



an ambulance was called. The employee was taken by ambulance to a hospital where he was pronounced dead. The cause of death was reported as arteriosclerotic cardiovascular disease.<sup>1</sup>

On August 13, 2002 appellant, the employee's spouse, filed a claim for death benefits. She submitted a copy of a wrongful death suit filed under the Federal Torts Claims Act, 28 U.S.C. § 1346, alleging that the employee was working overtime and had made several requests to his supervisor to go home when he became severely ill. She stated that the employee had an apparent heart attack and died shortly thereafter.

In an April 10, 2003 letter, the employing establishment contended that, although the employee experienced a heart attack while at work, it was not caused by his employment. Henry Delgado, Supervisor Distribution Operation (SDO) denied appellant's claim that the employee had made several requests to go home. In a January 28, 2002 statement, Mr. Delgado noted that he had approached the employee while he was working and asked him if he would like to stay. "[The employee] stated that he was not really feel well and I told him that it was OK and not to worry about it. He said that he would stay anyway. I asked him 'Are you sure?' and he replied that he was and that he would stay to help us out." Mr. Delgado advised that "[a]t no time on January 25, 2002 did [the employee] approach me and inform me that he wanted to go home because he was not feeling well." A January 26, 2002 statement from Perry Lovelady, a supervisor, stated that "a mail processor from Tour-3 OCR Operations [the employee] was assigned to work overtime," which he did without taking an after tour break. Mr. Lovelady noted that the employee stated that he did not feel well and had advised his supervisor before he was assigned. Mr. Lovelady told the employee to slow down as he was working really fast to try and complete the mail.

By decision dated July 17, 2003, the Office denied appellant's claim on the basis that there was no evidence, factual or medical, to establish that the collapse and death of the employee was caused by factors of his federal employment.

On July 22, 2003 appellant requested an oral hearing, which was held on July 15, 2004. Her attorney asserted that on the evening of January 25, 2002, the employee had "asked to be allowed to go home and that was denied." Counsel noted that there was no prior history of heart disease and asserted that the employee's heart attack and subsequent death were caused by workplace stress. He stated that the stress was due to the employee's work ethic as he would rarely take off work or use leave.

Appellant testified about the employee's health, noting that he had high blood pressure, but that it had dropped after dietary changes. She testified that two people had telephoned her after the employee's death and told her that they had heard that he asked three times to go home before he collapsed. She noted that he was a dedicated employee and that his work ethic was such that he must stay at work "or else." Copies of medical evidence, including those previously of record, were submitted. The hospital records from January 26, 2002 diagnosed cardiac arrest.

In a July 13, 2004 statement, the employing establishment reiterated its contention that there was no causal relationship between the employee's death and his federal employment and

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<sup>1</sup> The employee was noted to have been a smoker and to have had high blood pressure and acid reflux disease.

that the employee had been advised that it was okay to leave if he was not feeling well. In a July 13, 2004 statement, Mr. Delgado noted that the employee was a very hard worker who needed minimal supervision. He stated that "I instructed [the employee] to stay overtime that evening. Mr. Delgado looked at me with a distressed look on his face but stated that he would stay. I asked him what was wrong because he did not look well. He confirmed to me that he was not feeling well. I told him not to worry about it and that I would not require him to stay." Mr. Delgado was filling out paperwork at his desk when the employee came back and told him that he would stay. Mr. Delgado asked the employee if he was sure and he said that he would be all right. He never denied an employee the right to go home when informed that the employee was sick and could not stay at work.

By decision dated September 8, 2004, the Office hearing representative affirmed the July 17, 2003 decision, finding that appellant had not established compensable factors of employment. The hearing representative found that the medical evidence did not relate the employee's death to his employment.

