

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GINA C. CARDENAS (widow of ALEJANDRO P. CARDENAS) and U.S.
POSTAL SERVICE, SECONDARY POST OFFICE, Memphis, TN

*Docket No. 01-200; Submitted on the Record;
Issued September 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the employee's March 24, 1998 death was causally related to his federal employment.

The Board has reviewed the case record on appeal and finds that appellant failed to meet her burden of proof to establish that the employee's death on March 24, 1998 was causally related to his federal employment.

On November 12, 1999 appellant submitted a claim for compensation alleging that her husband's death on March 24, 1998 was causally related to his July 18, 1997 employment injury, a left shoulder contusion and strain.¹ By decision dated May 26, 2000, the Office of Workers' Compensation Programs rejected appellant's claim. On June 19, 2000 appellant requested reconsideration and submitted additional medical and factual evidence. By decision dated August 1, 2000, the Office declined to reopen appellant's claim for further merit review.²

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.³ This

¹ On July 19, 1997 the employee, then a 62-year-old mailhandler, filed a claim for traumatic injury alleging that on July 18, 1997 he injured his left arm and shoulder when he slipped and fell in the performance of his duties. The record reflects that this claim was never formally accepted by the Office, but rather was administratively accepted as a claim with a cost under \$1,500.00. The medical evidence submitted in support of the employee's claim consisted of emergency room treatment notes diagnosing left shoulder strain and contusion.

² While the Office stated in its August 1, 2000 decision that the evidence submitted by appellant was insufficient to warrant a merit review of her claim, the Office did in fact perform a merit review. Specifically, the Office found Dr. Frank Vrionis', a neurological surgeon and treating physician, June 16, 2000 medical report to be equivocal and lacking in medical rationale. Because the Office weighed the newly submitted evidence and discussed its relative probative value, the Office performed a *de facto* merit review.

³ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴

Appellant asserts that the employee's July 18, 1997 employment injury, not a spinal tumor, resulted in the employee's fractured spine, necessitating surgical intervention, which hastened the employee's death. She also asserts that this conclusion is supported by the autopsy results, which note no evidence of cancer in the vertebrae. Finally, appellant maintains that appellant's surgeon told her that the employee did not have a mass around his spine.

The medical evidence relevant to the cause of the employee's death consists primarily of medical reports from Dr. Vrionis and Dr. Margaret R. Todd, a treating physician. In a report dated December 14, 1997, Dr. Vrionis explained that appellant had a one-week history of progressive lower extremity weakness and numbness, which resulted in his inability to walk. He noted that appellant had reportedly been in good health until July 1997, when he was diagnosed with lung cancer. Examination and testing revealed T6 collapse and compression of the spinal cord by bone infiltrated with tumor, as well as epidural tumor. Dr. Vrionis surgically removed the tumor, sent the specimens to the laboratory for analysis and reconstructed appellant's spine. A surgical pathology report dated December 17, 1997 confirmed the diagnosis of a T6 tumor consisting of metastatic undifferentiated carcinoma in bone, with extensive necrosis of tumor in the marrow space. The appearance of the tumor was consistent with undifferentiated carcinoma, large cell type, of the lung.

In a report dated February 23, 1998, Dr. Vrionis opined that appellant was totally disabled due to paraplegia due to lung cancer metastatic to his spine with spinal cord compression. In a report dated February 27, 1998, Dr. Todd agreed with Dr. Vrionis' assessment, stating that appellant had thoracic paraparesis secondary to metastatic lung cancer to T6 with spinal compression and in addition suffered from vocal cord paresis, low back pain, hypertension, arthritis of the hands and knees, cataracts and neurologic bowel and bladder conditions, all of which combined to render appellant totally disabled. Appellant died on March 24, 1998. The death certificate completed on that date by Dr. O.T. Feagin listed the immediate cause of death as carcinoma of the lung without any contributing causes. An autopsy report dated March 25, 1998, completed by Dr. Noel T. Florendo, listed the final anatomic diagnoses as poorly differentiated adenocarcinoma of the left lung with metastasis to the liver, peritoneum and both adrenal glands, bronchopneumonia of the right lung and severe atherosclerotic cardiovascular disease. The report further noted that the vertebral body showed no evidence of metastasis.

Finally, the record contains a June 16, 2000 letter from Dr. Vrionis to appellant, in which he stated:

“This is in response to your letter of June 6, 2000 regarding your husband's compensation claim. Enclosed please find a copy of the pathology report from December 17, 1997 from Baptist Memorial Hospital. This report clearly states that the specimen I sent from your husband's surgery was metastatic (lung) carcinoma in the bone. This was my impression also during surgery where large

⁴ *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

amounts of tumor were removed from around your husband's spinal cord. Thus, I do not have any doubt that his weakness and spinal cord compression were due to weakening of his spine by the tumor.

“However, I did not evaluate [appellant] for his July 18, 1997 fall at work. Therefore, I am not certain that this injury did not contribute in some way to [appellant's] December 1997 problem. As I did not evaluate him for this accident, I do not know of any x-ray abnormality after his fall (if an x-ray was obtained). Because I did not evaluate him prior to December 1997, I cannot make any statement regarding his spine cancer and its relationship to his work-related injury. It is possible that such a relationship might exist but I am unable to prove it. I should mention that my alleged comments to you that ‘there was n[o]t much cancer around the spine’ are not true. They can only reflect the lack of cancer after the operation and not prior to that. There was clearly tumor in the spine as proven by the pathology report from the specimen sent during surgery.”

While Dr. Vrionis indicated that it was “possible” that the employee's 1997 employment fall contributed in some way to his death, he ultimately concluded that he could not make a such a statement because he had not evaluated the employee prior to December 1997.⁵ Consequently, his reports are insufficient to meet appellant's burden to establish that her husband's death was causally related to his employment.

The only remaining medical evidence that addressed whether the employee's July 18, 1997 employment injury was causally related to his death was the May 12, 2000 report of the Office medical adviser. He concluded that there was no medical evidence of record showing a causal relationship between appellant's 1997 fall and his death on March 24, 1998. The Office medical adviser specifically noted that while the autopsy report showed no metastasis to the spine, and while appellant's 1997 fall could have caused fractures of the spine, as asserted by appellant, the medical evidence of record established that the cause of appellant's death was metastatic cancer of the lung. As appellant failed to submit the necessary rationalized medical opinion evidence to support that the employee's death was caused by factors of his federal employment, the Office properly denied the claim.

⁵ The Board further notes that Dr. Vrionis' speculation cannot constitute a probative medical opinion supportive of appellant's claim. *Judith J. Montage*, 48 ECAB 292 (1997).

The decisions of the Office of Workers' Compensation Programs dated August 1 and May 26, 2000 are affirmed.

Dated, Washington, DC
September 17, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member