

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CONNIE S. TIMMERMAN,)
)
 Petitioner,)
)
 vs.) Case No. 98-5203
)
 DIVISION OF RETIREMENT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to Section 120.57(1), Florida Statutes, on June 3, 1999, by video teleconference, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stanley M. Danek, Esquire
2114 Great Oak Drive
Tallahassee, Florida 32303

For Respondent: Robert B. Button, Esquire
Division of Retirement
Cedars Executive Center
Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

STATEMENT OF THE ISSUE

Whether Petitioner, the surviving spouse of Ralph Timmerman, is entitled to receive "in line of duty" death benefits?

PRELIMINARY STATEMENT

By letter dated November 24, 1998, the State Retirement Director, A.J. McMullian III, notified Petitioner of the denial of her application for "in line of duty" death benefits from the account of her late husband, Ralph Timmerman. In his letter, Mr. McMullian stated the following:

As stated in my letter of September 15, your husband's death was not related to any accident or injury arising out of requirement of his job. It is apparent that the argument that occurred with his supervisor would not be an issue if not for his history of heart disease. Therefore, your application for in-line-of-duty death benefits is denied. Since Mr. Timmerman was vested in the Florida Retirement System, you are eligible for the Option 3 monthly benefit.

On or about November 5, 1998, Petitioner filed with Respondent a Petition for Formal Administrative Hearing. On November 24, 1998, the matter was referred to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct the administrative hearing Petitioner had requested.

As noted above, the hearing was held on June 3, 1999.¹ Three witnesses testified at the hearing: Petitioner, Harold Markey, and Stanley Colvin. In addition to the testimony of these three witnesses, a total of nine exhibits were offered and received into evidence at hearing: Petitioner's Exhibits 1 through 6, and Respondent's Exhibits 2 through 4.² The undersigned deferred ruling on the admissibility of Petitioner's Exhibit 7, a newspaper article in the May 29, 1999, edition of the Jacksonville Times-Union, which bore the headline,

"Unneighborly argument leads to murder charge," and read as follows:

WEST PALM BEACH- A woman was arrested eight months after her neighbor suffered a heart attack and died following their spat over why the victim didn't return a "good afternoon."

Julia Osmun, 65, died as a result of her altercation with Joelle O'Neill, 41, said forensic investigator Bill Pellan. The death was a homicide, the medical examiner determined, because studies show the anxiety of a confrontation³ can lead to heart attacks, he said.

O'Neill, who is already serving time in the Palm Beach County jail on cocaine charges, was charged Thursday with second-degree murder.

"If the lady hadn't been exposed to this battery and gotten all worked up, she would not have been dead 15 minutes later," said detective Bill Fraser. "The medical examiner concluded that stress is what caused her death. And I happen to agree with her."

O'Neill told police she had gone to the apartment building to visit her mother and passed Osmun outside the front door. When Osmun didn't reply to O'Neill's "good afternoon," O'Neill confronted her.

Witnesses say O'Neill, who is black, and Osmun, who was white, exchanged racial slurs, then O'Neill snatched Osmun's glasses from her face and pushed her to the ground. O'Neill also mooned the older woman, records show.

Minutes later Osmun, who already had heart problems, began breathing heavily and told a friend to take her to the hospital quickly because she felt she was dying. She died September 16, the day of the altercation.

"In this case there wasn't actually directly trauma directly leading to the death," Pellan

said. "But had [Osmun] not been involved in this incident, she might be alive today."⁴

This newspaper article was offered, according to Petitioner, "to show that the opinions of Drs. Mufson and Hobin [who testified by deposition] are the prevailing medical opinions on the issue of sudden cardiac death occurrences." Respondent objected to the admissibility of the article on the grounds that it is "hearsay within hearsay, is uncorroborated, and of limited, if any, relevancy, given major factual distinctions, such as a battering of the victim." The article unquestionably constitutes hearsay evidence, as Respondent contends. See Dollar v. State of Florida, 685 So. 2d 901 (Fla. 5th DCA 1996)("A newspaper article, introduced to prove the truth of out of court statements contained therein, constitutes inadmissible hearsay [in a civil proceeding]"). Its hearsay nature, however, does not render it inadmissible in this administrative proceeding. See Silvia v. Cumberland Farms, Inc., 588 So. 2d 1069, 1071 (Fla. 4th DCA 1991); Johnson v. Department of Health and Rehabilitative Services, 546 So. 2d 741, 743 (Fla. 1st DCA 1989); Harris v. Game and Fresh Water Fish Commission, 495 So. 2d 806, 809 (Fla. 1st DCA 1986). Nonetheless, the undersigned finds that the article would add nothing of significant probative value to the evidentiary record in this case and therefore he has not taken it into consideration in making his findings of fact.⁵

At the conclusion of the evidentiary portion of the hearing, the undersigned, on the record, established a deadline (30 days

from the date of the undersigned's receipt of the transcript of the hearing) for the filing of proposed recommended orders. The hearing transcript was filed on June 17, 1999. On July 13, 1999, the parties filed a Joint Motion for Extension of Time to File Proposed Recommended Orders in the instant case. By Order issued July 14, 1999, the parties' motion was granted and the filing deadline was extended to July 27, 1999. On July 23 and 27, 1999, respectively, Petitioner and Respondent filed their Proposed Recommended Orders.⁶ These post-hearing submittals have been carefully considered by the undersigned.

