

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY H. TURNER, claiming as widow of ROBERT E. TURNER and
TENNESSEE VALLEY AUTHORITY, HARTSVILLE NUCLEAR AUTHORITY,
Chattanooga, TN

*Docket No. 01-331; Submitted on the Record;
Issued September 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the employee's death on May 27, 1998 was causally related to his April 20, 1979 employment injury.

On April 20, 1979 the employee, then a 44-year-old steamfitter, injured his right knee in the employing establishment parking lot: "I was stepping over a concrete curb and stepped on a loose rock that rolled from under me and I fell on my hands and knees." The Office of Workers' Compensation Programs accepted his claim for torn medial meniscus, right knee; traumatic arthritis, right knee and aggravation of traumatic arthritis, left knee. The employee received compensation benefits.

On July 13, 1998 appellant filed a claim for compensation by widow. On the back of the claim form, Dr. Jerry M. Franklin reported on October 20, 1998 the following history of injury: "Chronic leg and back pain due to on-the-job injury with development of hypertension, diabetes, heart disease and stroke." Dr. Franklin had diagnosed the employee with coronary artery disease, congestive heart failure and carotid artery disease. He reported that the employee died on May 27, 1998. The direct cause of death was ventricular fibrillation due to congestive heart failure and coronary artery disease. Contributory causes were hyperlipidemia, hypertension and diabetes mellitus, Type II. Asked whether the death was due to the injury described, Dr. Franklin checked neither "yes" nor "no" but stated: "Stress is [a] complex component of heart disease and does contribute to development of vascular disease."

On December 4, 1998 an Office medical adviser reported that the employee's heart disease with congestive heart failure and ventricular tachycardia had no relation to the accepted conditions. The employee's death, he stated, was not secondary to or directly or indirectly due to the accepted conditions.

In a report to the Office dated December 31, 1998, Dr. Franklin clarified his opinion on causal relationship:

“I was asked to fill out the form regarding [the employee’s] disability by his wife following his death. The question that she posed was whether or not stress was related to his heart disease. As you may realize heart disease is a multifactorial illness having the issues of family history, hypertension, diabetes, hyperlipidemia, tobacco use, weight and several other factors. Stress is a reported risk factor for ischemic heart disease but it is extremely difficult to measure. Since I did not see [the employee] until July of 1993 when he presented for atypical chest pain and ultimately was proven to have stress induced ischemia and coronary artery disease. Unfortunately he required coronary bypass surgery and ultimately long-term medical therapy. He died as a result of congestive heart failure with an arrhythmia.

“The issue of stress and its relationship to coronary disease was never raised until after his death and it would probably require psychologist’s or psychiatrist’s opinion as to whether or not his coronary disease was related to job-related stress. His death was not related, apparently to his torn medial meniscus, rheumatic arthritis of the right knee and aggravation of traumatic arthritis of the left knee. However, certainly stress from this injury could have increased his total stress significantly. I am not even sure, however, at what time he left work on disability.

“You note in your letter that you do not accept a stress condition as work related so I am not sure I can give you any information that will change your mind in a situation such as this. You requested a copy of the autopsy results, but as noted on a previous form, he did not have an autopsy. You also requested a hospital admission discharge summary. At the time of his death he was in an outpatient area of the hospital and does not have a hospital admission or discharge summary. If I can give you any further information please let me know.”

The Office referred the medical record, together with a statement of accepted facts, to Dr. Lawrence J. Kanter, a specialist in cardiovascular diseases, for a second opinion on causal relationship. In a report dated January 21, 2000, Dr. Kanter replied:

“[The employee] had an injury in 1979. His first cardiac symptoms presented 14 years later. Clearly at the time of his injury, he did not have significant heart disease. There is no logical way that an injury occurring in 1979 on his knee could be related to heart disease which presented in 1993. In any case, he died five years after that presumably from complications of his heart disease and cardiac surgery.

“One doctor mentioned the possibility of stress. Looking through the record, this man worked at many jobs after he left the Tennessee Valley Authority. He even worked as a maintenance worker. He was reimbursed in an equitable fashion. He certainly did not have stress from his previous employment which supported him

quite well for many years. In summary, there is no way that one could make a connection between a knee injury of 1979 and his death in 1998 from heart disease.”

In a decision dated February 1, 2000, the Office denied appellant’s claim for compensation on the grounds that the medical evidence was insufficient to establish that the employee’s death on May 27, 1998 was related to the injury of April 20, 1979.

Appellant requested reconsideration. She argued that her husband was in pain and depressed from 1979 until his death. She identified physicians who treated her husband for depression and impotence, which was due to surgery and medicine he took for his legs. She stated that the day her husband died he told her that his legs were hurting so bad he wished they would just cut them off.

In a decision dated May 31, 2000, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office noted that Dr. Franklin’s December 31, 1998 report, which was apparently not reviewed in the prior decision, was speculative and did not support that the employee’s death was caused by or related to his work injury. The Office advised appellant that it was her burden to submit further medical evidence in support of her claim. The Office noted that there was no medical evidence in the record showing that the employee suffered from any emotional condition related to his knee conditions.

In a decision dated September 7, 2000, the Office again reviewed the merits of appellant’s claim and denied modification of its prior decision.

The Board finds that the medical opinion evidence is insufficient to establish that the employee’s death on May 27, 1998 was causally related to his April 20, 1979 employment injury.

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 federal employment. As part of this burden, appellant 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. Appellant’s unsupported belief is insufficient to establish causal relationship.¹ Causal relationship is medical in nature and can be established only by medical evidence.²

Appellant has submitted no such medical opinion. In his October 20 and December 31, 1998 reports, Dr. Franklin stated that stress was a reported risk factor for ischemic heart disease and that stress from the employment injury certainly could have increased the employee’s total stress significantly. While this supports the possibility that stress from the accepted employment

¹ See *Leonora A. Buco (Guido Buco)*, 36 ECAB 588 (1985); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111 (1982).

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

injury contributed to the employee's death, Dr. Franklin's opinion is speculative and of little probative value in establishing any such contribution as fact.³

Standing alone, then, Dr. Franklin's reports are insufficient to discharge appellant's burden of proof. In addition to this evidence comes January 21, 2000 report of Dr. Kanter, the Office referral physician who is a specialist in cardiovascular diseases. Dr. Kanter reported unequivocally that there was no way that one could make a connection between a knee injury in 1979 and the employee's death in 1998 from heart disease. On the possibility of stress, he attempted to make the case that the employee did not have stress from his previous federal employment, but this argument relies on questionable inferences and is speculative.

The medical evidence in this case thus consists of a speculative opinion supporting the mere possibility of a causal relationship, which is insufficient to discharge appellant's burden of proof, together with an additional opinion tending to negate any causal relationship, thereby further weakening appellant's claim. Because the weight of the medical opinion evidence fails to establish that the employee's death on May 27, 1998 was causally related to his April 20, 1979 employment injury, the Board will affirm the denial of appellant's claim.

The September 7, May 31 and February 1, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 24, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

³ *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).