

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT R. RASCH, JR. and DEPARTMENT OF THE ARMY,
HEALTH SERVICES COMMAND, Fort Bragg, NC

*Docket No. 99-1251; Submitted on the Record;
Issued February 2, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that the employee's death on October 19, 1990 was causally related to his October 11, 1990 employment injury.

This is the third appeal in the present case. In the first appeal, the Board issued a decision and order¹ on April 25, 1994, in which it set aside the November 24, 1992 decision, of the Office of Workers' Compensation Programs and remanded the case to the Office for further development to be followed by the issuance of an appropriate decision.² The Board noted that there was medical evidence of record that the employee's death was related to an infection and that appellant had contended the syringe which punctured the employee's finger on October 11, 1990 was contaminated. The Board indicated that the Office requested additional evidence regarding the syringe that punctured the employee's finger, but that the employing establishment had not responded to the Office's request. The Board indicated that on remand the Office should obtain additional factual evidence from the employing establishment, if available, regarding the circumstances of the October 11, 1990 employment incident. The Board further directed the Office to prepare a new statement of accepted facts and refer the case record to an appropriate specialist for an evaluation and opinion regarding whether the October 11, 1990 employment incident caused, hastened, precipitated or contributed to the employee's death on October 19, 1990.

On remand of the case by the Board, the Office requested that the employing establishment provide additional information regarding the contents of the syringe that the

¹ Docket No. 93-957.

² On October 19, 1990 the employee, then a 34-year-old medical supplies worker, passed away. On October 19, 1990 appellant, the employee's widow, filed a claim on behalf of the employee's survivors stating that, while the employee was changing an expired nerve agent antidote (atrophine) on October 11, 1990, the autoinjector went off and penetrated his right index finger. The Office later accepted the condition of "puncture wound of the right index finger," but denied the claim that the employee's death was caused by the October 11, 1990 employment injury.

employee was working with when his finger was punctured on October 11, 1990. In a memorandum to the file dated August 26, 1994, an Office senior claims examiner noted that the employing establishment had failed to respond to the request for information regarding the employee's activities on October 11, 1990 and that, therefore, appellant's contention that the employee "sustained an injury from contaminated injectors" was taken as factual. The Office then referred the case record to Dr. Thomas Thommi, a Board-certified internist with a specialty of geriatric medicine, for an evaluation and opinion regarding whether the October 11, 1990 employment incident caused, hastened, precipitated or contributed to the employee's death.³ By decision dated December 21, 1994, the Office denied appellant's claim on the grounds that the evidence failed to establish a causal relationship between the employee's death and the October 11, 1990 employment incident. By decision dated January 12, 1996, the Office denied appellant's request for merit review.

In the second appeal, the Board issued a decision and order⁴ on March 19, 1998 in which it set aside the January 12, 1996, Office decision and remanded the case to the Office for a merit review to be followed by an appropriate decision. The Board found that appellant presented a point of fact not previously considered, *i.e.*, the allegation that the Office did not select an appropriate medical specialist for its referral, which required the case to be reopened for merit review.

On remand of the case by the Board the Office referred the case record to Dr. Peter G. Pappas, a Board-certified internist specializing in infectious diseases, for an evaluation and opinion regarding whether the October 11, 1990 employment incident caused, hastened, precipitated or contributed to the employee's death. In a report dated August 6, 1998, Dr. Pappas determined that it was unlikely that the October 11, 1990 employment incident contributed to appellant's death on October 19, 1990. By decision dated August 10, 1998, the Office affirmed its prior decisions on the grounds that the evidence failed to establish a causal relationship between the employee's death and the October 11, 1990 employment incident. Appellant submitted a November 9, 1998 report, in which Dr. Woodhall Stopford, a physician Board-certified in internal and preventive medicine and specializing in occupational medicine, determined that it was likely that the October 11, 1990 employment incident contributed to appellant's death on October 19, 1990. By decision dated January 4, 1999, the Office affirmed its August 10, 1998 decision.

The facts and circumstances of the case up to that point are further set forth in the Board's prior decisions and are incorporated herein by reference.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence regarding whether the employee's death on October 19, 1990 was causally related to his October 11, 1990 employment injury.

