United States Department of Labor
Employees' Compensation Appeals Board

DANIEL J. FLAHERTY, Appellant (Claiming as widower of JAQUELINE A. FLAHERTY)	)	
and	)	**Docket No. 04-2247** **Issued: June 2, 2005**
DEPARTMENT OF AGRICULTURE, AGRICULTURAL STABILIZATION & CONSERVATION SERVICE, Washington, DC, Employer	)	

Appearances:
Daniel J. Flaherty, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On September 14, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated August 25, 2004, which rejected his claim for widower's benefits finding that the death of the employee was not causally related to her accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he is entitled to death benefits for the employee's death, his wife, causally related to factors of her federal employment.

FACTUAL HISTORY

This is appellant's third appeal before the Board related to this case. In the first appeal, the Board reversed the September 11, 1998 decision of the Office finding that there was sufficient relevant and credible evidence for the Office to further develop the case record for compensable factors and determination of whether these factors were causally related to the employee's disability. The facts and circumstances of the case are set forth in this decision and are hereby incorporated by reference.[1]

The employee died on May 14, 1999. On June 18, 1999 the Office accepted the employee's claim for chronic post-traumatic stress disorder due to harassment by a supervisor. On February 11, 2002 appellant filed a Form CA-5 claim for death benefits alleging that the employee's death on May 14, 1999 was causally related to stressful factors of her federal employment. The Office denied the claim on October 1, 2002 and a hearing representative affirmed the denial on February 5, 2003.

In the second appeal, the Board found that the opinions of the employee's treating physician, Dr. Philip Volastro, a Board-certified internist and rheumatologist, were at variance with the opinions of the second opinion specialist, Dr. C. Gordon Hale, a Board-certified cardiologist, such that there existed a conflict in medical opinion evidence, regarding the issue of whether the employee's death was employment related, which had to be resolved before this case could be decided. The follow-up facts and circumstances of the case are set forth in the second Board decision and are hereby incorporated by reference.[2]

Upon remand the Office was directed to refer the employee's records to an appropriate medical specialist for an opinion on what the direct cause of the employee's death was and what the contributory causes of death were, if any.

On June 17, 2004 the Office referred the relevant case record to Dr. Ellis M. Fribush, a Board-certified cardiac disease specialist, with a statement of accepted facts and specific questions that needed resolution.

By report dated July 20, 2004, Dr. Fribush reviewed the employee's file, the long history of cardiovascular disease and the history of medical/surgical interventions and he answered the questions as follows: The employee's death was due to congestive heart failure caused by severe coronary arteriosclerosis, causing diffuse coronary insufficiency and a myocardial infarction. He opined that the employee had multiple risk factors for early onset of cardiovascular disease. The employee had a strong family history, had hypertension and hyperlipidema and smoked one to two packs of cigarettes daily even after multiple cardiovascular events. These were all major contributing factors to the employee's cause of death. Dr. Fribush opined that the employee's chronic stress problem had little, if any, causation in the occurrence of her coronary artery

[1] Docket No. 97-150 (issued December 3, 1998). On April 17, 1992 the employee, then a 49-year-old program assistant, filed a claim for aggravation of angina, which she attributed to a heavy work load and aggravation by her supervisor.

[2] Docket No. 03-867 (issued May 19, 2004).

disease. He indicated that he knew of no reliable medical study that accurately correlated the relation of stress to the onset and advancement of coronary artery disease. Dr. Fribush noted that there were physicians who believe that there is a strong relationship; however, he believed that, if there was a relationship, it would be a very weak one. Dr. Fribush opined that this was especially true in this type patient whose risk factors were very great and although two of the risk factors, hyperlipidemia and hypertension, were positively modified by medical treatment, the two most important factors, heredity and cigarette smoking were uncontrolled.

By letter dated August 5, 2004, the Office requested clarification from Dr. Fribush on whether he believed that the deceased employee's work-related stress condition contributed to her death and how and why such a relationship would occur.