FINDINGS OF FACT

1. Petitioner is the surviving spouse of Ralph Timmerman, who died on January 23, 1998, at 48 years of age.

2. Petitioner and Mr. Timmerman had been married since September 5, 1981.

3. They had two daughters, who are now four and thirteen years of age.

4. Mr. Timmerman was a member of the Florida Retirement System.

5. At the time of his death, Mr. Timmerman was employed by Martin County as the Assistant Building Maintenance Superintendent.

6. Mr. Timmerman had been Martin County's Building Maintenance Superintendent until December of 1990, when he suffered a heart attack and had five-vessel by-pass surgery.

7. Following his return to work, he was reassigned to the position of Assistant Building Maintenance Superintendent. This was a new supervisory position that had been specifically created for him. By design, it was less demanding than the Building Maintenance Superintendent position he had formerly held.

8. One of Mr. Timmerman's former subordinates, Harold Markey, was tapped to succeed Mr. Timmerman as the Building Maintenance Superintendent, a decision that Mr. Timmerman supported.

9. As the Assistant Building Maintenance Superintendent, Mr. Timmerman worked under Mr. Markey's supervision.

10. Mr. Markey made an effort to avoid assigning Mr. Timmerman any tasks that, given Mr. Timmerman's history of heart problems, might jeopardize Mr. Timmerman's health.

11. Mr. Timmerman's primary duties were to directly supervise the building maintenance staff and to deal with contractors hired by Martin County to perform building maintenance and repair work.

12. Mr. Markey did not ask Mr. Timmerman to attend or make presentations at Martin County Board of County Commissioners meetings because he knew that Mr. Timmerman would feel uncomfortable performing these duties.

13. Neither did Mr. Markey require Mr. Timmerman to do any physically demanding work. In fact, whenever, he saw

Mr. Timmerman engaged in such physical labor, he would intervene and instruct Mr. Timmerman to stop.

14. Whenever Mr. Timmerman indicated during the course of the work day that he was tired or not feeling well, Mr. Markey allowed Mr. Timmerman to leave work and go home.⁷

15. Notwithstanding these accommodations made for him, Mr. Timmerman, on a number of occasions, complained to Mr. Markey about (what Mr. Timmerman perceived to be) Mr. Markey's lack of understanding and compassion as a supervisor. He expressed these views in a loud and argumentative manner.⁸ As a general rule, following these outbursts, Mr. Timmerman apologized to Mr. Markey for the manner in which he had acted.

16. It was during such an outburst on January 23, 1998, at his work site and during his normal working hours, that Mr. Timmerman suffered cardiac arrest and subsequently died.

17. The day before, Mr. Timmerman and members of his staff had attended a meeting with Mr. Markey. Among the subjects discussed at the meeting was the response of Mr. Timmerman and his staff to a water main break that had occurred at the Martin County-operated library in Hobe Sound on January 20, 1998. The discussion concerning this subject lasted approximately 15 to 20 minutes.

18. Mr. Markey was not at work on January 20, 1998, and therefore it was Mr. Timmerman's responsibility to coordinate the

efforts to repair the break and remedy any water damage that had occurred at the library.

19. Mr. Timmerman was notified of the water main break by Teresa Van Cardo, a Martin County employee occupying the position of Administrator Coordinator II for General Services.

20. After some time had passed, Ms. Van Cardo became concerned that Mr. Timmerman had not yet arrived at the library. She therefore telephoned Mr. Markey at home to express her concerns about Mr. Timmerman's delay in responding to the scene. (Huey Cummings, Martin County's lead plumber, however, was on the scene and assessing the situation.)

21. After speaking with Ms. Van Cardo, Mr. Markey telephoned Mr. Timmerman and told him that "he needed to get to the site and he needed to make an assessment of it." Mr. Timmerman replied that Huey Cummings was already at the library.

22. When Mr. Timmerman came home from work that day he told Petitioner about what had happened at the library and that he was "very pleased at the way the whole situation was handled" by his staff.

23. At the January 22, 1998, staff meeting (which was a regularly scheduled meeting), Mr. Markey voiced his criticism of the manner in which the staff had responded to the water main break at the library two days before,⁹ and he indicated what improvements the staff needed to make in responding to similar

incidents in the future. It should not be necessary, he told his subordinates at the meeting, for anyone to have to bother him at home for guidance in dealing with a situation such as the one that arose at the library.

