

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA JOHNSEN, claiming as widow of JAMES C. JOHNSEN and  
SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS & APPEALS,  
Syracuse, NY

*Docket No. 03-1738; Submitted on the Record;  
Issued September 30, 2003*

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DECISION and ORDER

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

The issue is whether the death of the employee on August 16, 1999, due to an August 13, 1999 myocardial infarction with anoxic encephalopathy, was employment related.

On August 16, 1999 the employing establishment filed a claim for traumatic injury on the behalf of appellant, asserting that on August 13, 1999 the employee, then a 73-year-old administrative law judge, suffered a heart attack and was involved in a motor vehicle accident while returning from conducting hearings in another city. Following the employee's death on August 16, 1999, appellant filed a claim for survivor's benefits.

On the morning of August 13, 1999, the employee, an administrative law judge and licensed pilot, was scheduled to fly himself to Ogdensburg, New York, to conduct six hearings. However, upon learning that morning that the weather was too inclement to permit small aircraft flight, the employee drove 120 miles from his home in Cazenovia, New York, to Ogdensburg, New York, to conduct the hearings. At approximately 3:00 p.m., after conducting three hearings, three being cancelled, the employee began the drive home. While driving along interstate 81, at approximately 6:00 p.m., he drove off the road and was subsequently found to be in cardiac arrest. A witness at the scene stated that he was traveling behind the employee's car in the right lane when he noticed the employee's car slow down and then veer off to the right shoulder, where he continued to travel "pretty fast." The witness stated that neither the employee's brakes nor his turn signal was used. The witness explained that, as he started to pass the employee's car, the employee's car swerved back into the roadway and struck his car before swerving back off the road, traveling across the grass and striking a utility pole. The witness flagged down a car with a cellular telephone and dialed 911. The witness stated that the employee appeared to have lost control of his car and that, when the employee's car struck his own, he looked over at the employee to see what he was doing and noticed that he was wearing glasses but his eyes were closed and his head was down like he was sleeping.

In the police accident report, Deputy Eric Horn noted that a second witness confirmed the first witness's recitation of events and stated that, after the employee's car struck the first witness's car, the employee's head was "bobbing and weaving like he had no control over his body." Deputy Horn also noted that the grass over which the employee traveled was not torn up, indicating that the employee's brakes were not applied.

Newspaper articles contained in the record note that deputies arrived at the scene of the accident at 6:06 p.m. The fire department report also contained, in the file notes, that the alarm came in by telephone at 6:04 p.m., that rescue personnel left the station at 6:06 p.m. and that they arrived at the accident scene at 6:13 p.m. The emergency room physician, Dr. Ronald Greenberg,<sup>1</sup> noted, in an August 13, 1999 report, that the ambulance arrived to find the employee unconscious and in cardiac arrest with ventricular fibrillation. The employee was shocked into pulseless electrical activity and arrived that way in the emergency room. The employee did not appear to have bled out and the only traumatic injuries were a small seat belt mark on his right chest and some abrasions on the legs below the knees. The employee's pupils were noted to be fixed and dilated and Dr. Greenberg noted that there was a good chance that the employee had suffered severe hypoxic brain damage during the early stages of the cardiac arrest. In a discharge summary dated August 16, 1999, Dr. Alessandro Giambartolomei,<sup>2</sup> with whom Dr. Greenberg consulted, noted that the employee's wife stated that he was in good health and underwent annual physicals, as required for his pilot's license and had no known coronary artery disease risk factors. The employee's wife further stated, however, that the employee had complained of bilateral pains in his arms the week prior to the accident and had a restless night's sleep the night before the accident. Dr. Giambartolomei further stated that appellant's condition steadily deteriorated and he died on August 16, 1999. He listed his primary final diagnosis as acute inferior wall myocardial infarction, complicated by ventricular fibrillation and ventricular tachycardia in the field, probably causing anoxic encephalopathy. Additional diagnoses listed were coronary artery disease, obesity, history of upper gastrointestinal bleed and hypertension. The death certificate listed the cause of death as atherosclerotic cardiovascular disease. An autopsy was not performed.

In a decision dated March 23, 2000, the Office of Workers' Compensation Programs found that the evidence was sufficient to establish that the employee was on official travel status, and, therefore, was in the performance of duty when the motor vehicle accident occurred and that he sustained injuries as a result of the accident. However, the Office found that appellant failed to establish that the employee's death was causally related to factors of his employment.

By letter dated April 21, 2000, appellant, through counsel, requested an oral hearing before an Office representative. By decision dated December 15, 2000, an Office hearing representative affirmed the Office's decision denying benefits. By letter dated December 14, 2001, appellant, through counsel, requested reconsideration of the Office's December 15, 2000 decision and submitted additional evidence in support of her request. In a decision dated March 13, 2002, the Office found the newly submitted evidence to be insufficient to warrant modification of its prior decision. Following appellant's second reconsideration request, dated

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<sup>1</sup> Dr. Greenberg is Board-certified in emergency medicine.

