

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIOLET RAE YARROLL, claiming as widow of DOUGLAS RALPH YARROLL and U.S. POSTAL SERVICE, POST OFFICE, Spokane, Wash.

*Docket No. 96-2032; Submitted on the Record;  
Issued June 25, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether the employee's death on October 7, 1994 was causally related to his federal employment; and (2) whether appellant's claim for disability compensation is barred where a disability claim was not filed during the lifetime of the employee.

On October 31, 1994 appellant filed a notice of occupational disease and claim for compensation on behalf of the employee asserting that the employee's diverticulitis and perforated colon were due to harassment he encountered at work.<sup>1</sup>

Dr. Thomas C. Trotta, a Board-certified surgeon, in a report dated November 23, 1994 opined that employee's death was unrelated to his work and job stress. Dr. Trotta opined that the employee's death was due to "post-operative complication of deep vein thrombophlebitis and a pulmonary embolism. Dr. Trotta also opined that the employee had diverticulitis and that "work related stress can aggravate (sic) these conditions by producing sigmoid colonic spasms, increasing the spasms already present and/or inciting the event of diverticulitis itself."

By letter dated November 29, 1994, the Office of Workers' Compensation Programs advised appellant that she could not file a claim for wage loss compensation due her husband prior to his death, but she could file for medical expenses alone. The Office also informed appellant of the information required to support a claim for compensation.

By letter dated April 13, 1995, the Office requested clarification from Dr. Trotta whether the stress the employee was under would have caused his diverticulitis.

On April 3, 1995 appellant filed a claim for survivor benefits on behalf of herself and her two children following the death of her husband, a 46-year-old postmaster, on October 7, 1994.

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<sup>1</sup> The employee did not file a claim during his lifetime.

Appellant listed the nature of injury which caused appellant's death as "diverticulitis, pulmonary emboli, cardiac arrest - stress related."

In support of her two claims, appellant submitted her narrative statement, witness statements, the employee's death certificate, birth certificates for her two sons, a marriage certificate and a November 23, 1994 report from Dr. Trotta. On the employee's death certificate, Dr. Trotta listed the immediate cause of death as cardiac arrest due to bilateral pulmonary embolism due to colon surgery.

In a letter dated April 18, 1995, Dr. Trotta opined that the employee's diverticulitis was not caused by his work stress, but that his work stress would have aggravated his pre-existing condition of diverticulitis.

The Office medical adviser on April 11 and 17, 1995, opined that the employee's perforation of the diverticulum was unrelated to any stress the employee suffered.

By letter dated May 20, 1995, the Office requested Dr. Trotta to provide further clarification as to whether there was a temporary or permanent aggravation and sent him a statement of accepted facts.

In a decision dated June 20, 1995, the Office found the evidence insufficient to establish causal relation between the employee's diverticulitis and factors of his employment.

Appellant, through counsel, requested reconsideration in a letter dated August 25, 1996. In support of her request appellant alleges that the employee attributed his disability<sup>2</sup> to the stress of meeting a tight budget and submitted evidence in support.

In a decision dated May 3, 1996, the Office denied appellant's request for reconsideration. The Office found that appellant's claim for disability filed on Form CA-2 is barred as a valid claim was not filed by the employee prior to his death. Regarding appellant's death claim, the Office found that the only medical opinion in the evidence opined that the employee's death was unrelated to his employment. The Office thus found the evidence insufficient to establish that the employee's death was due to factors of his employment.

The Board finds that appellant has failed to meet her burden of proof in establishing that the employee's death on October 7, 1994 was causally related to factors of his federal employment.

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 or her 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.<sup>3</sup>

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<sup>2</sup> There is no statement from employee contained in the record alleging any disability due to factors of his employment.

<sup>3</sup> *Timothy Forsyth (James Forsyth)*; 41 ECAB 467, 470 (1990); *Carolyn P. Spiewak (Paul Spiewak)*; 40 ECAB

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>4</sup> 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 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,<sup>5</sup> must be one of reasonable medical certainty<sup>6</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors or injuries identified by the claimant.<sup>7</sup>

In the instant case the only medical evidence is from Dr. Trotta who opined that the employee's death was due to cardiac arrest due to bilateral pulmonary embolism due to colon surgery. Dr. Trotta also opined that the employee's death was not work related. As appellant has not submitted any medical evidence supporting that the employee's death was caused by factors of his employment, the Office properly denied her claim.

Next, the Board finds that appellant's claim for disability compensation is barred because a disability claim was not filed during the lifetime of the employee.

Section 10.105(e) of Title 20 of the Code of Federal Regulations provides:

"If no claim is filed by an injured employee or by someone acting on the employee's behalf prior to his or her death, the right to claim compensation for disability other than medical expenses ceases and does not survive."<sup>8</sup>

The Board has held in previous cases that the right to claim disability compensation does not survive an injured employee and a claim for disability compensation not filed during the employee's lifetime may not be considered.<sup>9</sup>

In the instant case, the employee, or someone on his behalf, did not file a claim for disability prior to his death. Appellant has made no claim for medical benefits, but rather claimed disability from September 27, 1994 to October 7, 1994. Accordingly, her claim is barred under the provisions of 20 C.F.R. § 10.105(e).

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552, 560 (1989).

<sup>4</sup> See *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959)

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> 20 C.F.R. § 10.105(e).

<sup>9</sup> *Ned C. Lofton*, 33 ECAB 1497 (1982); *Mary Marie Young*, 30 ECAB 94 (1978); *Kay Gross*, 176 ECAB 687 (1966); *Anna Palestro*, 15 ECAB 241 (1964).

The decision of the Office of Workers' Compensation Programs dated May 3, 1996 is hereby affirmed.

Dated, Washington, D.C.  
June 25, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member