



caused him to lose control of the car he was driving, crash into a utility pole and strike his head on the steering wheel. The employee sustained a concussion and collapsed right lung.

By decision dated May 7, 1996, the Office denied the claim, finding that the evidence failed to establish that the claimed cerebral vascular condition was causally related to factors of his federal employment. By letter dated May 16, 1996, counsel for the employee requested a hearing, which was held on April 23, 1997. He submitted a February 7, 1997 report from his treating physician, Dr. Donald M. Zimmerman, Board-certified in internal medicine, who stated that the employee had significant hypertension but advised that his blood pressure had been at normal levels since the October 4, 1995 cerebral vascular accident and subsequent retirement from work.

At the hearing, the employee testified that he worked 25 years for the employing establishment for five days a week, eight hours per day as a food inspector at the Sugardale and Superior chicken plants. He was responsible for reviewing the assembly line, observing birds for contamination or liver or intestinal abnormalities, taking the necessary action to place contaminated chickens into the condemned bins and rejecting birds if salmonella was found. The hearing representative determined that the following employment factors contributed to the employee's hypertension:

- (1) the plant's failure to comply with Federal standards;
- (2) his responsibility for shutting down the plant until the facilities were adequately cleaned;
- (3) his fear of getting good supervisors fired;
- (4) constant decision-making requirements and the accompanying severe consequences;
- (5) the need to write handwritten reports on a daily basis;
- (6) arguments from plant managers who resisted the decedent's efforts to make changes;
- (7) the need to inspect 90 birds a minute;
- (8) fear of contaminating the general public with unclean poultry;
- (9) the plants' practices and operation, specifically dirty water falling on clean birds and birds traveling through water that was not changed.

The employee acknowledged taking medication for hypertension prior to his motor vehicle accident, but testified that he had no symptoms and had not been hospitalized before the accident. In an October 16, 1996 report, Dr. Zimmerman stated that the employee had "long-standing hypertension ... one of the contributing factors to the progression of the peripheral

vascular disease which resulted in the total occlusion of [the employee's] left carotid artery and his stroke." He further advised that "stress from working can be one of the contributing factors to hypertension." In a report dated May 5, 1997, Dr. Zimmerman stated:

"It is my opinion that [the employee's] work environment and stress from work elevated [the employee's] blood pressure which was a contributing factor to the [employee's] total occlusion of his right carotid artery and cerebral vascular accident."

In a decision dated June 5, 1997, an Office hearing representative set aside the May 7, 1996 decision and remanded the case for further development.

On remand, the Office found that the following factors of employment were compensable:

- (1) The employee's exposure to arguments and conflicts with plant personnel, who sometimes resisted his decisions over production, contamination of food product, and sanitation issues;
- (2) He had to make decisions constantly, and his job entailed a great deal of responsibility -- his decisions could and did shut down a plant's production;
- (3) He had to submit daily, handwritten reports in 1995;
- (4) At times, he worked at a very fast rate while inspecting the poultry line.<sup>1</sup>

The Office referred the employee, the case file and a statement of the accepted facts to Dr. Gerald S. Steiman, Board-certified in psychiatry and neurology, for a second opinion examination. Dr. Steiman stated in an October 29, 1997 report that the employee had no work-related condition or diagnosis, and opined that his current medical health was characterized by nonwork-related activities. He opined that there was no causal relationship between the diagnosis of hypertension and/or cerebral vascular accident to the employee's work activities either by proximate causation or by aggravation, acceleration or precipitation. Dr. Steiman stated that the employee had several risk factors for the development of a stroke, including a 20-year history of smoking, a history of alcohol use, and positive family history of stroke, his mother. He noted a history of long-standing hypertension, hypercholesterolemia and recognizable carotid stressors. Dr. Steiman concluded that the employee's work activities did not influence his stroke risk factors or influence his carotid disease, hypertension or hypercholesterolemia. He stated that there was no evidence that the employee had an impairment or disability secondary to job-related diagnoses or residuals.

By decision dated November 4, 1997, the Office denied the employee's claim for benefits, finding that Dr. Steiman's opinion represented the weight of the medical evidence. By

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<sup>1</sup> The hearing representative noted that appellant acknowledged a 30-year smoking history before quitting in 1981. Several medical reports indicated that appellant had a 20- to 30-year smoking history.

letter dated November 11, 1997, the employee, through counsel, requested an oral hearing, which was held on June 22, 1998.

In a report dated July 29, 1998, Dr. Zimmerman stated:

“As [it] pertains to the etiology of the occlusion of the carotid artery, this is a multi-factorial situation. The causes that can contribute to occlusion of carotid arteries include hypertension, genetic risk and hyperlipidemia, diabetes, smoking and stress-related factors.”