<sup>2</sup> Dr. Giambartolomei is a Board-certified internist.

February 20, 2003, in a decision dated May 19, 2003, the Office again found the evidence insufficient to warrant modification of its prior denial.

The Board finds that appellant has failed to establish that the employee's death on August 16, 1999, due to an August 13, 1999 myocardial infarction with anoxic encephalopathy, was employment related.

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident or event at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident or event caused a personal injury.<sup>3</sup>

In the present case, it is undisputed that the employee was on an official travel assignment on August 13, 1999.<sup>4</sup> However, appellant has failed to submit sufficient medical evidence to establish that the travel assignment caused or contributed to the employee's death.

With respect to whether the myocardial infarction may have been caused by the motor vehicle accident, appellant submitted a report from Dr. Carl B. Friedman,<sup>5</sup> with whom she consulted. Dr. Friedman stated that the employee was known to feel sleepy during long drives and that, in his opinion, the employee's entire administrative day and arduous prolonged drive caused him to fall asleep at the wheel and crash his car. As a result of the crash, the employee suffered severe chest wall trauma, myocardial contusion, resulting in the anterior wall myocardial infarction. Dr. Friedman explained that sudden chest trauma can elicit ventricular fibrillation and reduce blood flow to the major vessels resulting in an infarction of myocardial muscle. The Board notes, however, that Dr. Friedman's report, apart from being speculative regarding the employee's degree of alertness, is in conflict with both the eyewitness accounts and the medical reports of record.<sup>6</sup> With respect to whether the employee had fallen asleep, the first eyewitness noticed that, at the time the employee struck his car, his eyes were closed and the

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> It is well established that an employee who is on a trip for his or her employer is under the protection of the Federal Employees' Compensation Act while engaging in activities essential to or reasonably incidental to these special activities; see *James E. Johnson*, 35 ECAB 695 (1984). In this case, there was no identifiable deviation from the business trip so as to take appellant out of the course of his employment; see also *Lawrence J. Kolodzi*, 44 ECAB 818 (1993). However, even where an employee is within the course of employment, it must also be established that the employment caused the injury. See *Joseph J. Rotelli*, 40 ECAB 987 (1989).

<sup>5</sup> Dr. Friedman is a Board-certified internist.

<sup>6</sup> A medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, but neither can the opinion be speculative or equivocal. *Roger Dingess*, 47 ECAB 123 (1995). In addition, medical evidence must be in the form of a reasoned opinion by a qualified physician based upon a complete and accurate factual and medical history of the employee whose claim is being considered. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value. *Jean Culliton*, 47 ECAB 728 (1996).

employee's head was down as if he was asleep. The second eyewitness noticed that, even after the impact with the first witness's car, the employee's head continued to bob and weave as though he had no control over his body. This account indicates that the employee had lost consciousness at the time of the accident. With respect to whether the impact of the accident triggered the heart attack, the Board notes that Dr. Greenberg, the emergency room physician who had the advantage of having examined and treated the employee, specifically stated that the employee's only traumatic injuries were a small seat belt mark on his right chest and some abrasions on the legs below the knees. These findings on examination contradict Dr. Friedman's assessment that a severe chest wall trauma sustained in the accident triggered the heart attack. Furthermore, Dr. Giambartolomei, who also treated the employee at the hospital, stated: "I cannot solve the puzzle of what happened first, the car accident or the myocardial infarction. Both are possible. The [employee] could have suffered a myocardial infarction first followed by arrhythmia and cardiac arrest as cause of the accident or the accident could have triggered his heart attack." 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>7</sup> The record lacks a medical report containing a definitive diagnosis, supported by medical rationale, explaining how the car accident caused the employee's heart attack. The Board finds that the medical evidence of record is inconclusive, and, therefore, does not establish that the employee suffered a heart attack as a result of the motor vehicle accident. This is in accord with both eye witness accounts that the employee appeared unconscious before he drove off the road and struck a utility pole.

Appellant further asserted that the stressful circumstances of the employee's last day, his change of plans from flying to driving, the long drive to Ogdensburg, his full day of hearings and the long drive home caused appellant to suffer a myocardial infarction. In support of her assertion, appellant submitted a January 31, 2003 report from Dr. Giambartolomei, who stated, in pertinent part:

"This issue is whether a work-related factor may have triggered [the employee's] heart attack. It is my understanding that [he] was under a good deal of stress on the day in question. [The employee] was late to his hearings on account of his last-minute change of plans to drive rather than fly to Ogdensburg, New York, as a result of the inclement weather. He knew that the lawyers, claimants and other staff would be waiting for him. This stress of rushing and being worried was in addition to the fatigue caused by a full day's work and the six and a half hours of driving to Ogdensburg and back.

