

Office referred the case file and a statement of accepted facts to Dr. Ronald R. Wade, a Board-certified neurologist, for resolution of the conflict. On October 8, 2003 Dr. Wade found, as follows:

“It is my opinion that [the employee’s] death was not related to the work-related condition of a cerebrovascular accident that occurred on September 11, 1974. A cerebrovascular accident, by its very nature (almost by definition) occurs suddenly, it then stabilizes, and it remains as a stable lesion. The fact that it is associated with seizures does not necessarily indicate progression, but rather a usual process of healing and stability provided by the development of the supporting cells (glia) of the nervous system.

“He had multiple health factors that are almost universally recognized as being associated with increased risk of cerebral atherosclerosis. These risk factors included diabetes mellitus, which had been established prior to his stroke on September 11, 1974, hypertension, and hyperlipidemia. While the stroke of September 11, 1974, was a manifestation of the cerebral atherosclerosis, I do not believe that one could impugn that particular event with his ultimate demise.

“I do not believe, for the above reasons, that his cerebrovascular accident occurring 28 years ago contributed to his demise on September 29, 2002. It was a reflection of a generalized state of cerebral arteriosclerosis but in and of itself was a stable lesion and did not contribute to his death.

“It is not possible to establish that [the employee’s] CVA was the main factor in his death. The diffuse cerebral arteriosclerosis, diabetes, hypertension, and hyperlipidemia were ultimately most responsible. In an individual with cerebral arteriosclerosis, the stress of a cholecystectomy that was made necessary by the cholelithiasis was probably the most important precipitant in his demise.

“It is simply untenable that a cerebrovascular accident occurring 28 years before his death could in any way be blamed for his ultimate demise. He had multiple cerebral infarcts producing a multi-infarct dementia. Furthermore, the coronary artery disease may well ultimately have been responsible for his death. The diabetes mellitus, hypertension, and hyperlipidemia were responsible for both the coronary arteriosclerosis as well as the cerebrovascular occlusive disease.”

In a decision dated February 2, 2004, the Office denied appellant’s claim for benefits on the grounds that the weight of the medical opinion evidence, which rested with Dr. Wade, did not support that the employee’s death was causally related to his employment-related cerebrovascular accident on September 11, 1974.

In a decision dated March 4, 2004, an Office hearing representative affirmed the denial of appellant’s death benefits claim.

LEGAL PRECEDENT

Section 8133 of the Federal Employees' Compensation Act provides that a widow may receive compensation if the employee's death results from an injury sustained in the performance of duty.¹ 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 such an injury. This burden requires the claimant to submit 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.²

Section 8123(a) of the Act provides in part: "If there is 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."³

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

ANALYSIS

The Office referral physician, Dr. Steiman, disagreed with the employee's physician, Dr. Darr, on whether the employee's death was causally related to his employment-related cerebrovascular accident on September 11, 1974. The Office properly referred the case file to Dr. Wade, an impartial medical specialist, for resolution of the conflict under section 8123(a) of the Act.

The Office provided Dr. Wade with the employee's entire case file and with a statement of accepted facts so that he could base his opinion on a complete and accurate factual and medical history. After reviewing the record, Dr. Wade concluded that the employee's death was not related to the cerebrovascular accident on September 11, 1974, and he offered medical rationale for his opinion. He pointed to the nature of cerebrovascular accidents and to the stability of the lesions. Dr. Wade also pointed to multiple health factors that are almost universally recognized as being associated with increased risk of cerebral atherosclerosis. He explained that the stroke of September 11, 1974 was not a cause of death 28 years later but merely a reflection of the employee's diffuse state of cerebral arteriosclerosis. It was the underlying diabetes mellitus, hypertension and hyperlipidemia that were ultimately responsible for his demise, with the stress of a cholecystectomy probably the most important precipitant.

¹ 5 U.S.C. § 8133. Section 8134 of the Act provides that if death results from an injury sustained in the performance of duty, the United States shall pay funeral and burial expenses up to \$800.00 and may transport the body to the employee's home or last place of residence. *Id.* at § 8134.

² *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

³ 5 U.S.C. § 8123(a).

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The Board finds that Dr. Wade's opinion is based on a proper factual and medical background, is one of reasonable medical certainty and is sufficiently well rationalized that it must be accorded special weight in resolving the conflict under section 8123(a) of the Act. His opinion constitutes the weight of the evidence and establishes that the employee's death was not causally related to his cerebrovascular accident on September 11, 1974. For this reason, the Board finds that appellant has not met her burden of proof to establish that she is entitled to benefits. The Board will affirm the denial of her claim.

CONCLUSION

Appellant has not met her burden of proof to establish that the employee's death was causally related to his employment-related cerebrovascular accident on September 11, 1974. The weight of the medical opinion evidence, which rests with the impartial medical specialist, negates a causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board