

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMY D. KNOTT claiming as widow of KENNETH H. KNOTT and
U.S. POSTAL SERVICE, POST OFFICE, Greenville, SC

*Docket No. 01-496; Submitted on the Record;
Issued March 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the employee's death occurred while in the performance of duty.

On June 11, 1999 appellant, the employee's wife, filed a claim for death benefits. The employee, a 31-year-old electronics technician, died on March 26, 1999 while attending a two-week training session in Norman, Oklahoma. His body was found in his room on the floor beside the bed at approximately 9:45 a.m. The medical examiner's report and certificate of death listed the cause of death as status epilepticus due to complications of a brain tumor (glioblastoma multiform).

Dr. Chai S. Choi, a medical examiner who performed the autopsy, indicated that the employee died from seizures caused by a brain tumor and stated that "contributory causes of death" could include "not remembering to take his meds [medication]."

In a report dated July 30, 1999, Dr. William M. Butler, appellant's attending oncologist, stated that the employee had a brain tumor of unknown cause and had been treated with radiation and chemotherapy. He added that appellant had been free of the disease for many years. Dr. Butler opined that the employee's underlying cause of death was likely related to seizures that had been present since his original diagnosis but were well-controlled when he was taking his medications. He concluded:

"The issue to be considered with regard to his work is whether his absence from home where his medications were supervised to ensure that he remembered to take them contributed to his subsequent seizures and death. He was found to have a very low Dilantin level at the time of death, suggesting that he had not taken his medications."

By decision dated August 30, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that the employee's seizure on March 26, 1999 was due to any work factors. The Office stated that

Dr. Butler's suggestion that the employee forgot to take his medication because he was not at home was speculative and not supported by medical rationale.

By letter dated November 1, 1999, appellant requested reconsideration and submitted additional evidence. She stated that in 1992 the employee was diagnosed with cancer and underwent a craniotomy with removal of a brain tumor, chemotherapy, and radiation therapy. In October 1993 the employee had a second tumor removed and more chemotherapy. He was then cancer free until his death. Appellant stated that the employee had short-term memory problems, which sometimes caused him to forget to take his medication on a timely basis or in the prescribed dosages. She alleged that the employing establishment knew that the employee was taking medication and had short-term memory problems.

Appellant stated that the employee was required to go to Oklahoma for training on mail processing equipment and was under more stress than normal because he was undergoing training, was out of his normal environment, and missed his family. She stated that she sometimes reminded the employee to take his medication or actually monitored his medication to ensure that he maintained the proper amount of the anti-seizure medication. Appellant argued that, had the employee been at home at the time of the seizure, she could have summoned medical help or might have prevented a seizure by making sure that he took his medication.

In a statement dated September 24, 1999, Dr. Butler signed his initials to typed statements that the employee's seizures were well controlled when he took his medication but he had mental lapses and would sometimes forget to take his medications. He stated that appellant monitored the employee's medication to ensure that he maintained a therapeutic dosage of his medication, particularly Dilantin.

Dr. Butler related that the autopsy report revealed that the employee's Dilantin level was at a sub-therapeutic level which indicated that he had not taken his medication at the prescribed dosage on March 25, 1999, the day prior to his death. Dr. Butler indicated that taking the correct dosage of the prescription anti-seizure medications was critical to maintaining therapeutic levels to prevent and minimize seizure activity and that employee's failure to take the prescribed levels of Dilantin increased the risk and severity of seizure and contributed to the employee's death on March 26, 1999. Dr. Butler concluded that the fact that the employee was alone when his seizure occurred, with no one to summon medical help, significantly and substantially contributed to his death because of his inability to obtain timely medical treatment.

By decision dated December 6, 1999, the Office denied appellant's request on the grounds that the evidence submitted was insufficient to warrant modification of its August 31, 1999 decision.

By letter dated July 14, 2000, appellant requested reconsideration and submitted additional evidence.

In a report dated July 3, 2000, Dr. Butler stated that the lack of supervision by the employee's wife while he was on travel status "may well have contributed" to his low Dilantin level, which then allowed him to have a seizure, and the lack of having someone there to assist him may have contributed to his death. He stated:

"Certainly, the seizure and death may have been a spontaneous event, but that is a much less likely scenario than one in which his death was caused by lack of Dilantin which precipitated the seizure that occurred while he was by himself in a room away from home."

* * *

"Seizure activity is much more likely in patients with sub-therapeutic Dilantin levels. Seizures can occur with therapeutic Dilantin levels, but they are much less likely. Thus, it is my opinion that the low Dilantin level contributed to [the employee's] seizure and that the seizure led to his death. His wife had supervised his medications as he did have some difficulty remembering them and, under her supervision, his Dilantin levels had been in therapeutic ranges as an outpatient when tested in our office.

"I believe that had [the employee's] wife been available to assist him and to call for medical assistance, it would be much less likely that he would have died from his seizure."

By decision dated October 30, 2000, the Office denied modification of its December 6, 1999 decision on the grounds that the evidence submitted was not sufficient to warrant modification.

The Board finds that the employee's death was not sustained while in the performance of duty.

In a claim for death benefits under the Federal Employees' Compensation Act,¹ the claimant for benefits has the burden of proof to establish the necessary elements of his or her claim.² The claimant must prove by the weight of the reliable, probative and substantial evidence the existence of a causal relationship between an employee's death and factors of his or her federal employment.³

Congress has provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment." The Board has recognized that the phrase "in the course of employment" relates

¹ 5 U.S.C. §§ 8101-8193.

² *Darlene Menke (James G. Menke, Sr.)*, 43 ECAB 173 (1991).

³ *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176 (1992).

to whether the injury or death occurred at a time when the employee may reasonably be said to be engaged in the master's business.⁴ "In the course of employment" deals primarily with the work setting, the locale and time of the employee's performance of his work assignment. "Arising out of the employment" encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury.⁵

In this case, the employee was on temporary duty attending training in another city when his death occurred. Where an employee is in authorized travel status, he is entitled to the protection of the Act for all normal incidents of his trip. However, the fact that the decedent employee was in authorized travel status raises no inference that his death was the result of an incident of his trip.⁶

A condition that occurs spontaneously during a special mission or travel status is not compensable. The evidence must establish a causal relationship between the condition and factors of employment.⁷

Dr. Choi, the medical examiner who performed the autopsy, indicated that the employee's failure to remember to "take his meds" might have contributed to his death. However, the taking of medication for a nonwork-related medical condition is a purely personal task and bears no relationship to the employee's work duties. Although the employee was in authorized travel status, taking medication is not a normal incident of his work-related trip. Therefore, a purely personal action or inaction regarding administration of medication does not constitute an incident of employment.

The Board finds that appellant failed to meet her burden of proof to establish that the employee's death was causally related to his employment.

⁴ *Eric J. Koke*, 43 ECAB 638 (1992).

⁵ *Id.*

⁶ *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Mary Lou Rowland*, 8 ECAB 422 (1955).

⁷ *See William B. Merrill*, 24 ECAB 215 (1973).

The October 30, 2000 and December 6, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.⁸

Dated, Washington, DC
March 6, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ The Board notes that Priscilla Anne Schwab was not a member of the Board after January 27, 2002, as her appointment expired, and she did not participate in the preparation of this decision.