Dr. Zimmerman stated that the employee had a significantly stressful job as a food health inspector and that the stress was a contributory factor to his carotid artery disease. He included a copy of a study which documented the relationship of stress and increased risk of carotid disease, and noted the potential that stress could also make hypertension more difficult to control, therefore increasing the risk of carotid artery disease. Dr. Zimmerman concluded that the employee’s stressful work situation was at least partially contributory to his carotid stenosis and the subsequent cerebrovascular accident and disability.

By decision dated August 21, 1998, an Office hearing representative found that there was a conflict in the medical evidence between Drs. Steiman and Zimmerman regarding whether the employee’s cerebral vascular accident was causally related to employment factors. The hearing representative set aside the November 7, 1997 decision and remanded the case for referral to an impartial medical specialist.

By letter dated September 29, 1998, counsel informed the Office that the employee had passed away.<sup>2</sup> By letter dated October 1, 1998, the Office advised the decedent’s widow that she could be entitled to death benefits in the event that the impartial medical specialist submitted an opinion which established that her husband’s death was causally related to factors of his employment. On October 11, 1998 appellant filed a Form CA-6 claim for death benefits.

The Office referred the case to Dr. Jay P. Berke, Board-certified in psychiatry and neurology, who stated in a September 27, 1999 report that the employee’s hypertension and stroke were not causally related to underlying risk factors caused by his employment. He opined that the decedent’s job did not aggravate or cause his condition, disability or death. Dr. Berke stated that, based on the relevant literature pertaining to vascular disease of the nervous system, stress was not among the risk factors for ischemic stroke. He concluded that, “to suggest that job stress could produce sustained and prolonged hypertension of sufficient degree to meaningfully contribute to stroke in this situation given the overwhelming presence of other risk factors is, in my opinion, hypothetical and unsupported by the preponderance of the evidence.”

By decision dated October 29, 1999, the Office denied the claim for death benefits based on Dr. Berke’s opinion.

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<sup>2</sup> Appellant’s attorney submitted a copy of the death certificate indicating the employee died on August 15, 1998. The death certificate indicated that the immediate cause of death was “cerebral vascular accident,” which had occurred three years prior to the death, and that the underlying cause of death was “hypertension,” for which he had been treated for 10 years. The statement of accepted facts was subsequently amended to incorporate this history.

By letter dated November 3, 1999, appellant's counsel requested a hearing, which was held on June 28, 2000. By decision dated August 18, 2000, the Office hearing representative amended the risk factors in the statement of accepted facts, finding that it should include: (1) that the decedent's mother died of an aneurysm, not a stroke; (2) the decedent continued to drink one shot of whiskey and two to three beers a day until his death; (3) the decedent smoked one and one-half packs to two packs of cigarettes per day until he quit in 1968, and he smoked a pipe until quitting in approximately 1977; and (4) the decedent had been on cholesterol medication, but was not taking this medication at the time of his death. The hearing representative set aside the October 29, 1999 decision and remanded the case to the Office to obtain a supplemental report from Dr. Berke.

In a May 1, 2001 supplemental report, Dr. Berke reiterated his previous opinion, stating that the new accepted facts did not change his opinion. By decision dated November 16, 2001, the Office denied the claim for death benefits. In a review of the written record dated April 10, 2002, an Office hearing representative set aside the November 16, 2001 decision, finding that Dr. Berke's original May 2001 report was based in large part on those factors which had been shown to be inaccurate, and that his supplemental report did not provide adequate rationale as to why his opinion remained unchanged. The hearing representative remanded for the district Office to again refer the case file to Dr. Berke for a supplemental report clarifying his opinion. In a report dated May 30, 2002, Dr. Burke stated that the decedent's stroke was due to carotid artery stenosis related to arteriosclerosis. He opined that the risk factors operative in this case were hypertension and hyperlipidemia and that a review of the standard neurological literature found no supporting evidence that job stress was a risk factor for stroke.

By decision dated June 28, 2002, the Office denied the claim for death benefits. By letter dated July 7, 2002, appellant's attorney requested a hearing, which was held on May 20, 2003.<sup>3</sup> By decision dated August 6, 2003, an Office hearing representative set aside the June 28, 2002 decision, finding that Dr. Berke's opinion was not sufficiently well reasoned to represent the weight of the medical evidence. The Office was instructed to obtain a new impartial review.