³ Dr. Thommi produced a report dated December 1, 1994, in which he indicated that it was unclear whether there was an infectious cause of appellant's death.

⁴ Docket No. 96-1455.

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 employment.⁵ This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁶

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "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."⁷ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁸

The Board finds that there is a conflict in the medical evidence between Dr. Pappas, a Board-certified internist specializing in infectious diseases, who served as an Office referral physician and Dr. Stopford, an attending physician Board-certified in internal and preventive medicine and specializing in occupational medicine, regarding whether the October 11, 1990 employment incident caused, hastened, precipitated or contributed to the employee's death on October 19, 1990.

In a report dated August 6, 1998, Dr. Pappas determined that it was unlikely that the October 11, 1990 employment incident contributed to appellant's death on October 19, 1990. He described the course of appellant's illness and stated:

"It is difficult to assign a specific disease to this patient, but it is certainly consistent with a syndrome similar to TTP (thrombotic thrombocytopenic purpura) or an acute viral syndrome causing myocarditis and possibly encephalitis. Unfortunately, most of the serologic tests which were done would not have been diagnostic early in the course of this illness and would probably only have been useful several weeks after onset of symptoms. Therefore, the final diagnosis is still obscure, but probably was either viral induced or was somehow related to an entity such as TTP. In either event, it is difficult to ascribe the patient's demise to an otherwise uncomplicated needle stick one week prior to his admission."

* * *

"The second consideration would have to be an infectious agent that was transmitted by needle stick leading to a fulminant illness. There is no evidence to suggest that the needle had been used previously and thus it is highly unlikely that

⁵ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

⁶ *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

⁷ 5 U.S.C. § 8123(a).

⁸ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

this needle was contaminated with human blood. The organisms usually associated with needle stick transmission include HIV [human immunodeficiency virus], hepatitis B and hepatitis C. There is no evidence that the patient suffered from any of these infections, nor would any of them have led to an acute demise seven days following exposure.... I know of no other virus that could have survived extensive drying in a needle and still be viable enough to cause disease in this unfortunate man.”

* * *

“In summary, it is very difficult to connect the patient’s unfortunate and rapid demise to the needle stick he received eight days prior to his death. I think atropine poisoning is out of the question and a virally transmitted disease through the needle stick seems extraordinarily unlikely, particularly given the time course. Thus, it is difficult to attribute his demise to this incident. Furthermore, it seems unlikely that this event in any way contributed to his death or hastened it in any way.”

In contrast, Dr. Stopford determined in a report dated November 9, 1998, that it was likely that the October 11, 1990 employment incident contributed to appellant’s death on October 19, 1990.⁹ He described the course of appellant’s illness and stated:

“It is my opinion that [appellant’s] death was more likely than not secondary to an infection acquired at the time he had a needle stick a few days before his illness and death. [Appellant] died of a disease, DIC [disseminated intravascular coagulation] that was most likely secondary to an infectious disease process. The test procedures used may well have been inadequate to identify the wide range of organisms that have been associated with DIC. There was no finding of other illnesses that have been associated with DIC. His time course between ‘exposure’ to the needle stick and his symptoms and documentation of DIC are what one would expect with an infective etiology. No other sources of an infection were identified at the time of autopsy.

“Although needle sticks in a hospital setting are usually associated with a risk of exposure to ‘blood born pathogens,’ mainly viruses, puncture wounds are also associated [with] infections from organisms that are commonly found on the skin. One class of organisms that has been associated with DIC, clostridia, are common soil organisms that are found both in the intestinal tract and on the skin of man. Any puncture of skin contaminated with this organism would result in any increased risk of infection.”

Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between Drs. Pappas and Stopford regarding whether

⁹ It should be noted that Dr. Stopford’s background and specialty were appropriate for evaluating appellant’s condition.

the October 11, 1990 employment incident caused, hastened, precipitated or contributed to the employee's death on October 19, 1990. On remand the Office should refer the case file and the statement of accepted facts to an appropriate specialist for an impartial medical evaluation and opinion on this matter. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant's claim.

The decisions of the Office of Workers' Compensation Programs dated August 10, 1998 and January 4, 1999 are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
February 2, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member