

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RITA M. TATRO, claiming as widow of GERALD L. TATRO  
and U.S. POSTAL SERVICE, POST OFFICE, Harrisville, R.I.

*Docket No. 96-1766; Submitted on the Record;  
Issued November 18, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that her husband's death on October 25, 1990 was causally related to his 1975 heart condition for which he received compensation.

Appellant's husband, then a 61-year-old letter carrier, filed a notice of traumatic injury on December 3, 1975, claiming that his acute myocardial infarction on November 7, 1975 was caused by carrying a 60-pound carton of prayer books while delivering mail to a church.<sup>1</sup> The Office of Workers' Compensation Programs accepted the claim and paid appropriate compensation.

Subsequently, the Office reduced appellant's compensation by 60 percent, effective December 3, 1981, based on its determination that he could perform the duties of a service clerk. The Office relied on the medical opinion of Dr. Jeffrey F. Latham, Board-certified in internal medicine, who was the employee's long-time treating cardiologist.<sup>2</sup>

On February 1, 1986 the Office restored total full disability compensation, based on the October 29, 1985 report of Dr. Barbara H. Roberts, a cardiologist Board-certified in internal medicine to whom the Office had referred appellant. Dr. Roberts concluded that the employee was incapable of any employment, even the most sedentary, because he was "markedly disabled"

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<sup>1</sup> The statement of accepted facts dated February 21, 1986 indicated that appellant experienced acute chest pain shortly after noon on November 5, 1975 while delivering the carton of books, stopped work, and was driven home where he rested. The next day he worked normal duty. On November 7, 1975 at about 4:00 a.m. he had severe chest pains and was admitted to the hospital for a myocardial infarction.

<sup>2</sup> While Dr. Latham initially indicated that the employee was unfit to work in any job requiring the slightest exertion, he responded "yes" to an Office inquiry on whether the employee could perform sedentary work. Later, Dr. Latham explained that the employee's angina and coronary artery disease (CAD) would prevent him from working a full day. On February 19, 1985 Dr. Latham stated that the employee had been unemployable since 1980 because of the impaired oxygen supply to his heart and could not engage in any occupation requiring sustained effort.

from severe, extensive CAD with significant left ventricular dysfunction caused by the 1975 myocardial infarction.

The Office also restored full disability benefits for the 1981 through 1985 period, based on Dr. Roberts' finding that the employee was totally disabled as of December 3, 1981 and could not have performed the duties of a service clerk and on the April 24, 1986 report from Dr. Constantine S. Georas, a cardiologist, Board-certified in internal medicine, to whom the Office had referred Mr. Tatro to resolve a conflict in the medical evidence. Dr. Georas found that the employee had been "continuously and totally disabled since 1981" and his potential for employment "ever since has been nil."

Dr. Georas added that the employee's underlying asymptomatic CAD became symptomatic and permanently aggravated by the delivery task performed on November 5, 1975, that he lost the major functional part of his left ventricle, and that the heart attack incident on November 7, 1975 was causally related to the earlier episode, "a well-known phenomenon of pre-infarction to infarction angina."

Following the employee's death on October 25, 1990, the Office initially denied appellant's claim for survivor's benefits on June 5, 1992 finding that she had failed to submit medical evidence establishing the requisite causal relationship. Appellant timely requested reconsideration and submitted the records of the employee's hospital admission in October 1990 and a letter from Dr. Latham.

On August 27, 1993 the Office denied appellant's request on the grounds that the medical evidence submitted in support of reconsideration was insufficient to warrant modification of the June 5, 1992 decision. The Office noted that Dr. Latham provided no medical rationale for his statement that the employee's death was related to his 1975 myocardial infarction and the hospital records provided no opinion on the issue.

Appellant again requested reconsideration and submitted a copy of the October 1990 hospital records, the March 29, 1994 deposition of Dr. Latham along with his office treatment notes from 1980 through October 1990, and copies of all medical documents previously considered. On October 26, 1994 the Office sent the case record and a statement of accepted facts to Dr. Robert H. Rimmer, Jr., Board-certified in internal medicine, who also has teaching credentials, for review.

On June 22, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decisions. The Office noted that Dr. Rimmer's opinion -- that the employee's death was "consistent with the natural history of progressive heart failure" resulting from the 1975 myocardial infarction -- was well rationalized and represented the weight of the medical evidence. The Office relied on Dr. Rimmer's conclusion that while the 1975 incident led to the employee's progressive cardiomyopathy and death, there was no evidence that the infarction was caused by his postal work. Therefore, the Office rescinded its acceptance of the 1975 myocardial infarction as work related.

Appellant requested reconsideration on the grounds that the Office's prior determination on the issue of causal relationship should be conclusive and that the Office could not now rely on Dr. Rimmer's opinion to find that the employee's death was not work related.

On February 16, 1996 the Office denied appellant's request on the grounds that the legal arguments made in support of reconsideration were insufficient to warrant modification of its June 22, 1995 decision. The Office noted that the mere fact that an employee was receiving disability compensation at the time of his death did not establish that the employee's death was causally related to his federal employment.

The Board finds that the Office failed to meet its burden of proof in rescinding its acceptance of the 1975 myocardial infarction as work related.

