United States Department of Labor
Employees' Compensation Appeals Board

ESTELA KANADE, Appellant, claiming as widow of ASHOK KANADE	)	
and	)	**Docket No. 05-862**
	)	**Issued: March 21, 2006**
DEPARTMENT OF VETERANS AFFAIRS, GULF COAST VETERANS ADMINISTRATION HEALTH CARE SYSTEM, Biloxi, MS, Employer	)	

Appearances:
Mary E. Pilcher, Esq., for the appellant
Jim C. Gordon, Jr., Esq., for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 2, 2005 appellant filed a timely appeal of a November 24, 2004 decision of the Office of Workers' Compensation Programs that found her husband's death was not causally related to his employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant's husband's death on August 2, 2002 was causally related to his employment.

FACTUAL HISTORY

On August 9, 2002 appellant filed a claim for compensation for the death of her husband (hereinafter the employee) at the age of 57 on August 2, 2002 due to an acute myocardial

infarction in a conference room at the employing establishment during working hours. A death certificate listed the immediate cause of death as acute massive myocardial infarction and the underlying cause as coronary artery disease.

In response to the Office's request for a description of the factors of employment to which she attributed the employee's death, appellant stated that the employee had a multitude of responsibilities as a cardiologist at the employing establishment since 1982 and especially since he became its chief of medicine on March 25, 2001. She stated that he attended many meetings, did employee performance appraisals, made referrals for consultations, handled the employing establishment's accreditation and called patients who had complaints. He was on call at night and for emergencies, worked about 12 hours a day, rarely used leave, brought work home and worked on weekends. She noted that six weeks before his myocardial infarction, the employee had chest pain, that he was sick during the three days before his death and that he had no known prior history of angina, hypertension, heart attack, bypass surgery or coronary artery disease.

In an August 2, 2002 death summary, Dr. Albert Letcher Kline, a Board-certified surgeon at the employing establishment, stated that on that date, after giving a short talk in the conference room, the employee lost consciousness at about 1:15 p.m., slumped into his chair and was found to have no pulse. He described the unsuccessful attempts to resuscitate the employee for one and one-half hours, whereupon he was declared dead at 2:47 p.m. In an October 15, 2002 report the employee's supervisor, Dr. Gregg S. Parker, a Board-certified otolaryngologist, stated that the employee often worked 10 hours per day and would come in on weekends, that he spent about 70 percent of his time performing management and administrative duties and that he had never expressed concerns about undue stress. Dr. Parker noted that earlier during the week of his death, the employee experienced a personal illness consisting of upper gastrointestinal symptoms including indigestion and pain, for which he used a day of sick leave on Monday and left at noon on Tuesday. On the day of his death, the employee's duties were consistent with his regular assignment, with four meetings in the morning and the lunch meeting in the conference room. He concluded that the employee suffered a myocardial infarction early in the week that went untreated, that on Friday the infarction extended resulting in his death and that there was no evidence to substantiate that the myocardial infarction was caused by work-related events. In a November 4, 2002 report, Dr. Parker reviewed appellant's October 11, 2002 statement and noted that while the employee was required to be available seven days a week, the responsibilities of the chief of medicine had steadily decreased during the prior few years. The supervisor of each section was responsible for day-to-day operations and the chief of medicine responsible for oversight of operations and the quality of service. He continued that the employee had a three-person administrative staff and had risk factors of age, light smoking, type A personality and a sedentary lifestyle.

By decision dated December 11, 2002, the Office found that the medical evidence was not sufficient to establish the employee's death was caused by his federal employment.

On January 3, 2003 appellant requested a review of the written record, contending that the extended work hours for over a year and a half and the intense demands of his jobs as cardiologist and chief of medicine were detrimental to the employee's health. She stated that he "awoke in the midst of the nights with anxieties, something unnatural for him and would get up and walk to seek relief." She submitted a list of the cardiology procedures the employee

performed each month of 2000, 2001 and 2002, his e-mails regarding attempts to hire a cardiologist and a nurse practitioner, employing establishment memoranda on the limit of the number of employees and treatment notes from the employee showing times they were prepared. She also submitted a statement from an employee of a chemical manufacturing facility stating that in a July 5, 2002 conversation, the employee told him his job was stressful and that he received little support. In a January 2, 2003 report, Dr. Hugo C. Nievas, a Board-certified cardiologist, stated that, based on a review of the employee's medical records, within a reasonable medical certainty, the stressful working conditions described in appellant's October 11, 2002 statement precipitated a massive heart attack that culminated in the employee's death. He concluded: "[I]t is my strong opinion that his death was consequentially related to the enormous responsibilities appointed him. These duties were both numerous and extremely demanding."

By decision dated June 20, 2003, an Office hearing representative found that the report from Dr. Nievas was not sufficiently rationalized to meet appellant's burden of proof, but was sufficient to require further development of the medical evidence. Pursuant to the hearing representative's decision, the Office, on July 30, 2003, referred the case record and a statement of accepted facts to Dr. Alan J. Schimmel, a Board-certified cardiologist, for a second opinion on the cause of the employee's death. The statement of accepted facts recited that the employee was responsible for the oversight of operations and quality of service provided through the delegated authority of his staff, that he was required to attend meetings and that he had a medical history of coronary artery disease.