In an August 8, 2004 clarification, Dr. Fribush opined that the employee had serious accelerated general arteriosclerosis affecting many organ systems, that one of her most important risk factors, namely cigarette smoking, was uncontrolled and that the disease advanced inexorably until she died on May 14, 1999 with congestive heart failure. He opined that the employee's work stress situation, as outlined in the statement of accepted facts, did not play a significant role in the advancement of her generalized arteriosclerosis, which culminated in her death due to congestive heart failure. He further noted that this type of accelerated arteriosclerotic disease usually has a strong genetic connection which was difficult to modify significantly.

By decision dated August 25, 2004, the Office rejected appellant's widower claim for compensation for the employee's death, finding that appellant did not submit medical rationale that supported this hypothesis. The Office found that the conflict in medical opinion evidence was resolved by the well-rationalized medical opinion of the impartial medical specialist, Dr. Fribush, which established that the employee's work stress was not due to her accepted work-related post-traumatic stress disorder.

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 her employment. This burden includes the necessity of furnishing medical opinion evidence addressing a cause and effect relationship based on a complete factual and medical background.[3] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.[4]

The Federal Employees' Compensation Act,[5] 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. In

[3] *Carolyn P. Spiewak* (*Paul Spiewak*), 40 ECAB 552 (1989).

[4] *Kathy Marshall* (*Dennis Marshall*), 45 ECAB 827 (1994).

[5] 5 U.S.C. § 8123(a).

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 the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual and medical background, must be given special weight.[6]

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical evidence and that opinion requires clarification, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.[7]

ANALYSIS

The Board finds that in this case the weight of the medical evidence is constituted by Dr. Fribush's well-rationalized medical report, which was based upon an accurate factual and medical background, considered the finding upon examination and opined with sufficient medical rationale that the two most important risk factors in causing the employee's coronary artery disease were heredity and cigarette smoking, which were uncontrolled, followed by hypertension and hyperlipidemia. Dr. Fribush opined that, if there was a connection between the employee's stress and the advancement of coronary artery disease it was slight and not supported by the medical literature. After the Office requested clarification from Dr. Fribush, he replied that appellant's accelerated general arteriosclerosis affected many organ systems but that the most important risk factors were cigarette smoking, which was uncontrolled and the inexorable advancement of the disease until the employee died on May 14, 1999. He opined that the employee's work stress situation did not play a significant role in the advancement of her generalized arteriosclerosis culminating in her death due to congestive heart failure. Dr. Fribush noted that this type of accelerated arteriosclerotic disease had a strong genetic connection which was difficult to modify.

In situations where there are opposing medical reports of virtually equal weight and rationale, the issue was properly referred to an impartial medical specialist, Dr. Fribush, for the purpose of resolving the conflict. The Office secured an opinion from Dr. Fribush, which required further clarification and the Office properly requested a supplemental report which corrected the defect in the original report.[8] As the defect in Dr. Fribush's report was clarified and was sufficiently well rationalized and based upon a proper factual and medical background, it must be given special weight.[9] Dr. Fribush's report constitutes the weight of the medical evidence on the issue of causal relationship. As the weight of the medical evidence establishes that the employee's death due to congestive heart failure was not related to her work stress, there is no causal relationship between her death due to congestive heart failure and factors of her federal employment.

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[6] *See Alice J. Tysinger*, 51 ECAB 638 (2000).

[7] *See Roger W. Griffith*, 51 ECAB 491 (2000).

[8] *Id*.

[9] *See Alice J. Tysinger*, *supra* note 6.

Therefore, appellant has not met his claim to establish his entitlement to death benefits, as the weight of the medical evidence demonstrates that employee's death was not related to factors of her employment.

CONCLUSION

The Board finds that appellant's claim for benefits for the death of his wife by congestive heart failure is not compensable under the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2004 is affirmed.

Issued: June 2, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member