

while on temporary duty in John Day, Oregon. Prior to his death, appellant's 47-year-old husband was employed as a hydrological technician. She described the nature of the injury which caused his death as, "cold weather disability, caused heart attack and/or arrhythmia."

The record contains a death certificate, dated January 5, 2005, reflecting that the employee died on January 4, 2005 at 1:00 a.m. of natural causes. The cause of death was listed as a myocardial infarction.

In an undated statement, the employee's supervisor indicated that the employee was on travel status on January 3 and 4, 2005, on a routine trip to John Day, Oregon. The employee's position required him to work outdoors, at times under severe conditions. On January 3, 2005 he drove for approximately three hours from Pasco, Washington to the field site in north-central Oregon. The employee field notes reflected that he was out of his truck for a little over an hour at the field site, where the air temperature was 32 degrees and the water temperature was 48 degrees. He waded into a creek, which was six inches deep at the deepest, where he remained for 11 minutes. Mark Berry, the manager of a demonstration ranch and the primary user of the data collected, spoke with the employee during his visit to the field site on January 3, 2005. According to him, the employee made no mention of any health concerns that day. The employee returned to John Day, Oregon, which is about a three-hour drive from the field site and checked into his motel room.

Appellant submitted a February 9, 2005 report from Dr. H. Matt Smith, a treating physician, who examined the employee on two occasions in 2004. Dr. Smith noted the coroner's presumption that the cause of death was myocardial infarction and/or cardiac arrhythmia. He stated that the deceased had been a smoker with high blood pressure and high cholesterol, conditions for which he was treated. Noting that the employee was exposed to temperatures in the upper 20's and lower 30's on January 3, 2005, Dr. Smith indicated that cold weather can cause blood vessel constriction and, along with exertion, can aggravate cardiac ischemia and produce heart arrhythmias. He stated, "I suspect that [the employee's] work [on January 3, 2005] did play a role in his death. I suspect that if [the employee], rather than working in a strenuous and freezing environment, were sitting in an office doing computer or paper work, that he would be still among us."

The record contains a statement signed "Marty Larson, Dreamer's Lodge," reflecting that, pursuant to data from the regional airport, the temperature in John Day, Oregon on January 3, 2005 ranged from a low of 18 degrees to a high of 33 degrees. On January 4, 2005 the temperature ranged from a low of 21 degrees to a high of 25 degrees.

On February 1, 2006 the Office informed appellant that the evidence submitted was insufficient to establish her claim. Appellant was advised to submit details surrounding the employee's job activities on the day of death, as well as additional medical evidence supporting her claim that his death was a result of an injury or medical condition caused by exposure on the job.

In a March 23, 2004 report, Dr. Smith noted an elevated blood pressure, a "racing of the heart," and a diagnosis of hypertension. The record also contains unsigned medical notes for the period January 18, 2001 to May 27, 2003.

In a report dated January 8, 2005, Dr. Smith indicated that the employee had been found in a John Day, Oregon hotel room, dead from an apparent heart attack. He noted that a few grams of marijuana had been found in the room with the employee.

In an undated statement, appellant reported that on January 2, 2005 her husband was at home with his family following the Christmas holidays. On January 3, 2005 the employee traveled to John Day, Oregon for work. At 7:30 p.m. that evening, he complained to appellant by telephone that he “could not get warm.” The time of the employee’s death was estimated to be 1:00 a.m.

On June 1, 2006 the Office asked the district medical adviser to review the record and provide an opinion as to whether the employee’s death was causally related to his employment. In a report dated June 11, 2006, the medical adviser indicated that he was unable to determine whether the employee’s death was due to his job activities. He stated that preexisting high blood pressure, high cholesterol and cigarette abuse could have been responsible for the fatal arrhythmia or myocardial infarction. However, as to whether the employee’s work-related duties may have aggravated an underlying cardiac condition which led to his death, the medical adviser recommended that the case file be referred to a cardiologist for an opinion.

In a July 28, 2006 report, Greg Ruppert, Pasco, the Washington field office chief, stated that, on the day prior to his death, the employee drove three hours to a field site in north-central Oregon, in a government-owned 4-wheel drive pick-up truck. At approximately 1:00 p.m., after putting on his coat and hip-waders, the employee would have walked 200 feet to a very small stream (3 feet wide, ½ foot deep), where he stood for 11 minutes. Mr. Ruppert quoted the employee’s field notes, which indicated that the air temperature was 32 degrees and the water temperature was 48 degrees. The field notes reflected that the employee visited only one field site on January 3, 2005.

By decision dated September 8, 2006, the Office denied appellant’s claim, finding that the medical evidence did not establish that the employee’s federal job duties caused or contributed to his death.

