

Board found that the Office properly accepted that the employee sustained two compensable factors of employment: that he worked prolonged hours and that threats were made against him regarding the investigation of the Rattlesnake mine. The Board also found that appellant's regular job of investigating fatalities and carrying out his supervisory duties including investigating those employees he supervised were compensable factors under *Lillian Cutler*.² The Board, however, found that the weight of the medical evidence rested with the opinion of the Office referral physician, Dr. Barbara Connors, Board-certified in internal and occupational medicine, regarding whether the employee's death was caused by the compensable factors of his federal employment. It was noted that Dr. Robert E. Kessler, an attending Board-certified osteopath specializing in manipulative medicine, stated that the employee's coronary arteries were reported to be clear at the time they were harvested. While the record contained a pathology report regarding donor specimen number 55809, there was nothing to identify the surgical specimen as belonging to the employee. Dr. Irwin Hoffman Board-certified in internal medicine and cardiovascular disease, reviewed the employee's medical records at appellant's request. He advised that the employee's coronary arteries were not normal with evidence of severe triple vessel disease. However, Dr. Hoffman relied in part on the unidentified pathology report; therefore, his opinion was of diminished probative value. The law and the facts of the previous Board decision are incorporated herein by reference.

On December 5, 2005 appellant, through her attorney, requested reconsideration and submitted a November 2, 2005 report in which Dr. Kessler advised that he had reviewed a final pathology report dated June 15, 2001, which demonstrated that the employee had severe coronary atherosclerosis with the right coronary artery 90 percent occluded, the left anterior descending artery 80 percent occluded and the circumflex artery 60 percent occluded which was very significant. He stated that, in retrospect, his earlier opinion had been based on faulty information and was wrong, concluding that the employee had very significant atherosclerosis. A CryoLife, Inc. Nevada donor network procurement form, No. 55809, identified the donor as the employee. David M. Frank, a vice president with CryoLife, provided an affidavit dated October 20, 2005, in which he attested that the specimens for donor number 55809 were kept in the ordinary course of business at CryoLife and donor number 55809 was identified as the employee. He stated that the pathology report prepared by Pathworks Anatomic Pathology Laboratory for donor number 55809 referred to the employee.

By decision dated March 14, 2006, the Office denied modification of the prior decision. On April 12, 2006 appellant's attorney again requested reconsideration. In a March 31, 2006 report, Dr. Hoffman reiterated his opinion that the employee had coronary artery disease and an old inferior-posterior myocardial infarction at the time of his death. He opined that fatal arrhythmias could be precipitated by occupational stresses such as the death threats experienced by appellant. In a merit decision dated August 15, 2006, the Office again denied modification.

² 28 ECAB 125 (1976).

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ 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.⁴ However, an award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation or on appellant's belief that the employee's death was caused, precipitated or aggravated by his employment. The mere showing that the employee was receiving compensation for total disability at the time of death does not establish that the death was causally related to conditions resulting from the employment injury.⁵ 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 or her employment. This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁶

In the case of *Cutler*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable stress-related condition arising under the Act. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁸ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁹ To establish entitlement to benefits, the claimant must establish a factual basis for the claim by supporting allegations with probative and reliable evidence.¹⁰

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.¹¹ 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 employee's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical

³ 5 U.S.C. §§ 8101-8193.

⁴ *Id.* at § 8102(a).

⁵ See *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

⁶ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

⁷ *Supra* note 2.

⁸ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 2.

¹⁰ *Janice I. Moore*, 53 ECAB 777 (2002).

¹¹ See *Donna L. Mims*, 53 ECAB 730 (2002).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

Section 8123(a) of the Act provides that, 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.¹³

ANALYSIS

The Board finds that this case is not in posture for decision. As noted, the record establishes compensable employment factors. The Office must base its decision on an analysis of the medical evidence.¹⁴ Part of an appellant's burden of proof is the submission of rationalized medical opinion evidence establishing a causal relationship between the compensable employment factors and the employee's death.¹⁵ In analyzing the medical evidence of record, the Board finds that a conflict in medical opinion evidence exists between the opinions of appellant's consulting cardiologist, Dr. Hoffman and the Office referral physician, Dr. Connors, regarding whether the employee's death was caused or contributed to by the compensable factors of his federal employment. Both physicians are Board-certified yet had different opinions regarding the relationship between employment factors and the employee's death. Dr. Hoffman advised that the employee's coronary arteries were not normal with evidence of severe triple vessel disease. He discussed the compensable factors found by the Office and concluded that, to a reasonable degree of medical certainty, the job stresses accelerated the employee's coronary condition, making him increasingly likely to sustain coronary complications such as the ventricular fibrillation episode which caused his death. Dr. Connors, on the other hand, opined that smoking was an established cause of cardiac arrhythmias and stated that there was no medical documentation in the record to support that appellant was under stress or sought any type of medical care for stress. The record was supplemented with evidence that establishing the previously unidentified pathology report as that of the employee.¹⁶ Furthermore, Dr. Connors relied in part on Dr. Kessler's initial impression that the employee's heart vessels looked fairly clear. Dr. Kessler reviewed the June 15, 2001 pathology report and found the decedent had severe occlusive coronary atherosclerosis, which was aggravated by stress.

The case is not in posture for decision and will be remanded to the Office. On remand, the Office should refer the case record, including an amended statement of accepted facts that

¹² *Claudio Vazquez*, 52 ECAB 496 (2001).

¹³ 5 U.S.C. § 8123(a).

¹⁴ *Janet L. Terry*, 53 ECAB 570 (2002).

¹⁵ *Lois E. Culver*, *supra* note 6.

¹⁶ In a report dated June 15, 2001, Dr. Gregory S. Ray, Board-certified in anatomic and clinical pathology, advised that the donor heart specimen number 55809 revealed evidence of a past myocardial infarction involving the posterior left ventricle and severe atherosclerosis with narrowing of the right coronary artery to 10 percent of its original size, the left anterior descending to 20 percent of its original size and the left circumflex to 40 percent of its original size. The aortic valve and anterior mitral leaflet revealed moderate atherosclerotic plaque formation.

lists all accepted employment factors, to an appropriate Board-certified cardiologist for an impartial medical opinion regarding the cause of the employee's death. After such further development as the Office deems necessary, it shall issue an appropriate decision.

CONCLUSION

The Board finds this case is not in posture for decision as a conflict in medical opinion exists between Dr. Hoffman, appellant's consulting cardiologist and Dr. Connors, the Office referral physician.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 15 and March 14, 2006 be set aside and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: March 13, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board