

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REMEDIOS HERNANDEZ, claiming as widow of JOHN HERNANDEZ and
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL
CENTER, Sepulveda, CA

*Docket No. 00-1836; Submitted on the Record;
Issued May 2, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the employee's medical condition on September 12, 1990 was causally related to his federal employment; and (2) whether appellant has established that the employee's subsequent death on September 16, 1993 was causally related to his federal employment.

On June 24, 1996 Remedios Hernandez filed a notice of traumatic injury on behalf of John Hernandez, her late husband for workers' compensation benefits. Appellant alleged that on September 12, 1990 the decedent, then a 65-year-old housekeeping aid, suffered a major stroke after pushing a dumpster at work. She additionally filed a claim for survivor benefits alleging that the death of her husband on September 16, 1993 was causally related to his federal employment. Appellant indicated that the employee died while hospitalized on September 16, 1993.

Appellant submitted evidence that her husband previously gave notice of the September 12, 1990 claimed injury to the San Francisco Office of the Office of Workers Compensation Programs by letter dated January 22, 1993, received on March 12, 1993. In the January 22, 1993 letter, Mr. Hernandez requested compensation benefits as a result of his stroke on September 12, 1990 and indicated that he had been separated from his position under disability on March 6, 1991.

By letter dated June 5, 1998, the Office advised appellant that it had received timely notice of injury and a claim for survivor benefits; however, it had not received any evidence to substantiate that the alleged incident on September 12, 1990 occurred as described or resulted in an injury. The Office advised appellant of the necessary evidence in order to establish the claim and afforded her 45 days within which to submit supportive evidence.

Appellant submitted clinical reports, which discussed the onset of her husband's symptoms on September 12, 1990. The clinical reports indicated that the employee felt fine the morning of September 12, 1990, until after he began his 3:30 p.m. shift, when he suddenly became lightheaded and had an unsteady gait. It was noted that he reported feeling dizzy and diaphoretic, and a fellow employee noticed that his speech was slurred.

Appellant also submitted a medical report dated September 29, 1990 from Dr. Bruce Enos, a Board-certified neurologist and attending physician who reported that the employee was hospitalized for his condition from September 12 to 29, 1990. Dr. Enos stated that the employee had been at the employing establishment since July 1990 with a history of hypertension. He reported that the patient was well until approximately 3:45 p.m. on September 12, 1990 after just reporting to work, when he developed acute light-headedness, some diaphoresis and mild nausea, as well as a generalized malaise. A coworker noticed right-sided weakness in his lower extremity more than his upper extremity, associated with incoordination and slurred speech, approximately 30 minutes after his onset of symptoms. Dr. Enos reported that the employee was admitted with the suspicion of sub-cortical stroke. He reported that on discharge, he diagnosed new onset, pure motor right hemiparesis and dysarthria, probably secondary to small sub-cortical infarction in either the basis points or left posterior limb of the internal capsule; gout; hypercholesterolemia and hypertriglyceridemia and history of hypertension.

Appellant further submitted a report dated September 16, 1993 from Dr. Brian Parker, a Board-certified anesthesiologist who stated that the employee was hospitalized with coronary artery disease on September 13, 1993. He underwent a coronary artery bypass grafting on September 15, 1993 and that the procedure went well until the time of closing the chest, when the patient experienced a blood pressure drop and subsequently went into ventricular tachycardia. Dr. Parker reported that following further complications, the employee died on September 16, 1993.

By decision dated July 31, 1998, the Office denied the claim for benefits. The Office found that the evidence was insufficient to establish a causal relationship between the employee's medical condition or death and his federal employment.

On October 8, 1999 appellant requested review of the written record. By letter dated January 10, 2000, the Office acknowledged appellant's October 8, 1999 request as timely and advised that the Office's Branch of Hearings and Review would consider the matter with any additional evidence submitted for consideration.

By decision dated March 9, 2000, an Office hearing representative affirmed the prior decision. The Office hearing representative found that no medical evidence had been submitted by a physician, which established that the employee's medical condition on September 12, 1990 or his subsequent death were causally related to his federal employment.

The Board finds that the evidence of record fails to establish that the employee's medical condition on September 12, 1990 was causally related to his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

In this case, the record establishes that the employee was at his place of employment on September 12, 1990 when he experienced symptoms subsequently diagnosed as a sub-cortical infarction or stroke. The record establishes that the employee, prior to his death, filed written notice of injury within the time requirements of the Act. However, the record does not support that his medical condition was caused on contributed to by pushing a dumpster in the course of his employment, as alleged by appellant. Because appellant did not submit rationalized medical evidence establishing causal relationship, the Board will affirm the denial of appellant's claim for compensation.

Further, the Board finds that appellant has failed to establish that the employee's death on September 16, 1993 was causally related to his federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the employee's death on September 16, 1993 was causally related to an employment injury or to factors of his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his federal employment.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁴ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

Appellant has failed to submit any rationalized medical opinion evidence establishing that her husband's death was caused by employment factors. Dr. Parker, in a report dated September 16, 1993 indicated that the employee died due to complications following a coronary artery bypass surgery. The death certificate listed cause of death as a myocardial infarction with heart rupture due to coronary artery arteriosclerosis. The autopsy report indicated that the employee suffered from systemic hypertension, atherosclerosis of the aorta and adult onset diabetes mellitus. His death was not attributed to work duties performed on September 12, 1990 by any medical evidence of record. Appellant's lay opinion on causal relationship is insufficient to establish such a causal relationship.⁶

Because the medical evidence in this case fails to establish that the employee's death on September 16, 1993 was causally related to his federal employment, appellant has not met her burden of proof.

The decision of the Office of Workers' Compensation Programs dated March 9, 2000 is affirmed.

Dated, Washington, DC
May 2, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ *Bernice W. Curtis (Oscar Lee Curtis)*, 1 ECAB 95 (1948).