The case file and a statement of accepted facts was sent to Dr. Joel S. Steinberg, Board-certified in psychiatry and neurology. In a report dated December 23, 2003, Dr. Steinberg thoroughly reviewed appellant's medical records and the statement of accepted facts, stated findings on examination and opined that the decedent did not have any work-related conditions based on his review of the records. He advised that neither the decedent's hypertension nor his cerebral vascular accident appeared to be established as causally related to any occupational exposures by proximate causation, aggravation, acceleration or precipitation. Dr. Steinberg stated that, within a reasonable degree of medical certainty, the fundamental risk factor to the development of the carotid artery arteriosclerosis that led to the decedent's October 1995 cerebral vascular accident was hypertension. Other risk factors included a history of tobacco and

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<sup>3</sup> At the hearing, Dr. Alan Harris, a specialist in cardiovascular disease, testified for appellant. Dr. Harris stated that the types of stress factors appellant experienced while working for the employing establishment could have elevated his blood pressure and caused his hypertension to become "malignant." Dr. Harris advised that appellant's job stress was enough to cause him hypertension, which was out of control. This opinion represented, along with that of Dr. Zimmerman, one side of the conflict in medical evidence which the hearing representative determined was not resolved by Dr. Berke's opinion.

alcohol use of uncertain nature. He stated that there was no evidence in the record that would lead him to conclude that there were any other factors that led to his stroke.

With regard to whether appellant's cerebral vascular accident death was contributed to by arguments and conflicts with plant personnel who occasionally resisted his decisions over production, contamination of food products and sanitation, Dr. Steinberg stated:

“Based on information in the statement of accepted facts, it appears that Park Farms was one of the places where such arguments and conflicts took place at less than an average frequency. Regardless of how often they took place, the only information that we have about them is that the decedent did not complain about them. We have no measurements of his blood pressure responses to his work situation. Any comment that anyone makes about his blood pressure responses at work is merely conjectural, because there were no facts about the decedent himself.”

Dr. Steinberg agreed that the decedent's need to constantly make decisions and the ample responsibilities entailed by his job, including the authority to shut down a plant when it was necessary, was indeed stressful, as was the need to submit daily, handwritten reports in 1995 and work at a fast rate. However, Dr. Steinberg did not feel that there was any identified link or connection between these accepted stressors and the decedent's high blood pressure. Dr. Steinberg stated that the fact the decedent's hypertension and blood pressure were improved after he received a disability retirement in 1996 did not necessarily indicate that these improvements were due to his removal from the employing establishment. He advised that the decedent's more easily managed blood pressure could have been related to several factors, including the use of new, more efficacious medication; greater reliability about taking the prescribed medication; the results of the stroke itself, leading to more easily managed blood pressure; weight loss, and a more sedentary lifestyle. Dr. Steinberg noted that appellant never underwent an arteriogram, which could have been used to accurately attribute the changes in his carotid artery to the October 1995 work accident. He stated:

“I found it possible to conceive that work stressors might have made the management of the decedent's hypertension more difficult, but I found nothing that suggested that possibility a more probably than not.... Thus I am unable to conclude within a reasonable degree of medical certainty that the decedent's stroke [preceded by right carotid artery stenosis ... preceded by hypertension and possible tobacco and alcohol use] was causally related to occupational exposure by proximate causation, aggravation, acceleration or precipitation. I conclude that there is insufficient evidence to link any job-related stressors to the decedent's high blood pressure and/or his subsequent catastrophic stroke.

“It is my opinion within a reasonable degree of medical certainty that the decedent's death was not connected to any properly compensable job factors or job-related residuals. I based that opinion on all of the factors that I have emphasized throughout this report and because I believe that the necessary standard is ‘more probable than not,’ rather than the standard of a mere possibility.”

In a decision dated January 13, 2004, the Office found that Dr. Steinberg's opinion represented the weight of the medical evidence. It denied appellant's claim as the evidence failed to establish that the employee's death was due to factors of his federal employment.

By letter dated January 14, 2004, appellant's attorney requested an oral hearing, which was held on February 25, 2004.

By decision dated September 9, 2004, an Office hearing representative affirmed the January 13, 2004 Office decision.

### **LEGAL PRECEDENT**

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 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>4</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>5</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>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

Section 8123(a) of the Federal Employees' Compensation Act<sup>9</sup> provides that, 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. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>10</sup>

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<sup>4</sup> *Kathy Marshall (James Marshall)*, 45 ECAB 827, 832 (1994); *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990).

<sup>5</sup> *See Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> 5 U.S.C. § 8123(a).

<sup>10</sup> *Gloria E. Godfrey*, 52 ECAB 486 (2001).

