

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of [REDACTED], claiming as widow of [REDACTED] and  
DEPARTMENT OF ENERGY, Albuquerque, N.M.

*Docket No. 97-92; Submitted on the Record;  
Issued April 13, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the employee's suicide is causally related to factors of his employment.

Appellant, the employee's widow, filed a claim for death benefits, contending that her husband's suicide on February 27, 1995 was causally related to factors of his employment. In support of her claim, appellant submitted reports from Timothy Strongin, Ph.D., a clinical psychologist. In a report dated May 3, 1995, Dr. Strongin, after setting forth the employee's history stated, "The combination of his preexisting personality structure, his recent depression, his alcohol abuse and the vocational stress noted above led to the impulse to kill himself and to his inability to resist that impulse." In a report dated May 12, 1995, he concluded that the employee's "psychiatric condition was directly caused by employment factors including extended absences from home, frequent disruptions in his day/night cycle, limited recovery time following return from trips and long service required prior to retirement." Dr. Strongin continued that "his psychiatric condition was directly caused by both his previous circumstances and his employment circumstances. Neither was sufficient by itself to have caused the disability or suicide, but together they were sufficient to result in the tragedy of [REDACTED]'s death."

The Office of Workers' Compensation Programs referred the employee's case record and a statement of accepted facts to Dr. William T. Moore, a Board-certified psychiatrist, for a second opinion. In a report dated January 19, 1996, Dr. Moore concluded:

"In my opinion, [REDACTED]'s suicide was not the direct result of his federal employment. His suicide was a consequence of growing up in an environment whereby perfection was demanded, where fear was a major part of growing up. Processes, where expectations of being an individual which was impossible to be was a part of the living process with a great deal of hopelessness attached to it (basis for depression). Also there was a long family history of alcoholism. The fact that he was threatening suicide for a major part of his marital life with his first wife all indicate the potentiality that suicide was there for a major part of his life.

There was a significant threat of loss from his employment; there was a very significant loss of prestige and position in his employment with some potentiality of being let go from his employment all of which would be potential losses which can lead to depression, but these potential losses would not have had the profound effect for him to commit suicide if suicide had not already been a part of his existence. It was the inability to maintain the image that he expected of himself which was the stimulus for his suicide.”

The Office determined that there was a conflict of medical opinion between Drs. Moore and Strongin. To resolve this conflict, the Office, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,<sup>1</sup> referred the case record and a statement of accepted facts to Dr. Carol C. Schwarz, a Board-certified psychiatrist. A copy of the Office’s referral letter, dated February 1, 1996, was not sent to appellant or to her attorney. In a letter dated April 2, 1996, the Office advised appellant that her claim had been reviewed by an independent psychiatrist who expressed the opinion that her husband’s death was not related to his employment, that this opinion conflicted with the opinion expressed by Dr. Strongin and that the case record had been sent to an impartial Board-certified psychiatrist to resolve the conflict of medical opinion.

In a letter dated April 9, 1996, appellant’s attorney objected to the Office’s failure to notify him of the referral to an impartial medical specialist as required by its procedure manual. In a letter dated May 3, 1996, the Office stated:

“Our reading of the [p]rocedure [m]anual does not indicate that the Office must notify the claimant and/or the claimant’s representative that a conflict of medical opinion exists and afford them the opportunity to participate in the selection process. It states if the claimant asks to participate in the selection and then only if the reason[s] given by the claimant is acceptable does the claimant have the right to participate in the selection of the impartial specialist. Furthermore, the reasons cited in the [p]rocedure [m]anual deal with situations involving physical examination of the claimant. Since [the employee] is deceased there is no examination required, only a record review. For these reasons, we did not advise you or [appellant] of the conflict, but proceeded to move the case forward towards a resolution.”

By decision dated September 6, 1996, the Office found that the weight of the medical evidence established that the employee’s suicide was not causally related to factors of his employment.

The Board finds that the case is not in posture for a decision.

The Office properly found that there was a conflict of medical opinion between Dr. Strongin, whose reports were submitted by appellant, and Dr. Moore, to whom the Office

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<sup>1</sup> 5 U.S.C. § 8123(a) states 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.”

referred the case record. To resolve this conflict, the Office referred the case record to Dr. Schwarz.

In making this referral, however, the Office did not notify appellant or her attorney of the existence of the conflict or of the identity of the physician to whom the case record was being referred. Such notice is required by the Office's procedure manual,<sup>2</sup> which then states, "Notification that the examination is being arranged under the provisions of 5 U.S.C. § 8123 will give the claimant an opportunity to raise any objection to the selected physician prior to the examination." The Board has found this section of the procedure manual equally applicable to a case involving a claim for death benefits.<sup>3</sup>

By not notifying appellant of the identity of the impartial medical specialist, the Office deprived her of an opportunity to present any objections to the selection of Dr. Schwarz as the impartial medical specialist. By not notifying appellant of the existence of a conflict, the Office denied appellant the opportunity to present reasons for participating in the selection of the impartial medical specialist.<sup>4</sup> The Board therefore finds that Dr. Schwarz was not properly selected as an impartial medical specialist and that her report may not be used to resolve the conflict of medical opinion. The Office should therefore refer the case record, after proper notification to appellant, to another impartial medical specialist for a reasoned medical opinion of whether the employee's suicide is causally related to factors of his employment.

The decision of the Office of Workers' Compensation Programs dated September 6, 1996 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
April 13, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4d (October 1995) states that information that must be provided to the claimant includes the existence of a conflict and the name and address of the physician selected to serve as the impartial medical specialist.

<sup>3</sup> *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>4</sup> *See Henry J. Smith, Jr.*, 43 ECAB 524 (1992), *reaff'd on recon.*, 43 ECAB 892 (1992).