The power to annul an award is not arbitrary; an award of compensation can be set aside only in the manner provided by the Federal Employees' Compensation Act.<sup>3</sup> Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>4</sup>

The burden is the same if Office later decides that it erroneously accepted a claim.<sup>5</sup> To justify rescission of acceptance, the Office must show that its decision is based on new evidence, legal argument and/or rationale.<sup>6</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>7</sup>

In this case, two specialists, Drs. Latham and Georas, have opined that the employee's 1975 myocardial infarction was causally related to his work duties. The Office accepted the 1975 incident as work related and subsequently informed Dr. Rimmer in the statement of accepted facts that, based on the evidence in the record, the employee had sustained a myocardial infarction in the performance of duty.

While the Office did not ask Dr. Rimmer to comment on the cause of the employee's myocardial infarction, the second opinion specialist stated that he found "virtually no evidence in the record" to support a causal relationship between the accepted myocardial infarction the employee's work. Based on his report, the Office determined that Mr. Tatro had sustained an episode of angina and not a myocardial infarction on November 7, 1975. The Board finds that there is a conflict in medical opinion between Dr. Rimmer, the Office's referral physician, and Dr. Latham, appellant's treating physician, both of whom are Board-certified specialists in internal medicine.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.* (1974); *Shelby J. Rycroft*, 44 ECAB 795, 803 (1993).

<sup>4</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

<sup>5</sup> *Lorna R. Strong*, 45 ECAB 470, 480 (1994).

<sup>6</sup> *Laura H. Hoexter (Nicholas P. Hoexter)*, 44 ECAB 987, 994 (1993).

<sup>7</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

Section 8123 of the Act<sup>8</sup> provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.<sup>9</sup> The Board finds that because the Office relied on Dr. Rimmer's opinion to rescind its acceptance of appellant's work-related heart condition without having resolved the existing conflict, the Office failed to meet its burden of proof.<sup>10</sup> Therefore, the Board reverses the Office's rescission determination.<sup>11</sup>

For this reason, the case is not in posture for decision on the issue of whether the employee's death on October 25, 1990 was causally related to his 1975 heart condition.

The Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>12</sup> Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the employee's death was causally related to factors of his employment.<sup>13</sup> This burden includes the necessity of furnishing a rationalized medical opinion based on an accurate factual and medical background and supported by medical rationale explaining the nature of the cause-and-effect relationship between the employee's death and specific employment factors.<sup>14</sup>

That an employee was receiving compensation for total disability at the time of death does not establish that his death was causally related to conditions resulting from the employment injury.<sup>15</sup> Neither the fact that the disease was diagnosed during such employment nor appellant's opinion that an injury accepted by the Office ultimately caused the employee's death is sufficient to establish the required causal relationship.<sup>16</sup>

The Office's question to Dr. Rimmer was: "Did claimant's death on October 25, 1990 in any way arise out of his accepted employment-related myocardial infarction of November 7, 1975?" While Dr. Rimmer agreed with Dr. Latham that the employee's death followed from the 1975 myocardial infarction, Dr. Rimmer severed the requisite causal connection between the 1975 infarction and the employee's work and stated that his death "was consistent with the

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<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> *Shirley L. Steib*, 46 ECAB 309, 315 (1994).

<sup>10</sup> *See Craig M. Crenshaw, Jr.*, 40 ECAB 919, 923 (1989) (finding that the Office failed to meet its burden of proof because a conflict in the medical evidence was unresolved).

<sup>11</sup> *See Josie P. Waters*, 45 ECAB 513, 518 (1994) (finding that the Office failed to meet its burden of proof in rescinding its acceptance of appellant's emotional condition).

<sup>12</sup> 5 U.S.C. § 8102(a).

<sup>13</sup> *Judith L. Albert (Charles P. Albert)*, 47 ECAB -- (Docket No. 95-2475, issued September 25, 1996).

<sup>14</sup> *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827, 832 (1994).

<sup>15</sup> *Elinor Bacorn*, 46 ECAB 857, 861 (1995); *see Joan Leveton (Edward E. Leveton)*, 34 ECAB 1368, 1371 (1983) (finding that the employee's fatal myocardial infarction in 1981 was not causally related to the accepted myocardial infarction in 1969).

<sup>16</sup> *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

natural history of progressive congestive heart failure” resulting from the 1975 myocardial infarction.

Thus, Dr. Rimmer’s opinion conflicts with that of Dr. Latham, who provided the following medical rationale: The’ employee’s underlying CAD was aggravated by the physical exertion of his postal duties, causing an attack of angina on November 5, 1975, which led to the infarction on November 7, 1975, which resulted in major ventricular dysfunction and cardiomyopathy, which caused a steady decline in heart function, which resulted in low blood pressure, which eventually led to renal failure and death. Dr. Latham emphasized that absent the damage done to the employee’s heart by the work-related myocardial infarction in 1975, his heart would not have been in the condition that caused his death in 1990. Such a conflict in the medical opinion evidence requires remand for resolution.<sup>17</sup>

On remand, the Office should refer the case record and the statement of accepted facts to an appropriate medical specialist for an impartial evaluation pursuant to Section 8123(a) to determine whether the employee’s death was causally related to his 1975 heart condition.<sup>18</sup> After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The February 16, 1996 decision of the Office of Workers’ Compensation Programs is set aside, the June 22, 1995 decision is reversed, and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
November 18, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>17</sup> See *George S. Johnson*, 43 ECAB 712, 716 (1992) (finding that a conflict in medical opinion was not resolved because the opinion of the referee physician was insufficiently rationalized; thus, further remand was required).

<sup>18</sup> See 20 C.F.R. § 10.408; *Debra S. Judkins*, 41 ECAB 616, 620 (1990).