

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA E. BACHOFEN, claiming as the widow of ERNEST T. BACHOFEN and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Burlington, MA

*Docket No. 01-290; Submitted on the Record;  
Issued March 25, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

The issue is whether the employee's death on August 31, 1999 was causally related to his accepted January 7, 1979 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to establish that the employee's death on August 31, 1999 was causally related to his accepted January 7, 1979 employment injury.

On November 1, 1999 appellant submitted a claim for compensation alleging that her husband's death on August 31, 1999 was causally related to his January 7, 1979 employment injury.<sup>1</sup> By decision dated October 3, 2000, the Office rejected appellant's claim.

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.<sup>2</sup> This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>3</sup>

The medical evidence relevant to the cause of the employee's death consists primarily of medical reports from Dr. Edward Quinlan, a Board-certified internist and the employee's treating

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<sup>1</sup> On April 23, 1979 the employee, then a 69-year-old air traffic controller, filed an occupational disease claim alleging that his acute inferior wall myocardial infarction and transient ischemic episode sustained on January 7, 1979 were caused by factors of his federal employment. By letter dated December 12, 1979, the Office of Workers' Compensation Programs accepted the employee's claim for a myocardial infarction.

<sup>2</sup> *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

<sup>3</sup> *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

physician, an Office medical adviser and Dr. Lawrence J. Kanter, a Board-certified internist and impartial medical examiner. On appellant's claim form, Dr. Quinlan indicated that the direct cause of the employee's death was arrhythmia due to dilated ischemic cardiomyopathy. He further indicated that the contributory causes of the employee's death were biventricular congestive heart failure, chronic atrial fibrillation, renal failure and insulin-dependent diabetes mellitus. Dr. Quinlan opined that he considered the employee's death to be directly related to his coronary artery disease, which he believed was the basis for the employee's previous total disability. An accompanying death certificate completed by Dr. Quinlan listed ischemic cardiomyopathy and coronary artery disease as the cause of death.

On November 17, 1999 an Office medical adviser reviewed the employee's medical records. He opined that the employee died from heart trouble due to preexisting diseases, which included obesity, insulin-dependent diabetes, chronic obstructive pulmonary disease and coronary artery disease. He further opined that the employee's death was not due to the 1979 myocardial infarction.

The Office found a conflict in the medical opinion evidence between Dr. Quinlan and the Office medical adviser as to whether the employee's death on August 31, 1999 was caused by the accepted condition of myocardial infarction. To resolve the conflict, the Office referred the employee's medical records, a statement of accepted facts and a list of specific questions pursuant to section 8123(a) of the Federal Employees' Compensation Act to Dr. David Chinoy, a Board-certified internist, for an impartial medical opinion. Dr. Chinoy failed to submit a medical report. The Office then referred the employee's medical records, a statement of accepted facts and a list of specific questions to Dr. Kanter for an impartial medical opinion.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>4</sup>

The September 15, 2000 report of Dr. Kanter indicates that the employee's death on August 31, 1999 was not caused by the January 7, 1979 employment injury. Dr. Kanter detailed the employee's factual and medical history. In response to the Office's question of whether there was a causal relationship between the cause of the employee's death and the employment-related injury of myocardial infarction, Dr. Kanter stated that there was no causal relationship. He explained:

"From the statement of accepted facts, medical history and events not accepted as being related to [f]ederal [e]mployment are: Coronary artery disease, hypertension, diabetes with reactive hypoglycemia, obesity, alcoholism, heavy cigarette smoker, chronic obstructive pulmonary disease, bladder outlet obstruction, asthma/bronchitis, incision hernia, degenerative joint disease in both knees and fractured left medial malleolus. This man had a myocardial infarction in 1979. He was felt by some observers in 1981 fit to return to work. He was not

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<sup>4</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

in heart failure at the time of his myocardial infarction. He was fit enough to undergo bypass surgery shortly after his myocardial infarction. This was at a time when it was unusual to take high-risk patients with ischemic cardiomyopathies to bypass surgery. Obesity, alcoholism and heavy cigarette abuse contributed to his general demise. Ten years after his heart attack, he developed congestive heart failure due to coronary artery disease, hypertension and marked obesity. The cause of his death is listed as ischemic cardiomyopathy and coronary artery disease. Coronary artery disease is not accepted as being related to [f]ederal [e]mployment. The ischemic cardiomyopathy which resulted in congestive heart failure was due to obesity, hypertension and coronary artery disease all of which are not accepted as being related to [f]ederal [e]mployment.”

The Board has carefully reviewed the opinion of Dr. Kanter and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of this case. Dr. Kanter’s opinion is based on a proper factual and medical history in that he reviewed an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Kanter provided a proper analysis of the factual and medical history and reached conclusions regarding the cause of the employee’s death, which comported with this analysis.<sup>5</sup> Dr. Kanter provided medical rationale for his opinion by explaining that the employee’s death was due to conditions that were not accepted by the Office.

As appellant failed to submit the necessary rationalized medical opinion evidence to support that the employee’s death on August 31, 1999 was caused by the January 7, 1979 employment injury, the Office properly denied the claim.

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<sup>5</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

The October 3, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 25, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member