### **LEGAL PRECEDENT**

A claimant has the burden of proof to establish that an employee's death occurred while in the performance of duty. The Federal Employees' Compensation Act provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. However, an award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation or on a claimant's belief that the employee's death was caused by his or her employment.<sup>2</sup>

To establish her claim that the employee sustained stress in the performance of duty, which precipitated his coronary insufficiency, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that his death was due to or aggravated by an emotional reaction; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his death.<sup>3</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>4</sup>

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of

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<sup>2</sup> *Jimmy Zenny (Ingrid Hall Zenny)*, 54 ECAB \_\_\_\_ (Docket No. 02-1615, issued May 14, 2003).

<sup>3</sup> *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *See Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 3.

workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>5</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>6</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>7</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.<sup>8</sup>

### ANALYSIS

Appellant alleged that the employee's heart attack and death were caused by stress at the employing establishment. She alleged that the employee became ill and had requested to leave but was required to stay at work. Appellant further alleged that the employee's work life was stressful as he was dedicated to the point where he worked very hard and took little time off.

Appellant's allegations pertaining to the employee's assignment of work duties<sup>9</sup> and denial of leave<sup>10</sup> relate to administrative functions of the employer and are not considered compensable factors of employment absent evidence of error or abuse by the employing establishment.<sup>11</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>12</sup> In this case,

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<sup>5</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>6</sup> *See Barbara Bush*, 38 ECAB 710 (1987).

<sup>7</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>8</sup> *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

<sup>9</sup> *James W. Griffin*, 45 ECAB 774 (1994); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>10</sup> *John Polito*, 50 ECAB 347, 348 (1999).

<sup>11</sup> *Kathleen D. Walker*, *supra* note 9.

<sup>12</sup> *See Martha L. Watson*, *supra* note 4.

appellant has not submitted any witness statements or other corroborating evidence to document her allegations that the employee's supervisor erred or acted abusively in assigning the employee overtime work on January 25, 2002. Mr. Delgado noted that he had asked the employee several times if he was sure he wanted to work the overtime assignment and the employee indicated that he would stay. The record establishes that, although the employee told his supervisor that he was not feeling well, the supervisor informed the employee that he could stop the work assignment. However, he decided to continue working. Appellant has not submitted any factual evidence to substantiate her contention that the employee had requested to leave work because he was feeling ill and that such request was denied. There is no indication that the employee requested sick leave from Mr. Lovelady, the other supervisor. The evidence does not substantiate that the employee's supervisor erred or acted abusively in the assignment of work and the evidence does not support appellant's contention that the employee had requested to leave work. Appellant has failed to establish a compensable factors of employment in this regard.

Appellant further asserted that the employee had a good work ethic and took little time off. In his statements, the employee's supervisor confirmed that the employee was a hard worker who needed minimal supervision. He noted, however, that the overtime assignment was strictly voluntary and not a requirement of the position. However, as this aspect relates to the performance of the employee's regular and specially assigned duties, it constitutes a compensable factor of employment.<sup>13</sup> In this case, the evidence of record reflects that the employee was working at his overtime assignment at the time he collapsed. Regardless of whether employee volunteered to do the overtime work, the record supports that the employee worked overtime on January 26, 2002.<sup>14</sup> Appellant has, therefore, established a compensable factor of employment.

However, the medical evidence of record does not support a causal relationship between the employee's death and the work he was performing on January 26, 2002. The medical evidence indicates that the employee was a smoker, that he had high blood pressure and history of acid reflux. The official cause of death was noted as arteriosclerotic cardiovascular disease. There is no medical evidence of record which addresses how the employee's specific duties on January 26, 2002 either caused or contributed to his death due to arteriosclerotic cardiovascular disease. The medical evidence of record is insufficient to establish that the employee's death was due to his federal employment activities on that date.<sup>15</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that the employee's death was causally related to compensable factors of his federal employment.

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<sup>13</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>14</sup> *See Donna J. DiBernardo*, 47 ECAB 700, 704 (1996).

<sup>15</sup> *See Lillian Cutler*, *supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 8, 2004 is affirmed.

Issued: April 8, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member