

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE ROSE, claiming as widow of JEFFREY A. ROSE and DEPARTMENT  
OF THE NAVY, NAVAL SURFACE WARFARE CENTER CARDEROCK DIVISION,  
Philadelphia, PA

*Docket No. 03-617; Submitted on the Record;  
Issued June 26, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the employee's death on May 15, 2001 was causally related to his federal employment.

On April 5, 2002 appellant filed a claim for compensation (Form CA-5), on the grounds that the death of her husband, the employee, was causally related to his federal employment. She alleged that his seizure and resulting death on May 15, 2001 were caused by sleep deprivation and work travel. The death certificate listed the cause of death as epilepsy.

An autopsy report indicated that the immediate cause of death was epilepsy. Dr. Bani H. Win, a Board-certified pathologist, stated that the employee was on a temporary-duty assignment in Honolulu, Hawaii and was found in his hotel room face down, with his upper torso and head on the floor with the remainder of the body on the bed. Dr. Win noted that Dilantin was prescribed for the control of seizures, but that the toxicological screen did not detect the presence of such medication.

In a report dated November 21, 1996, Dr. Stephen T. Dinsmore, a Board-certified psychiatrist and neurologist, stated that he had been treating the employee for nighttime seizures. The employee told Dr. Dinsmore that he had suffered three seizures, which occurred during his sleep, in the past 30 months. The first episode, he stated, occurred approximately two to three hours after he went to sleep and occurred on an evening when he had been modestly intoxicated. The second episode occurred about four hours after he went to sleep and occurred on an evening when he had stopped by a bar on his way home from work and had also become mildly intoxicated. The third event occurred in mid-August 1996, after he and his wife had been at the casinos and had also consumed alcoholic beverages, yet on this occasion his alcohol intake had been less than usual. He noted that he had been extremely tired while driving home and approximately one hour after going to sleep he suffered another seizure. Dr. Dinsmore also noted that the employee had a family history of seizures and stated: "Although all three seizures were associated with ethanol intake, I suspect this patient has an underlying predisposition."

In a follow-up report dated December 23, 1997, Dr. Dinsmore indicated that another incident occurred when the employee fell asleep while on a flight to San Diego and had a seizure that was witnessed by several passengers and that on this occasion he had not consumed any alcohol. He noted that the employee's seizures were restricted to sleeping and stated: "Early stage sleep was known to allow the emergence of epileptic form activity."

Appellant submitted her husband's pay stubs in support of her contention that her husband had suffered from sleep deprivation due to his long work hours and that this had contributed to his seizure and death. The pay stubs showed that, from approximately April 11 to 21, 2001, the employee worked 90 hours in 10 days; from April 22 to May 4, 2001, he worked 86 hours; and from May 5 to 15, 2001, the 10-day period directly preceding his death, he worked 59 hours. Appellant claimed that, in 2001, during a period of 4 months and 15 days, her husband had traveled for 63 of those days for work and had been "much more tired" than usual.

In a May 7, 2002 attending physician's report, Dr. Dinsmore stated that the direct cause of death was "seizure" and that contributing causes were "sleep deprivation, stress, fatigue."

In an undated follow-up report, Dr. Dinsmore stated:

"A specific employment[-]related physical injury as noted in number three is not present. The patient did however suffer nocturnal epilepsy. This disorder was well controlled with no recurrence of epileptiform events for [three and one half] years. The employee had an intense work schedule, the magnitude of the stress and fatigue level is indicated by the report of [appellant]. In this report very long work intervals were noted April 2001. This is correlated with reports of fatigue and decreased libido as indicated by [appellant]. In addition the seizure resulting in death occurred in the third sleep interval after the employee arrived in Hawaii. This followed the physical effort and sleep deprivation associated with long travel and adjustment to a new time zone.

"Stress and sleep deprivation are associated with lower seizure threshold. The report of [appellant] supports marked fatigue and work stress, this combined with the travel to Hawaii are a probable precipitant of the seizure on May 15, [2001]."

By letter dated June 18, 2002, the Office of Workers' Compensation Programs notified appellant that the medical evidence of record was insufficient to establish her claim for survivor's benefits and requested that she submit a medical report containing the employee's medical history, diagnosis and treatment rendered, and an opinion discussing the relationship between the employee's death and employment factors.

In reports dated April 21, 2000 and May 2, 2001, Dr. Dinsmore indicated that the employee was taking 200 milligrams of Dilantin and had not had a seizure since 1997 and that he could possibly taper and discontinue his use of Dilantin.

In a report dated July 15, 2002, Dr. Dinsmore discussed the cause of the employee's seizure. He stated:

“The specific cause of any given seizure usually remains unknown, while overlying causes of epilepsy may often be identified. A neurodegenerative disease, acquired brain injury or a genetically determined epilepsy may be the known cause of recurrent seizures, however the reason a seizure occurs at any point in time is often undetermined. There are several known seizure participants, which may initiate a seizure in underlying epilepsy or sometimes in patients without identified seizure disorder. A short list of common causes of seizure induction include withdrawal from sedating drugs and alcohol, sleep deprivation, certain antibiotics, fever and acute psychological stress.

