

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET PRITCHETT claiming widow of EDWARD PRITCHETT and
DEPARTMENT OF THE ARMY, U.S. CORP. OF ARMY ENGINEERS,
Washington, DC

*Docket No. 03-1487; Submitted on the Record;
Issued September 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the employee's death on November 21, 1991 was causally related to his federal employment.

On August 15, 1992 appellant filed a notice of occupational disease (Form CA-2) for her husband's death on November 21, 1991. On August 15, 1996 appellant filed a claim for compensation by widow (Form CA-5) alleging that the employee suffered a heart attack and died November 21, 1991 as a result of stress and travel on the job.¹

By decision dated August 15, 1996, the Office of Workers' Compensation Programs determined that appellant had failed to establish that the employee's death was causally related to his federal employment. Appellant through counsel, Christopher Allen, Esq., requested an oral hearing and submitted evidence which she contended supported that her husband died from blood clots resulting in pulmonary embolism due to lengthy and frequent air travel during his federal employment. Following a hearing held on July 22, 1997, an Office hearing representative found that appellant submitted sufficient evidence to warrant further development of the medical evidence and set aside the August 15, 1996 decision.

Following further development of the evidence, the Office denied appellant's claim on October 1, 1998 on the grounds that she failed to establish that the employee's death was causally related to employment factors. Appellant, through counsel, requested an examination of the written record and on October 14, 1999 an Office hearing representative found that the statement of accepted facts upon which a second opinion physician based his medical opinion

¹ The employee, born on March 21, 1937, worked as a supervisory civil engineer by the employing establishment. He died suddenly while on a temporary-duty assignment in Vicksburg, Mississippi. The death certificate noted probable pulmonary thrombosis as the cause of death.

was incomplete. The October 1, 1998 decision was set aside and the case remanded for further development.²

In a decision dated February 17, 2000, the Office denied appellant's claim for widow's benefits on the grounds that appellant had not established that the employee's death on November 21, 1991 was caused by employment factors.³ Appellant requested another oral hearing. In a February 13, 2001 decision, an Office hearing representative found a conflict in the medical and set aside the February 17, 2000 decision. Following referral of the case to an independent medical examiner, the Office denied the claim on May 22, 2001 on the grounds that the record failed to establish that the employees' death on November 21, 1991 was causally related to employment factors. Appellant through counsel requested another oral hearing and submitted additional evidence. In a January 7, 2002 decision, an Office hearing representative affirmed the May 22, 2001 decision finding that the medical evidence of record failed to establish that the employee's death was causally related to his federal employment.

On January 13, 2003 appellant through counsel requested reconsideration of the January 7, 2002 decision and submitted additional evidence. The Office denied modification of the January 7, 2002 decision following a review of the merits on March 31, 2003.

The Board has reviewed the record and finds that appellant has not established that the employee's death was causally related to his federal employment.

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. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a complete factual and medical background.⁴ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.⁵ The mere showing that an employee was receiving compensation for total disability at the time of his death does not establish that his death was causally related to his employment.⁶

² The Board notes that in a letter received by the Office on October 9, 1999, appellant's counsel stated: "The claimant hereby *amends* the [F]orm CA-5 dated August 15, 1992, whereby Box No. 7 entitled '[n]ature of [i]njury which [c]aused [d]eath' whereby 'pulmonary embolism' is substituted in place of 'heart attack.' The [Form] CA-5 was mistakenly completed and this inaccuracy has prevented a proper evaluation of the claim. The [Form] CA-5 was completed and signed on behalf of the claimant rather than the claimant herself. Also Box 10 incorrectly states that an autopsy was performed."

³ The record reflects that, prior to this decision, the Office amended the statement of accepted facts and attempted to furnish the second opinion physician who provided the medical opinion upon which the Office had previously relied; however, the Office was informed that the referral physician was no longer available and under investigation. The evidence and file was, therefore, reviewed by another pulmonary physician referred by the Office.

⁴ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

⁵ *Kathy Marshall (Dennis Marshal)*, 45 ECAB 827 (1994).

