



The Office terminated the employee's compensation benefits effective May 24, 1998 by decision dated May 12, 1998. He requested an oral hearing and by decision dated August 25, 1999, the hearing representative set aside the Office's May 12, 1998 decision.

In a report dated December 26, 1999, Dr. Dominic Gaziano, a Board-certified pulmonologist and impartial medical adviser, diagnosed chronic obstructive pulmonary disease. He found that the employee was disabled from his date-of-injury position. Dr. Gaziano attributed the employee's condition primarily to years of smoking cigarettes, but also found that exposure to coal dust in the performance of his federal duties contributed to his condition. In a report dated February 15, 2000, he found that the employee could work eight hours a day with restrictions.

The employee died on February 20, 2000. Dr. Mario Stefanini, a Board-certified pathologist, signed the employee's death certificate and listed his cause of death as cardiac arrest, acute myocardial infarction due to atherosclerotic coronary artery disease. Appellant, the employee's widow, was appointed executrix of his estate. On April 5, 2000 the Office paid the compensation that was due the employee at the time of his death to his estate.

Appellant completed a claim for compensation by widow on April 10, 2000 alleging that the employee's death was caused by chronic obstructive pulmonary disease. Dr. Stefanini completed the attending physician's report on April 7, 2000 listing the employee's federal duties. He stated that the direct cause of death was acute myocardial infarction due to atherosclerotic coronary artery disease. Dr. Stefanini listed chronic obstructive pulmonary disease as a contributing cause of death. He checked "no" to indicate that the employee's death was not due to his employment, but added:

“[B]ut chronic obstructive pulmonary disease was a significant contributory factor as the hypoxia related to chronic lung disease decreased the chances of the deceased to survive the fatal heart attack.”

The Office referred appellant's claim with a statement of accepted facts to the Office medical adviser on June 14, 2000. In a report dated June 19, 2000, the Office medical adviser noted that the Office had not accepted any heart disease as being caused, aggravated, accelerated or precipitated by factors of the employee's federal duties. He opined that the employee's death due to cardiac arrest, acute myocardial infarction and atherosclerotic coronary artery disease was not related to the lung condition accepted by the Office.

By decision dated June 29, 2000, the Office denied appellant's claim finding that there was no rationalized medical opinion evidence supporting that the employee's death was caused or contributed to by his accepted employment injury.

On July 5, 2000 appellant requested an oral hearing. Appellant and her son testified at the oral hearing on October 25, 2001. By decision dated March 18, 2002, the hearing representative affirmed the Office's June 29, 2000 decision finding that appellant had not submitted the necessary medical opinion evidence to establish a causal relationship between the employee's accepted lung condition and his death due to cardiac arrest.

On appeal the Board issued an order remanding case on July 25, 2003 requiring the Office to reassemble the record and issue an appropriate decision.<sup>1</sup> On April 7, 2004 the hearing representative again affirmed the Office's June 29, 2000 decision finding that the medical evidence was not sufficient to meet appellant's burden of proof.

### **LEGAL PRECEDENT**

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. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.<sup>2</sup>

An award of compensation may not be based on surmise, conjecture or speculation. The mere showing that an employee was receiving compensation at the time of his or her death does not establish that the death was causally related to the condition resulting from the employment. The receipt of compensation for total disability for work is not proof of the fact nor sufficient to raise a presumption of a causal relation between an employee's death and an accepted injury. Such an issue is medical in nature and must be resolved through probative medical opinion evidence.<sup>3</sup>

### **ANALYSIS**

In support of her claim, appellant submitted a form report completed by Dr. Stefanini dated April 7, 2000. He stated that the direct cause of death was acute myocardial infarction due to atherosclerotic coronary artery disease. Dr. Stefanini listed chronic obstructive pulmonary disease as a contributing cause of death. He checked "no" to indicate that the employee's death was not due to his employment, but added that chronic obstructive pulmonary disease was a significant contributory factor to the employee's death as the hypoxia related to chronic lung disease decreased his chances to survive the fatal heart attack. This report is not sufficient to meet appellant's burden of proof as Dr. Stefanini did not provide a clear statement of the cause and effect relationship between the employee's accepted condition of aggravation of chronic bronchitis and the acute myocardial infarction that caused his death. Although Dr. Stefanini opined that the employee might have had a better chance of surviving his fatal myocardial infarction on February 20, 2000 if not for his chronic lung disease, he did not provide reasoning explaining how or why the employment-related lung disease in any way caused or contributed to the employee's death. As Dr. Stefanini's opinion is not supported by medical rationale, it is speculative and not sufficient to meet appellant's burden of proof.

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<sup>1</sup> Docket No. 02-1502 (issued July 25, 2003).

<sup>2</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

<sup>3</sup> *Bertha J. Soule (Ralph G. Soule)*, 48 ECAB 314, 317 (1997).

**CONCLUSION**

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between the employee's accepted employment injury and his death, and has therefore not met her burden of proof to establish her claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 7, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member