

cerebrovascular accident¹ caused by anticoagulant medications used to treat the accepted left leg injuries, resulting in right hemiplegia with spasticity of the right upper and lower extremities, gait abnormalities and diplopia. The Office accepted right hemiplegia and diplopia as work related. The employee retired from federal employment May 19, 1965 and received compensation for total disability through April 22, 2003.

Following the accepted 1964 injuries and cerebrovascular accident, appellant's husband required continuous medical treatment. He developed concurrent conditions of recurrent pulmonary emboli,² chronic obstructive pulmonary disease (COPD), peripheral neuropathy, osteoporosis, osteopenia, lumbar scoliosis, degenerative disc disease, venous insufficiency in the lower extremities, arteriosclerosis, bradycardia and neurodegenerative dementia. Beginning in June 1987, the employee's physicians noted a decline in his physical abilities. In a July 2, 1991 report, Dr. George P. Fitzgerald, III, an attending Board-certified family practitioner, stated that the functional deficits from the accepted stroke were "gradually progressing and slowly encroaching on [the employee's] self sufficiency." The Office approved a home health care aide from mid-1999 to October 2000 and his residence in an assisted-living facility beginning in October 1999. Following a stroke on October 15, 2002 the employee was transferred to a nursing home. He was hospitalized on April 14, 2003 with a urinary tract infection, bowel obstruction, atrial fibrillation, COPD, hypertension and recurrent deep vein thrombi. Appellant's husband died on April 22, 2003. The death certificate lists the causes of death as brain death, multiple infarctions, cerebral arteriosclerosis and arteriosclerosis.

On June 9, 2003 the employee's widow filed a claim for compensation for death benefits (Form CA-5). On this form Dr. Fitzgerald checked a box "yes" indicating his support for a causal relationship between the 1964 stroke and the employee's death. However, Dr. Fitzgerald noted that this was not a direct causal relationship, as the "original injury did not cause late[r] infarct[s] but he would have survived them had he not had his prior injury."

In a June 23, 2003 letter, the Office advised appellant to submit a detailed report from the employee's attending physician explaining how and why the accepted left lower extremity injuries and secondary stroke caused or contributed to his death.

In a July 10, 2003 report, an Office medical adviser reviewed the medical record. The medical adviser noted that the employee's pulmonary infarctions and emboli were possibly related to hypercoagulability caused by an elevated prostate-specific antigen (PSA). He explained that there was "no clear cut evidence thr[ough] the years that the old ankle tears were causing continued or repeated vascular problems to call attention to the possibility of pulmonary emboli or infarctions." The medical adviser also opined that the employee's death was not related to the accepted conditions as he did "remarkably well" for 39 years following the 1964

¹ In a November 27, 1964 report, Dr. William E. Hunt, an attending physician, diagnosed a thrombosis of the posterior parietal branch of the left middle parietal artery, noting that appellant did not exhibit marked arteriosclerosis.

² An Office medical adviser opined in an October 17, 1997 report that there was "no clear cut evidence" that ... "the old ankle tears were causing continued or repeated vascular problems" such as the "pulmonary emboli or infarctions."

cerebrovascular accident, until advanced age and multiple health problems necessitated his transfer to a nursing home.

In an August 7, 2003 letter, the Office requested that Dr. Fitzgerald provide a report explaining how and why the accepted 1964 left lower extremity injuries and cerebrovascular accident would have caused appellant's death in 2003, as he survived and "did well for 39 years." Dr. Fitzgerald did not submit an additional report prior to September 12, 2003.