“In the case of the employee, sleep deprivation is a consideration. Sleep deprivation would generally be present if there is a marked reduction in effective sleep over one or several days. The employee suffered a seizure early in the third sleep interval after arrival in Hawaii. The period of longest sleep deprivation was prior to the first sleep interval after arrival in Hawaii, possibly 20 to 22 hours from arising on May 12, 2001 in the eastern time zone to retiring in Hawaii, if bedtime was at 10 p.m. local Hawaiian time on May 12, 2001. If wakeup was at 6 a.m. local time on May 13, [2001] this would allow four to seven hours for sleep, depending on sleep efficiency (there is a tendency to awaken early since a 6 a.m. local wakeup would be an 11 a.m. eastern time wakeup). The same would be true for the second sleep interval between May 13 and 14, [2001] where sleep achieved should be somewhat more than the first sleep interval, allowing for some adjustment to local time, but still reduced compared to non travel sleep interval of the same duration. The seizure occurred early in the third interval. Mullins and Elias report an increase in seizure frequency among travelers to Honolulu from Japan during the first 48 hours after arrival. They propose this phenomenon is due to sleep deprivation. Mr. Rose likely had his seizure between 54 and 56 hours after arrival.

“Other variables to consider in the case are the general state of health, and anticonvulsant blood level at the time. There was evidence of over-the-counter decongestant in the urine at autopsy. The use of such agents may have been a result of upper respiratory symptoms, which if associated with fever, may in itself have been a trigger. The presence or absence of fever cannot be determined in this case. Chronic stress and fatigue as supported by [appellant] can reduce resistance and increase likelihood of contracting viral or bacterial illness, and also increase the impact of the acute sleep deprivation of travel.

“The autopsy report reports no Dilantin (phenytoin) present in the toxicology screen. This raises the possibility of a missed dose or doses of medication allowing the level to drop below that which had provided for control of seizures during the past several years. However, the patient had long intervals before the initiation of anticonvulsant therapy without seizure. In light of this pretreatment experience, the circumstance of very long distance travel with severe sleep

deprivation stand out as the novel factor that precipitated the seizure of May 15, 2001.”

By decision dated November 22, 2002, the Office determined that the evidence was insufficient to establish that the employee’s death was caused by his federal employment.

The Board finds that appellant did not establish that the employee’s death on May 15, 2001 was caused by factors of his federal employment.

A claimant 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 complete factual and medical background.<sup>1</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.<sup>2</sup>

In the instant case, the Office determined that appellant provided sufficient evidence to establish the first component of fact of injury, that long distance travel occurred in the employee’s performance of duty; however, the evidence was insufficient to establish that sleep deprivation was the cause of the employee’s fatal seizure. The medical evidence in this case is insufficient to establish that the employee’s travel and/or any sleep deprivation caused or contributed to his death on May 15, 2001.

The only medical report of record, which addressed the cause of the employee’s fatal seizure on May 15, 2001, is the July 15, 2002 report from Dr. Dinsmore. Even though Dr. Dinsmore mentioned sleep deprivation as a contributing factor to the employee’s death on May 15, 2001, his report lacks medical rationale and is too speculative to establish a causal relationship between the employee’s work duties and his death. Dr. Dinsmore noted that sleep deprivation was “a consideration” in the case of the employee, yet he did not opine that the employee suffered from sleep deprivation as a result of his work duties and that this, in turn, was a cause of the fatal seizure. The Board has held that, while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal.<sup>3</sup> The opinion of Dr. Dinsmore is too speculative to establish a causal relationship between the employee’s work duties and his death.

Dr. Dinsmore also did not provide a full history of the employee’s treatment for his seizure disorder and did not discuss the discontinuance of the anti-seizure medication, Dilantin, as a possible cause of death. The Board notes that the postmortum toxicology screen found no Dilantin present in the employee’s system. On July 15, 2002 Dr. Dinsmore noted that among the common causes of seizures was the withdrawal from medication. The record reflects that, shortly before the employee’s trip to Hawaii, Dr. Dinsmore discussed tapering and discontinuing the use of Dilantin. Dr. Dinsmore also noted that other factors may have contributed to the employee’s death on May 15, 2001, such as the over-the-counter decongestant found in the

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<sup>1</sup> *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

<sup>2</sup> *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

<sup>3</sup> *Judith J. Montage*, 48 ECAB 292 (1997).

employee's urine and chronic stress and fatigue. He stated that the use of such agents, if taken for upper respiratory symptoms and if associated with fever, may have triggered the fatal seizure. Since appellant submitted no other medical reports discussing causal relationship between the employee's death and his employment duties, the Board finds that appellant did not meet her burden of proof and the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated November 22, 2002 is hereby affirmed.

Dated, Washington, DC  
June 26, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member