On September 21, 2006 appellant requested an oral hearing. In an April 17, 2007 letter, her representative contended that the Office should further develop the medical evidence in accordance with the recommendation of the district medical adviser. At the April 16, 2007 hearing, the representative argued that the Office improperly ignored the medical examiner’s recommendation for a second opinion, as appellant had presented a *prima facie* case.

By decision dated July 3, 2007, an Office hearing representative affirmed the September 8, 2006 decision, finding that Dr. Smith’s report was insufficiently rationalized to establish causal relation. On January 17, 2008 appellant requested reconsideration.

Appellant submitted a November 22, 2006 report from Dr. Smith, who opined that the employee’s job activities contributed to his death. Dr. Smith stated that, on the day he died, his patient had been “working a long, hard day -- hiking up and down hills in subfreezing temperatures in an area where there was no easily available potable water.” He indicated that, at times, he would be required to stand in near freezing water up to his thighs in order to gauge

stream flows and collect specimens. Dr. Smith stated that, “during his vigorous hiking [] one of the soft plaques in one of his coronary arteries ruptured, a clot developed and that later that night while in a warm hotel room that the clot achieved a critical narrowing of the affected coronary artery, caused damage to his heart and resulted in a fatal heart arrhythmia.” He opined that the likely presence of dehydration and the constrictive effect of the cold weather aggravated the situation and put an additional strain on the employee’s heart.

By decision dated January 30, 2008, the Office denied appellant’s request for reconsideration, on the grounds that the evidence submitted did not warrant merit review. It found that Dr. Smith’s report was repetitive and irrelevant.

LEGAL PRECEDENT -- ISSUE 1

An award of compensation in a survivor’s claim may not be based on surmise, conjecture or speculation or an appellant’s belief that the employee’s death was caused, precipitated or aggravated by the employment.¹ Appellant has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the employee’s death was causally related to an employment injury or to factors of his employment. As part of this burden, she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee’s death and an employment injury or factors of his federal employment. Causal relationship is a medical issue and can be established only by medical evidence.²

The medical evidence required to establish causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between an employee’s diagnosed conditions 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 rationale explaining the nature of the relationship between the employee’s death and the accepted conditions or employment factors identified by the employee.³

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision as to whether the employee’s death was causally related to his employment.

Medical evidence of record includes reports from the employee’s treating physician, Dr. Smith. On March 23, 2004 he noted an elevated blood pressure, a racing of the heart and a diagnosis of hypertension. On February 9, 2005 Dr. Smith stated his belief that the employee’s job activities on January 3, 2005 contributed to his death. Noting the coroner’s determination

¹ *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

² *Mary J. Briggs*, 37 ECAB 578 (1986); *Umberto Guzman*, 25 ECAB 362 (1974).

³ *Donna L. Mims*, 53 ECAB 730 (2002).

that the cause of death was myocardial infarction and/or cardiac arrhythmia, he stated that appellant was a smoker and had preexisting risk factors, including high blood pressure and high cholesterol. Dr. Smith explained that cold weather can cause blood vessel constriction and, along with exertion, can aggravate cardiac ischemia and produce heart arrhythmias. Noting that the employee was exposed to temperatures in the upper 20's and lower 30's on January 3, 2005; he opined that his work on that day played a role in his death.

The Office asked the district medical adviser to review the record and provide an opinion as to whether the employee's death was causally related to his employment. The district medical adviser was unable to determine whether the employee's death was causally related to his job activities and recommended that the employee's case file be referred to a cardiologist for an opinion as to whether his job activities contributed to his death. He stated that work-related duties may have aggravated an underlying cardiac condition, which led to the employee's death. However, the Office did not seek the opinion of a cardiologist, or further develop the medical evidence.

Proceedings under the Act are not adversarial in nature; nor are the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁴ Although Dr. Smith did not provide sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that the employee's January 4, 2005 death was causally related to employment activities, his reports raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁵ Moreover, the Office did not pursue the district medical adviser's recommendation to obtain an opinion on causal relationship from a cardiologist. Once it undertakes development of the record, it has the responsibility to do so in a proper manner.⁶ Therefore, the Board will remand the case for further development of the medical evidence.

On remand, the Office should refer the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether the employee's January 4, 2005 death was causally related to employment activities. After such further development of the case record as the Office deems necessary, the Office shall issue a *de novo* decision.⁷

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether the employee's work activities on January 3, 2005 caused or contributed to his death.

⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁵ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *See Henry G. Flores, Jr.*, 43 ECAB 901 (1992); *see also Charles J. Jenkins*, 40 ECAB 362 (1988).

⁷ In light of the Board's decision on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 30, 2008 and July 3, 2007 are set aside and the case is remanded for action consistent with the provisions of this decision.

Issued: February 20, 2009
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