reports which were reviewed by the Board in its October 2, 1998 decision. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to survivor benefits.

² In its October 2, 1998 decision, the Board stated that "a careful review of the record discloses no medical evidence substantiating a preexisting anxiety neurosis." As noted in its October 2, 1998 decision, the Office Form CA-800, FECA Nonfatal Summary, approves a claim for anxiety neurosis, severe, with an obsessive-compulsive base, and then, apparently at some later date, the notation "aggravation of preexisting" was written above this accepted condition.

The decisions of the Office of Workers' Compensation Programs dated July 1 and February 18, 1999 are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
March 7, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member