

File Number:
HR10-D-H

RECEIVED SEP 17 2013

U.S. DEPARTMENT OF LABOR

SEP 10 2013

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear Sir/Madam:

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on June 19, 2013. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case *remanded* to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Boston District Office. You may contact that office by writing to our Central Mail Room at the following address: PO Box 8300, District 01; London, KY 40742-8300

Sincerely,



Mary Anne Meier,
Hearing Representative
Branch of Hearings and Review

PAUL H. FELSER, ATTY.
P O BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

The claimant disagreed with that decision and requested an oral hearing, which was scheduled and held on June 19, 2013. The claimant was represented by attorney Paul Felser, who argued that he wanted a copy of the second opinion examiner's curriculum vitae to be entered into the record to determine whether his level of experience and/or training was as extensive of that of Dr. [REDACTED] the claimant's treating physician. He argued that the report of Dr. [REDACTED] was, at the least, sufficiently rationalized to require a referee examination.

Mr. Felser also argued that the District Office incorrectly discounted that the claimant's smoking habit was aggravated by his stress at work, which in turn aggravated his underlying condition, despite the fact that both the claimant's wife and Dr. [REDACTED] stated that this occurred.

A copy of the transcript was sent to the employing agency for review and comment.

The record was held open for thirty days to allow for the submission of additional evidence.

Based upon hearing testimony, together with the written evidence of record, I find that the decision of the District Office should be *SET ASIDE AND REMANDED* for further development of the medical evidence.

Section 8123(a) 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.¹

The Board has interpreted the section 8123(a) to require more than a simple disagreement between two physicians. To constitute a true conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.²

With regards to the attorney's argument that the claimant's wife and Dr. [REDACTED] had established that the claimant's smoking habit had been aggravated by his stress at work, I do not agree. I find that it is the opinion of the claimant's wife and physician that the claimant's job aggravated his smoking addiction, which in turn aggravated his underlying conditions; however, there is no proof of this. Therefore, the Statement of Accepted Facts as written is accurate.

In the instant case, the claimant's attending physician, Dr. [REDACTED] submitted another medical report, in which he called into question the New England Journal of Medicine cites referenced by Dr. [REDACTED] in support of his opinion that the claimant's death was due to a rupture of a known cerebral aneurysm. He has also submitted several medical reports describing in detail the claimant's work activities in the months preceding his death, and has offered a well-reasoned medical opinion to support that the claimant's

¹ Regina T. Pellecchia, 53 ECAB 658, (2001).

² Robert D. Reynolds, 49 ECAB 52, (1998).

death was caused, at least in part, by the stress "associated with fulfilling his job-related duties."


Therefore, after reviewing the medical evidence of file, to include the reports of Dr. _____ as well as Dr _____, I find that a conflict of medical opinion exists that requires an impartial examination. Dr. _____ is a board-certified specialist and he had to opportunity to examine the claimant on numerous occasions; therefore, I find his report must be considered of equal weight to the report of Dr. _____.

Upon receipt of this file, the District Office must arrange an impartial examination with a Board-certified cardiologist to examine the medical records, as well as the Statement of Accepted Facts that is currently on file, to determine whether the claimant's death was directly caused, aggravated, or accelerated by any of the accepted compensable factors of employment. The physician must be specific in his opinion, and provide medical rationale in support of his conclusions. Following this, and any further development deemed necessary, the District Office should issue a *de novo* decision regarding the claim for survivor's benefits.

Consistent with the above findings, the December 27, 2012 District Office decision is *set aside and remanded* for further development.

The file is returned for further processing as noted.

Dated: **SEP 10 2013**
Washington, DC


Mary Anne Meier,
Hearing Representative
For
Director,
Office of Workers'
Compensation Programs