## ANALYSIS

The Board finds that Dr. Steinberg, extensively reviewed the medical evidence in this case and concluded that the decedent's federal employment did not cause or contribute to his injury and death. He advised that neither the decedent's hypertension nor his cerebral vascular accident were established as causally related to occupational exposure by proximate causation, aggravation, acceleration or precipitation. In Dr. Steinberg's opinion, there was insufficient evidence in the record to relate any accepted employment stressors to the decedent's high blood pressure and his subsequent stroke.

Dr. Steinberg stated that within a reasonable degree of medical certainty, the fundamental risk factor to the development of the carotid artery arteriosclerosis that led to the decedent's October 1995 cerebral vascular accident was hypertension. He noted that there were other, nonwork-related risk factors reflected by the record which contributed to his October 1995 work incident, including his long-standing history of tobacco and alcohol use. Dr. Steinberg reviewed the four compensable factors found by the Office -- arguments and conflicts with plant personnel; the constant need to make decisions such as shutting down a plant and the large responsibilities entailed by his job; the need to submit daily, handwritten reports; and the fact that he worked at a very fast rate while inspecting the poultry line, and agreed that these risk factors could cause stress. He opined, however, that there was no documented connection between these accepted stressors and the decedent's high blood pressure. After reviewing the medical record Dr. Steinberg pointed out that the medical record did not contain any blood pressure measurements which were taken in response to any work incident. He then explained that, without actual measurement of appellant's blood pressure at the time of the allegedly stressful work incidents, it was merely speculation or conjecture that appellant had elevated blood pressure as a result of any specific work incident.

Dr. Steinberg further advised that the fact that the decedent's hypertension and blood pressure were improved after he received a disability retirement in 1996 did not indicate that these improvements were due to his removal from the employing establishment. He stated that the record contained no reliable means of quantifying the alleged connection between his retirement and his lowered blood pressure. He also noted that general advances in the efficacy of medical treatment in recent years for hypertension allowed for better medical control of blood pressure. Dr. Steinberg therefore concluded, based on a reasonable degree of medical certainty, that the decedent's death was not connected to any compensable job factors or job-related residuals.

The Board finds that Dr. Steinberg's impartial medical opinion that the employee's October 4, 1995 cerebral vascular accident and subsequent death on August 14, 1998 were not caused by factors of his employment is sufficiently probative, rationalized, and based upon a proper factual background. For this reason his opinion represents the weight of the medical



evidence. The Board will affirm the Office's January 13, 2004 and September 9, 2004 decisions denying compensation for death benefits.<sup>11</sup>

### **CONCLUSION**

The Board finds that the employee's cerebral vascular accident on October 4, 1995 and subsequent death on August 14, 1998 were not causally related to factors of his federal employment.

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<sup>11</sup> By letter to the Office's Branch of Hearings and Review dated February 20, 2004, appellant's requested that a subpoena be issued to Dr. Steinberg and to Dr. William Leuchter, a Board-certified neurologist, who submitted a November 7, 2003 independent medical report which was deemed inconclusive by the Office. Counsel stated that he requested the subpoenas because he believed it was the only way to examine and ascertain the truth from these witnesses who provided medical evidence upon which the Office relied to deny the decedent's claim. Counsel stated that it was "absolutely vital" that these witnesses testify at the June 24, 2004 hearing. By letter dated June 10, 2004, the hearing representative denied counsel's subpoena request. The hearing representative stated that, under 20 C.F.R. § 10.619, subpoenas are issued for witnesses only where oral testimony was the best way to ascertain the facts. The hearing representative stated that because counsel had failed to show that the attendance and testimony of Drs. Steinberg and Leuchter would adduce evidence that had not already been provided in their detailed written reports, she was denying the request.

Counsel stated at the hearing that this denial by the Office constituted a denial of due process. The hearing representative addressed the issue in her September 9, 2004 decision, finding that counsel did not discuss what evidence he hoped to elicit by subpoenaing and cross-examining Drs. Leuchter and Steinberg. The hearing representative stated that the Office had concluded that Dr. Leuchter could not resolve the issue under consideration based on his report and that Dr. Steinberg had already provided a thorough, rationalized medical opinion sufficient to constitute the weight of the medical evidence. Therefore, the hearing representative found that counsel was not denied due process. The Board finds that this was not an abuse of discretion, as appellant failed to provide any evidence that the requested testimony from Drs. Leuchter and Steinberg would have provided any additional medical evidence relevant to the issue at hand that had not already been produced. *See* 20 C.F.R. § 10.617(c), (g).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 9, 2004 and January 13, 2003 are hereby affirmed.

Issued: April 12, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member