By decision dated September 12, 2003, the Office denied appellant's claim for compensation for the reason that the evidence failed to establish that the employee's death was causally related to the work injury of October 21, 1964. The Office found that Dr. Fitzgerald had opined that the employee's death was not causally related to the accepted injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ provides for the payment for compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of an in the course of performance."⁵

In a claim for survivor's benefits, an award of compensation may not be based on surmise, conjecture or speculation or on appellant's belief that the employee's death was caused, precipitated or aggravated by his employment.⁶ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to factors of his employment.⁷ This burden includes the necessity of furnishing a rationalized medical opinion based on an accurate factual and medical background and supported by medical rationale explaining the nature of the cause and effect relationship between the employee's death and specific employment factors.⁸ The mere showing that the employee was receiving compensation for total disability at the time of his death does not establish that his death was causally related to conditions resulting from the employment injury.⁹

³ 5 U.S.C. §§ 8101-8193.

⁴ *Id.* at § 8102(a).

⁵ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

⁶ *Juanita Terry (Rex Terry)*, 31 ECAB 433, 434 (1980).

⁷ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001); *Judith L. Albert (Charles P. Albert)*, 47 ECAB 810 (1996).

⁸ *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827, 832 (1994).

⁹ *Id.*

ANALYSIS

In this case, the record demonstrates that the employee died on April 22, 2003. The death certificate lists the causes of his death as brain death, multiple infarctions, cerebral arteriosclerosis and arteriosclerosis. Appellant must demonstrate that the accepted 1964 left lower extremity injuries and secondary cerebrovascular accident caused or contributed to the brain death, infarctions and arteriosclerosis that caused her husband's demise.

In support of her claim, appellant submitted Dr. Fitzgerald's June 9, 2003 form report. Although Dr. Fitzgerald indicated his support for a causal relationship between the accepted 1964 stroke and the employee's death, he noted that this was not a direct relationship. Dr. Fitzgerald explained that the "original injury did not cause [the] late[r] infarct" but that the employee "would have survived them had he not had his prior injury." Dr. Fitzgerald did not provide any further reasoning to explain why the accepted conditions may have contributed to the employee's death.

Also, Dr. Fitzgerald did not otherwise provide any opinion indicating that the cerebral and generalized arteriosclerosis noted on the death certificate were related to the 1964 left lower extremity injuries or subsequent stroke. Dr. Fitzgerald stated that had the employee not have sustained the 1964 infarction, that he would have survived the crises of April 2003. However, he did not explain the medical reasoning by which he discerned that the employee's numerous concurrent, nonoccupational conditions, including arteriosclerosis, venous insufficiency, an October 15, 2002 stroke, dementia, bradycardia and chronic obstructive pulmonary disease with recurrent thrombi, would not have proven fatal but for the contribution by the sequelae of the 1964 infarction. Without such supportive rationale explaining the reasons for his conclusion, the Board finds that Dr. Fitzgerald's opinion is too speculative to establish causal relationship in this case.¹⁰

To further develop the claim, the Office referred the record to an Office medical adviser. In a July 10, 2003 report, the medical adviser found "no clear cut evidence" that the October 1964 ankle tears caused later emboli or infarctions, noting a possible relationship between the employee's history of hypercoagulability and an elevated PSA. The medical adviser also opined that the employee's death was not related to the accepted conditions as he did well for 39 years following the 1964 cerebrovascular accident, until overtaken by advanced age and multiple health problems. Thus, the adviser set forth two physiologic bases on which he questioned a causal relationship between the accepted conditions and the employee's death in April 2003.

The Board notes that appellant was advised by June 23, 2003 letter of the necessity of submitting a rationalized report from the employee's physician explaining how and why his death in April 2003 could be related to the accepted 1964 injuries. However, appellant did not submit such evidence. The Board also notes that in an August 7, 2003 letter, the Office requested that Dr. Fitzgerald submit a supplemental report, but that he did not do so prior to the issuance of the Office's September 12, 2003 decision.

¹⁰ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

Thus, appellant submitted insufficient rationalized medical evidence to establish that the employee's death was causally related to the accepted conditions.

CONCLUSION

The Board finds that appellant did not submit sufficient rationalized medical evidence to establish that the employee's death was caused by the accepted 1964 left lower extremity injuries and cerebrovascular accident. Therefore, under the facts and circumstances of this case the Office's September 12, 2003 decision was proper.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member