In an August 14, 2003 report, Dr. Schimmel stated:

> "Despite the fact that the acute event occurred while the patient was at work, it is not necessarily work related. It is extremely unclear whether his long hours of employment were the precipitating cause. Apparently, this patient had warning symptoms for [six] weeks prior to his acute event, at which time he was having chest or abdominal discomfort and apparently did not seek medical attention. He had a history of tobacco use. His family history is not obtainable from the records that were presented to me. He apparently never underwent a physical examination and his blood pressure and lipid status are unknown to me. Blood work drawn at the time of his acute event, August 2, 2002, reveals elevation of the troponin level with normal total CPK as well as normal CPK cardiac isoenzyme. These blood tests are suggestive of recent, but not acute, myocardial injury. It seems probable from this data that the patient had sustained a prior myocardial event, continued to work and did not seek medical attention. He may have succumbed to an acute ventricular arrhythmia that was the ultimate cause of his demise. In any event, it seems unlikely that the patient's acute cardiac death was related to his federal employment. No EKG's [electrocardiograms] were performed, no autopsy was performed and the patient's body was cremated. The only data that are available were the cardiac enzyme assays that are suggestive of a recent but not acute myocardial event. The other available data suggest a heavy workload but no real complaints from the physician about excessive stress. Thus, despite the fact that [appellant] sustained sudden cardiac death while at work,

there is no objective evidence to substantiate that the episode was related to his duties at work."

By decision dated September 9, 2003, the Office found that the evidence did not establish that the employee's death was causally related to his employment.

On August 31, 2004 appellant requested reconsideration, contending that the statement of accepted facts did not accurately describe the employee's work activities, particularly the performance of dual duties as a cardiologist and chief of medicine, which continued until another cardiologist was hired in July 2002. She submitted a September 4, 2004 report from Dr. Nievas, concluding that "[the employee's] employment demands aggravated his health adversely and thus contributed to and precipitated his death." Dr. Nievas cited studies showing how prolonged mental stress was an independent risk factor and led to initiation and progression of coronary atherosclerosis and triggered coronary vasospasm. Dr. Nievas stated:

"As an administrator and a physician at the Biloxi VA [Veterans Administration] for [20] years, [appellant's] decisions had profound relevance to possible damage and hazard, both economic and for human life. During the [18] months prior to his death, the employing agency increased its work demands on [appellant] by failing to provide adequate staffing while demanding that he produce results. The prolonged exposure to this demanding, constraining and highly stressful working environment was particularly deleterious to [appellant] and initiated and contributed to his heart attack.

"[Appellant's] death was sudden. There was no medical evidence to support that this man, whose career was dedicated to the service of the VA hospital, ever had any history of heart disease. His only reported complaint of chest discomfort was six weeks prior to his death while at work. He had called the ER to be examined and was told they were too busy.

"Studies have shown that acute mental stress, particularly speech presentation, causes a surge in catecholamines prompting a coronary spasm, acute myocardial ischemia, fall in myocardial ejection fraction and arrhythmia. Numerous studies have shown that acute mental stress is a trigger to sudden cardiac death. [He] was tasked by his superiors to present a speech describing the contributions of his medical department at the VA Affiliated Partnership Council Meeting in front of the Keesler Air Force Base commander, university deans, chief of staff and service chiefs. [He] collapsed seconds after completing a speech. His medical records show that he was in ventricular fibrillation. [He] died of cardiac arrest sustained on duty at work.

"The VA Hospital system failed to provide adequate staffing and increased its work demands on [appellant] during the [18] months prior to his death. His superiors ignored his repeated requests for work relief. His only work relief came two weeks prior to his death when a cardiologist was finally hired. It is consequential that this prolonged work stress caused prolonged catecholamine surges and coronary endothelial damage, culminating in coronary spasm, plaque

rupture, myocardial infarction, arrhythmia and sudden death. [He] died while working, collapsing seconds after completing a speech.

"It is my medical opinion that [appellant's] death was indeed employment related. It is also my opinion that his cardiac condition was the result of an imposed workload that was excessive and demanded of him by the VA hospital. Inadequate staffing and time restraints forced [appellant] to work excessive hours under great duress with no hope for relief. This set of events was deleterious to his physical and mental health, contributing to and precipitating his untimely death."

By decision dated November 24, 2004, the Office found that there was no objective medical evidence of a causal relationship between the employee's death and factors of his employment.

LEGAL PRECEDENT

Appellant 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 rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[1] Section 8123(a) of the Federal Employees' Compensation Act states in pertinent 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."[2] Resolution of facts concerning working conditions is an Office adjudicatory function that may not be surrendered to a medical expert.[3]

ANALYSIS

The Board finds that there is a conflict of medical opinion on the question of whether the employee's death was causally related to his employment. Dr. Schimmel, a Board-certified cardiologist to whom the Office referred the case record for a second opinion, concluded in an August 14, 2003 report that it seemed unlikely that the employee's death was related to his employment and that there was no objective evidence to substantiate a causal relationship. Dr. Nievas, a Board-certified cardiologist, concluded in a September 4, 2004 report that the employee's employment demands, which he described, contributed to and precipitated his death. Dr. Nievas cited studies on the effect of stress on coronary conditions and explained how job stress, including that of making a speech immediately before his death, contributed to his cardiac condition and his sudden death.

[1] *Lois E. Culver*, 53 ECAB 412 (2002).

[2] 5 U.S.C. § 8123(a).

[3] *John A. Snowberger*, 34 ECAB 1262 (1983).

To resolve this conflict of medical opinion, the Office should refer the case record to an appropriate medical specialist for a reasoned opinion of whether factors of the employee's employment contributed to his death. Before such referral, the Office should augment its statement of accepted facts to include the number of hours the employee worked and to more completely describe his duties as a cardiologist and chief of medicine.[4] The Office should also further develop whether the employee had a medical history of coronary artery disease.

CONCLUSION

The Board finds that there is a conflict of medical opinion on the question of whether the employee's death was causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: March 21, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809 (June 1995) states, at paragraph 7, that the statement of accepted facts should cover all material facts and provide a complete picture of the claim and at paragraph 11, that the facts should be specific as to the number of hours worked over a particular period of time and present a vivid picture of the circumstances of a claim so that the reader will clearly understand them.