⁶ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

The Office found a conflict in the medical opinion evidence under 5 U.S.C. § 8123(a) in this case.⁷ An Office medical consultant, Dr. Robert Soffler, a Board-certified internist, opined in a February 8, 2000 report that without an autopsy one could only speculate as to the cause of the employee's death. The referral physician noted that, although it was true that people who fly on airplanes for prolonged periods of time have a higher risk of venous thromboembolism, the majority of the patients who develop this condition in relationship to air travel had other risk factors for pulmonary embolism, including a prior history of deep venous thrombosis, chronic medical diseases, cancer of the lung, injury to the lower extremities, recent surgery or ongoing cigarette smoking. An attending physician, Dr. James Grissom, a Board-certified internist, opined in a March 13, 1997 report that with reasonable medical certainty the employee developed blood clots resulting in pulmonary embolism directly caused by lengthy and frequent airplane travel over many years during his federal employment. The Office, therefore, referred the case to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁸

The Office referred medical records and a statement of accepted facts to Dr. Stephen Bagnoli, a Board-certified internist specializing in pulmonary diseases. In a report dated May 3, 2001, Dr. Bagnoli reviewed the details of the employee's November 21, 1991 death and his medical records, noting that the employee had a history of hypertension that was being treated with medication, hypercholesterolemia with a cholesterol count of 255 in October 1991 and that the employee was a former cigarette smoker of 1 pack per day for 31 years until he quit in 1976. Dr. Bagnoli noted:

“Blood pressure recorded in Dr. Grissom's office in October of 1991 was 140/100 and 130/100. The [employee] drank six to eight cups of coffee per day by Dr. Grissom's notes and previous holter [monitor] from November of 1989 revealed many PVC's.... In summary, this was a 54[-]year[-]old former one pack a day smoker for a [30-]year period with prolonged, apparently poorly controlled, hypertension, hyperlipidemia and obesity who expired suddenly on November 21[,] [19]91.... His symptoms in the days prior to his death were more suggestive of a possible cardiac problem than that of a pulmonary emboli.”

Dr. Bagnoli concluded that only an autopsy could have provided a clear diagnosis as to the cause of death and opined that the employee likely died of a cardiac event than a pulmonary emboli. He stated: “Without an autopsy no one will ever know for sure. It would, therefore, be impossible to state with any degree of certainty that this patient's death had any relationship to his job or any other employment-related factors.”

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

⁷ Section 8123(a) of the Federal Employees' Compensation Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.

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

the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background must be given special weight.⁹

Following a hearing representative's decision dated January 7, 2002 which found that Dr. Bagnoli's report represented the weight of the medical evidence appellant submitted additional medical evidence with her December 31, 2002 request for reconsideration. In a report dated December 23, 2002, Dr. John Vitarello, a Board-certified internist, indicated that he reviewed appellant's medical records, factual evidence concerning appellant's work history and medical literature. He stated: "[the employee's] death, in my expert opinion, was either due to pulmonary embolism or myocardial infarction with a reasonable medical degree of certainty. I certainly believe that his occupation and frequent traveling lead to deterioration of his overall health leading to his demise." Dr. Vitarello stated:

"I believe as a medical expert in the field of cardiovascular medicine that any other cause apart from pulmonary emboli or myocardial infarction can be effectively ruled out with a reasonable degree of medical certainty. I believe the causation of his death is related to pulmonary emboli and/or myocardial infarction which was directly connected to his employment. These alternative diagnosis [sic] are both stated with reasonable medical certainty."

The Board finds that the report of Dr. Vitarello is not sufficient to create a conflict of medical opinion with Dr. Bagnoli. Dr. Vitarello acknowledged that he provided alternative diagnoses for the cause of death. Moreover, while stating his conclusion of causal relationship, he provided no medical rationale explaining how appellant's employment or his employment-related travel would cause either medical condition. The Board finds that the well-reasoned medical opinion of Dr. Bagnoli, which was based on a complete medical and factual background that the employee's death was not causally related to travel or other factors during his federal employment, represents the weight of the medical evidence in this case. The medical evidence submitted in support of the claim is equivocal, unrationalized and, therefore, insufficient to establish a causal relationship between the employee's death on November 21, 1991 and factors of his federal employment. Appellant has failed to meet her burden in this case.

⁹ *Stanley B. Plotkin*, 51 ECAB 700 (2000).

The decision of the Office of Workers' Compensation Programs dated March 31, 2003 is affirmed.

Dated, Washington, DC
September 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member