

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCY HANLEY (JOHN F. HANLEY) and U.S. POSTAL SERVICE,
POST OFFICE, Chelsea, MA

*Docket No. 03-2115; Submitted on the Record;
Issued January 26, 2004*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly rescinded acceptance of the deceased employee's claim; and (2) whether appellant established that the employee's death was causally related to his federal employment.

On March 30, 1982 the employee, then a 62-year-old administrative clerk, filed a notice of occupational disease alleging that he suffered a stroke on October 30, 1980 due to stress in his federal employment. The Office accepted the claim for a work-related stroke.¹ The Office paid appropriate compensation for total disability from March 20, 1981 until the employee's death on November 19, 1998.

On April 24, 2000 appellant filed a Form CA-5 claim for death benefits. She provided a copy of the employee's death certificate, signed by Dr. Gerald Smetana, a Board-certified internist. The immediate cause of the employee's death was listed as acute renal failure due to congestive heart failure and sleep apnea. Other contributing conditions contributing to death were listed as diabetes mellitus and stroke.

Appellant submitted a July 17, 2000 report from Dr. Smetana, who related that, in the years preceding his death, the employee had suffered from sleep apnea primarily due to obesity. He explained that, while the stroke of 1980 was not the immediate cause of the employee's

¹ The Office based its acceptance on a February 9, 1980 report prepared by Dr. Joseph R. Dorsey, an impartial medical specialist and Board-certified neurologist, who opined that appellant's stress was related to his history of angina, hypertension and stress at work in trying to prepare a report under deadline. Dr. Dorsey explained that stress increases hypertension, which then constricts blood vessels and diminishes the flow of blood to the brain and results in a progressive type of stroke, which the employee experienced from October 27 to 30, 1980. The record reflects that the employee first described having difficulty holding his pencil on October 27, 1980 and experienced episodes of drooling, right arm pain and left leg weakness over the next few days. He was hospitalized on October 30, 1980 with a diagnosis of a thrombosis lesion in his brain resulting in right hemiparesis and dysarthria secondary to basilar insufficiency and hypertension.

death, it was a potential contributing factor in that the stroke impaired the employee's upper respiratory and throat muscles and aggravated his obstructive sleep apnea. He opined that the employee's death was ultimately caused by acute renal failure and congestive heart failure, which were complicated or aggravated by sleep apnea.

The Office sent a copy of the medical record to Dr. Alexander B. Rimalovski, a Board-certified neurologist, for a second opinion evaluation. In a report dated August 23, 2000, Dr. Rimalovski opined that the employee's death was not employment related because he did not feel that the accepted stroke of 1980 was causally related to work factors. In a decision dated October 3, 2000, the Office denied appellant's claim for death benefits. Appellant requested a hearing on October 6, 2000. In a March 14, 2001 decision, an Office hearing representative vacated that Office's October 3, 2000 decision and remanded the case for further medical development.²

In a March 14, 2001 letter, the Office wrote to Dr. Rimalovski requesting a supplemental opinion as to whether or not the accepted 1980 stroke in any way contributed to the employee's death. On April 6, 2001 Dr. Rimalovski reported that the stroke sustained in 1980, as well as the congestive heart failure and renal failure that were the immediate cause of death, were all complications of preexistent risk factors including hypertension and coronary artery disease. He reiterated that he did not consider the accepted stroke to be work related and further noted that sleep apnea was a contributory factor in the employee's death.

In a decision dated May 4, 2001, the Office held that the opinion of Dr. Rimalovski was entitled to probative weight and, therefore, denied compensation, finding that appellant had failed to meet her burden of proof in establishing a causal relationship between the employee's death and his work injury. Following a hearing, the Office's May 4, 2001 decision was vacated by an Office hearing representative, who determined that a conflict existed in the record between Dr. Smetana and Dr. Rimalovski.

The Office referred a copy of the medical record and a statement of accepted facts, to Dr. G. DeAndrea, a Board-certified neurologist, for an impartial medical evaluation. In a report dated March 13, 2002, Dr. DeAndrea summarized the medical record, noting that the employee had obesity, congestive heart failure and sleep apnea prior to his stroke in 1980. He acknowledged that stress could exacerbate hypertension but stated that the employee's stroke in 1980 was not caused by stress or work factors. He agreed that the employee died from complications of renal failure as a result of severe, low cardiac output and congestive heart

² The Office hearing representative noted that Dr. Rimalovski did not answer the question posed to him, which was whether the employee's death was in any way related to his accepted work-related stroke. Rather, the physician stated that the death was not work related because the physician did not agree that the stroke was precipitated by work factors. The Office hearing representative remanded the case for a supplemental opinion from Dr. Rimalovski, that specifically addressed the issue causal relationship between the employee's death and his accepted stroke in 1980.

failure complicated by other major medical problems, including hypertension, diabetes and severe sleep apnea. Dr. DeAndrea stated:

“Although his first stroke in October 1980 was reportedly accompanied by dysphagia and he underwent speech pathology and swallowing training [during his hospital stay] and, therefore, may have had worsened hypotonia and/or dyscontrol of pharyngeal musculature, further exacerbating his apnea (again uncertain of onset), neither his initial stroke nor subsequent strokes are felt to be the proximate cause of his death.”

