

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHANNA GERVOL, claiming as widow of VICTOR J. GERVOL and
DEPARTMENT OF THE TREASURY, CUSTOMS SERVICE,
OFFICE OF INTERNAL AFFAIRS, Seattle, Wash.

*Docket No. 96-838; Submitted on the Record;
Issued January 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that the employee's death was due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds the case not in posture for decision.

Appellant filed a claim for compensation by widow on February 9, 1993 alleging that the employee's death on November 6, 1992 was due to factors of his federal employment. The Office of Workers' Compensation Programs denied appellant's claim on March 28, 1994 finding that the weight of the medical evidence did not support a causal relationship between the employee's work and his death. Appellant requested reconsideration on March 29, 1995 and the Office denied modification of its March 28, 1994 decision on May 16, 1995. Appellant requested reconsideration on September 14, 1995 and by decision dated December 5, 1995, the Office again denied modification of the March 28, 1994 decision.

An 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 federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.¹

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.² Rationalized medical opinion evidence is medical evidence which

¹ *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989).

² *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant'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 claimant,³ must be one of reasonable medical certainty,⁴ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

The Office accepted that the employee worked a variable work schedule with mandatory overtime an average of 11.5 hours per week, that he worked a 6-day week, that his work schedule rotated between day and night shifts and that the last 2 weeks of his life he was on temporary-duty assignment working 8-hour days. On November 5, 1992 appellant worked eight hours and returned to work following dinner to retrieve an attache case he had left in an unlocked desk drawer.

The autopsy report completed by Dr. James C. Beyer, a Board-certified pathologist, on November 13, 1992, listed the cause of death as infiltrative cardiomyopathy-sarcoidosis. He also noted that the employee was markedly obese.

In support of her claim, appellant submitted a report dated November 30, 1992 from Dr. Gary R. Snyder, a Board-certified family practitioner, stating that the employee died on November 6, 1992 "presumably from a cardiac dysrhythmia." He listed myocardial sarcoidosis as a contributing cause of death. Dr. Snyder noted that the employee was required to work double shifts which caused stress and concluded: "It is my judgment that with underlying sarcoidosis that the increased stress in his life was occasioned by working multiple double shifts on a more probable than not basis, could be responsible for cardiac dysrhythmia."

In a report dated December 16, 1993, Dr. Snyder diagnosed heart failure as the cause of death. He stated:

"I feel that the main reason that his blood pressure was difficult to control was the great stress under which [the employee] worked. He worked a great deal of overtime. His work schedule changed from night to day.... It is my professional opinion that the cumulative effect of the factors listed *i.e.*, 16-hour days, changing shifts, no lunch breaks, and travel to a new stressful work environment, were detrimental to [the employee's] health and contributed to his early death."

Dr. Snyder completed a report on July 20, 1995 and noted the employee's conditions of hypertension and noninsulin dependent diabetes. He stated that the employee's duties precluded following the recommended diet and exercise and that the employee was trying to comply with a stringent medical regimen and was not able to do so because of the long shifts, overtime and shift rotation. He stated, "There is no question in my mind that this clearly contributed to his

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁴ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁵ *See William E. Enright*, 31 ECAB 426, 430 (1980).

death from sarcoidosis.” Although these reports provide an opinion on the causal relationship between the employee’s duties and his death, Dr. Snyder did not provide any medical rationale explaining how the underlying sarcoidosis with increased stress was responsible for cardiac dysrhythmia, or the relationship between the employee’s employment factors, his high blood pressure and the heart failure.

Dr. Karl J. May, a Board-certified thoracic surgeon and Office medical adviser, completed a report on March 17, 1994. He reviewed the statement of accepted facts and found the employee had morbid obesity, diabetes, and sarcoidosis involving his heart and lungs as well as hypertension. Dr. May noted the autopsy results and concluded the employee died of an arrhythmia “probably secondary to infiltrative cardiomyopathy secondary to sarcoid.” He stated that the employee’s death was most likely due to the nature progression of his sarcoidosis. Dr. May stated:

“Sarcoid is a granulomatous disease of unknown cause that can infiltrate the myocardium and the cardiac conducting system. It can cause congestive heart failure and cardiac arrhythmia. There is no relationship between sarcoidosis and stress or between sarcoidosis and other factors of employment. It is not related to obesity, diabetes or hypertension.”

He concluded, “In my opinion the [employee’s] death was caused by sarcoidosis. Factors of employment did not contribute.” This report negates a causal relationship between the employee’s death and the accepted factors of his federal employment.

Appellant submitted a report dated June 28, 1994 from Dr. Jesse E. Edwards, a Board-certified pathologist. Dr. Edwards described the events immediately preceding the employee’s death and noted the details of the autopsy report including cardiac hypertrophy, sarcoid lesions in the heart muscle and obesity. He opined that cardiomegaly was the more likely cause of death. Dr. Edwards stated:

“Sarcoid involvement of the heart has been known to be associated with sudden death. Nevertheless, the cardiac hypertrophy (cardiomegaly) of 820 grams was an unusually severe degree of cardiac hypertrophy. A hypertrophied heart is susceptible to a fatal arrhythmia in the form of ventricular fibrillation. Physical and/or emotional stresses, such as were experienced by the [employee] on the last day of his life, namely, (1) employment in uncommon circumstances (temporary duty), (2) emotional stress (leaving unattended his attache case containing important contents), and (3) long hours of work (his returning to the workplace to get his attache case after a full day’s work), are factors which in my opinion, served to aggravate his cardiomegaly and to lead to fatal ventricular fibrillation.”

The Board finds that there is a conflict of medical opinion evidence between Dr. May, a Board-certified thoracic surgeon and the Office medical adviser, who opined that the employee’s death was due to sarcoidosis which was not related to employment stress, and Dr. Edwards, appellant’s physician and a Board-certified pathologist, who concluded that the employee’s death was due to cardiomegaly which was aggravated by his accepted employment factors.

Section 8123(a) of the Federal Employees' Compensation Act,⁶ provides, "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."

On remand the Office should refer the case record, a statement of accepted facts and list of specific questions to an appropriate Board-certified physician to determine the cause of the employee's death and whether the conditions that caused his death were caused or aggravated by factors of his federal employment.

The decision of the Office of Workers' Compensation Programs dated December 5 and May 16, 1995 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
January 26, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).