"While it is impossible to know exactly which events precipitated [the employee's] heart attack on August 13, 1999, it is my medical opinion that stress of the type described above was likely one of many factors that contributed to his heart attack."

The Board finds that Dr. Giambartolomei's opinion, both that appellant had in fact had a stressful day and that these stresses were "likely" one of many contributing factors to the

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<sup>7</sup> *Judith J. Montage*, 48 ECAB 292 (1997).

employee's heart attack, is too speculative to support a finding that the employee's fatal heart attack was caused by specific factors of his employment.<sup>8</sup>

Appellant also asserted that the fact that the employee's heart attack and motor vehicle accident occurred in a remote location of central New York State and the fact that he was in his car and had to be extricated before aid could be administered, delayed his access to medical treatment and contributing to his death.

In *Carl Paul Johnson*, the Board recognized that an injury is compensable if the obligations or conditions of employment create a "zone of special danger" out of which the injury arose.<sup>9</sup> If an employee is sent by his employer to a place where adequate medical facilities are not available or obtainable for a condition unrelated to the employment and as a result thereof, or because of a delay in obtaining the needed medical care, injury results, which would not have occurred had the stricken employee had normal access to proper medical care, such inadequacy of medical facilities or delay in obtaining treatment constitutes a risk incidental to the employment-related travel and any consequent disability is, therefore, compensable. Under such circumstances, the employment itself is said to place the stricken employee in a position of jeopardy.<sup>10</sup>

In this case, however, appellant has not shown that the employee's assignment to drive along interstate 81 from his home in Cazenovia, New York, to Ogdensburg, New York, placed him in an area where he did not have normal access to proper medical care. In support of this assertion, appellant submitted an October 11, 2001 medical report from Dr. Lawrence Port, the employee's primary physician whom he saw approximately once a year for more than 20 years. Dr. Port stated that the employee was in generally good health and, at the time of his death, was not being treated for any underlying medical conditions. Dr. Port concluded that, "had [the employee] been in a place where he could have received more timely medical attention, he was strong enough to have been able to respond to treatment, were it not for the long period of unconsciousness. In my opinion, this work-related delay in receiving medical services was a factor that contributed to his death." Appellant also submitted an October 19, 2001 report from Dr. Giambartolomei, who noted that "it took a considerable time for the police and paramedics to reach the patient" and concluded "there is no doubt in my mind that the logistical difficulty in reaching and assisting [the employee] caused the prolongation of his cardiac arrest which, in turn, was the direct cause of his permanent brain damage and ultimately of his death.... Had not the [employee] been in need of driving quite a long distance out of town and back for his job, he would not have found himself in the situation from which he could not be rescued in time to save his life." Finally, appellant submitted a report dated December 12, 2001 from Dr. Friedman, who stated that when the paramedics arrived at the accident scene, they found the employee to be in cardiac arrest, having lapsed into ventricular tachycardia and then ventricular fibrillation. Dr. Friedman explained that, during ventricular fibrillation, there is no blood supply and,

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<sup>8</sup> *Id.*

<sup>9</sup> *Carl Paul Johnson*, 39 ECAB 470 (1988).

<sup>10</sup> *Carl Paul Johnson*, *supra* note 9; *see also Carrie S. Stefanatz*, 44 ECAB 252 (1992); *Beverly Sweeny*, 37 ECAB 651 (1986); *Allern M. Winters*, 16 ECAB 551 (1965).

therefore, no oxygen supply to the brain or other major organs and the brain can tolerate only minutes of reduced oxygen supply before deteriorating. Dr. Friedman concluded that “the delay involved in reaching the employee at the scene and extricating him from the car was a factor that exacerbated the anoxic encephalopathy and ultimately contributed to his death.”

The Board finds that the evidence does not establish that factors of the employee’s work placed him in special danger from delayed medical care. A map submitted by appellant establishes that the accident did not occur in an isolated location, but rather occurred in the town of Cicero, located outside of Syracuse, New York. The police report establishes that interstate 81 is a well-traveled roadway. The police and fire department reports further establish that the alarm call was received at 6:04 p.m., that the ambulance left the station at 6:06 p.m., arrived at the scene by 6:13 p.m. and arrived at St. Joseph’s hospital in Syracuse by 6:45 p.m. In addition, a medical helicopter team landed at the scene, but emergency personnel opted to transport the employee by ground instead. Appellant has not shown that adequate medical facilities were not available or obtainable or that there was a delay in obtaining needed medical care. Therefore, the Board is not persuaded that appellant was in a zone of special danger by virtue of having to travel by car from his home to Ogdensburg and back.

Accordingly, the decision of the Office of Workers’ Compensation Programs dated May 19, 2003 is hereby affirmed.

Dated, Washington, DC  
September 30, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member