On June 13, 2002 the Office wrote to Dr. DeAndrea and noted that it had accepted as factual that the employee’s stroke of October 1980 was work related. The physician was asked to provide a reasoned opinion as to whether that stroke in any way contributed to the employee’s death. In a July 5, 2002 supplemental report, Dr. DeAndrea expressed his disagreement with the February 9, 1990 report of Dr. Dorsey, who originally stated that work-related stress was the precipitating cause of the employee’s October 30, 1980 stroke. Dr. DeAndrea noted that acute stress could cause a rise in blood pressure, but that cerebrovascular autoregulation maintained cerebral blood flow except at times of extreme hypertension or hypotension. He stated: “if elevated blood pressure were the precipitating cause of [the employee’s] stroke, his blood pressure would likely be higher in the even more stressful emergency department, where his blood pressure was determined to be 160/100, not high enough to overcome cerebrovascular autoregulation.” Dr. DeAndrea further noted that “the records reflect a clinical course suggesting crescendo transient ischemic attack/stroke in evolution,” which was consistent with progression of atherosclerosis due to the long-standing risk factors of ischemic heart disease, hypertension, diabetes and high cholesterol. He concluded that the 1980 stroke occurred by temporal coincidence but was not work related. Dr. DeAndrea opined that Dr. Dorsey’s opinion should be discounted as to causal relationship.

In a decision dated July 30, 2002, the Office rescinded its acceptance of the 1980 stroke, finding that the weight of the evidence was represented by Dr. DeAndrea’s report. Dr. DeAndrea found that the accepted condition was not causally related to appellant’s federal employment duties on or prior to that date. The Office’s July 30, 2002 decision further denied the claim for survivor benefits.

Appellant requested a hearing, which was held on April 30, 2003. In a decision dated July 29, 2003, an Office hearing representative affirmed the Office’s July 30, 2002 decision.

The Board has upheld the Office’s authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees’ Compensation Act and where supported by the evidence, set aside or modify a prior decision and issue a new decision.³ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁴ It is well established that, once the Office accepts a claim, it has the burden of justifying termination

³ *Eli Jacobs*, 32 ECAB 1147 (1981).

⁴ *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.⁵ In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁶

Evidence to rescind acceptance must be substantial and probative positive evidence confirming the fact that the injury did not occur as alleged. In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

The Board finds that the Office properly rescinded acceptance of appellant's claim based on the report of the impartial medical specialist, which established that the employee's stroke on October 30, 1980 was not work related.

In this case, a conflict occurred in the medical opinion when the Office obtained a report from Dr. Rimalovski, who indicated that the employee's stroke was not caused by employment factors and, therefore, his death due to complications from the stroke was not work related. This opinion was found to conflict with the opinion of Dr. Smetana, that the accepted stroke contributed to the employee's death. In light of the conflict in the medical evidence, the Office properly referred the medical record to an impartial medical specialist for consideration.⁸ In a well-reasoned opinion based on accurate factual and medical references, Dr. DeAndrea disputed the original findings of Dr. Dorsey that stress at work had precipitated the employee's stroke on October 30, 1980. Dr. DeAndrea noted that, while stress can cause elevations in blood pressure, the employee did not demonstrate a sufficiently high blood pressure reading on October 30, 1980 to suggest that his stroke was work related. The Board finds that Dr. DeAndrea's evaluation of the blood pressure readings to be reasoned and persuasive. His opinion is of probative value in establishing that the employee's stroke was due to preexisting hypertension and not work-related stress. Accordingly, the Board will affirm the Office's decision to rescind acceptance of the 1980 stroke as employment related based on Dr. DeAndrea's rationalized opinion and his status as the impartial medical specialist.

The Board also finds that appellant is not entitled to survivor benefits.

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

⁵ See 20 C.F.R. § 10.610.

⁶ *Alice M. Roberts*, 42 ECAB 747 (1991). See *Belinda R. Darville*, 54 ECAB ____ (Docket No. 02-1183, issued June 26, 2003).

⁷ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Manuel Gill*, 52 ECAB 282 (2001).

⁸ Section 8128 provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. See 5 U.S.C. § 8128; *Theresa Goode*, 51 ECAB 650 (2000).

relationship based on a complete factual and medical background.⁹ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.¹⁰

In this case, the Office credited the opinion of Dr. DeAndrea that the employee's death was not caused or contributed by the 1980 stroke. Based on the Board's finding that the Office properly rescinded acceptance of the claim, appellant is not entitled to compensation for survivor benefits. For the reasons noted above, Dr. DeAndrea's opinion that the employee's stroke was not work related is dispositive on the issue of the causation of the employee's death. Dr. DeAndrea's opinion is entitled to the special weight accorded an impartial medical specialist and his opinion establishes that the employee's death was not due to complications from a work-related stroke.

The decision of the Office of Workers' Compensation Programs dated July 29, 2003 is hereby affirmed.

Dated, Washington, DC
January 26, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁹ *Jacqueline Brasch*, 52 ECAB 252 (2001).

¹⁰ *Id.*; see also *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).