24. At least one of the employees at the meeting (Patti Smith) could sense (based upon her observations of Mr. Timmerman's body movements as Mr. Markey spoke) that Mr. Markey's comments upset Mr. Timmerman. Indeed, Mr. Timmerman was upset. He felt that Mr. Markey's criticism was unwarranted, and, after Mr. Markey had voiced his criticism, Mr. Timmerman told Mr. Markey and the others at the meeting that, in his opinion, "everybody responded exceptionally."

25. That evening, when he arrived home from work, Mr. Timmerman was still upset about the negative comments that Mr. Markey had made at the staff meeting earlier that day. Mr. Timmerman shared with Petitioner what Mr. Markey had said at the meeting and expressed his disappointment that Mr. Markey had criticized, rather than praised, his subordinates.

26. The following morning (January 23, 1998), Mr. Timmerman woke up at 5:30 a.m. He ate a small breakfast and, after spending time with his youngest daughter, left for work at 6:30 a.m. He appeared to be "very calm" when he left.

27. Mr. Timmerman arrived at work at or about 7:00 a.m.

28. At around 7:30 a.m., Mr. Markey, at the request of another employee, went to Mr. Timmerman's office (which was

located in a different building than Mr. Markey's office) and requested that Mr. Timmerman not park his assigned Martin County-vehicle in the staff parking lot (which was reserved for personal vehicles). Mr. Timmerman reacted with displeasure to the request. He told Mr. Markey, "This is bull crap," or at least used words to that effect. Mr. Markey repeated his request and then left Mr. Timmerman's office.

29. Shortly thereafter, Mr. Markey discovered that two expensive vacuum cleaners were missing from the storage area where they were supposed to be kept. A few months earlier, Mr. Markey had instructed Mr. Timmerman to put up a "sign-out" sheet outside the storage area for employees to sign whenever they removed an item from the storage area. After discovering that the vacuum cleaners were missing from the storage area, Mr. Markey looked for, but did not find, such a "sign-out" sheet.

30. When he returned to the building where Mr. Timmerman's office was located, Mr. Markey confronted Mr. Timmerman and asked him where the vacuum cleaners were. Mr. Timmerman told Mr. Markey that it was not his (Mr. Timmerman's) day to watch the vacuum cleaners and that he did not know where they were. Mr. Markey then said to Mr. Timmerman, "We need to get them located today," to which Mr. Timmerman responded, "Well, later on today, I will get somebody on it and we'll try to find them." Mr. Markey was not satisfied with Mr. Timmerman's response. He

advised Mr. Timmerman that he wanted Mr. Timmerman, not someone else, to look for the vacuum cleaners and that he wanted Mr. Timmerman to look for them that morning, not later in the day. He also told Mr. Timmerman that he expected Mr. Timmerman to place a "sign-out" sheet outside the storage area before the morning was over. Mr. Markey then walked away and left the building.

31. When Mr. Markey was approximately 30 feet away, Mr. Timmerman yelled out to him, "What do you have up your ass today?" Mr. Markey stopped and replied, "Obviously you." Mr. Markey then continued walking and returned to his office.

32. Approximately four or five minutes later, an obviously very upset Mr. Timmerman stormed into Mr. Markey's office, yelling and screaming that Mr. Markey mistreated his staff and lacked understanding and compassion. Mr. Markey told Mr. Timmerman to calm down so that they could discuss what was bothering Mr. Timmerman. Mr. Timmerman, however, continued to yell and scream. In fact, if anything, he became louder. Mr. Markey made further attempts to persuade Mr. Timmerman to sit down and talk calmly about his grievances, but these efforts were to no avail. During his exchange with Mr. Timmerman, Mr. Markey, like Mr. Timmerman, raised his voice.

33. Mr. Timmerman left Mr. Markey's office in a huff. As he was walking down the hallway, he shouted back to Mr. Markey,

"I take-up for you all of the time with the guys," and then added, "I treat you like a F-en prince, and this is what I get."

34. Mr. Timmerman then went into another employee's (Sharon Barnes') office and started pacing back and forth. His face was red and he was visibly agitated. Ms. Barnes told Mr. Timmerman to calm down. He replied to her that it was "too late."

35. Mr. Timmerman thereupon returned to Mr. Markey's office and continued his ranting. Mr. Markey shouted back at Mr. Timmerman. When Mr. Markey told Mr. Timmerman to "sit down," Mr. Timmerman said that he "couldn't" and then turned to leave. Mr. Markey asked where Mr. Timmerman was going. Mr. Timmerman responded that he was going to take a ride in his truck.

36. As Mr. Timmerman exited Mr. Markey's office and walked toward his truck, Mr. Markey followed behind him. Mr. Markey believed that, given Mr. Timmerman's agitated emotional state, Mr. Timmerman was in no condition to drive. He urged Mr. Timmerman not to go to his truck.

37. Mr. Markey was ultimately able to convince Mr. Timmerman to sit down on a bench outside the building where Mr. Markey's office was located. Mr. Timmerman remained on the bench, however, for just a couple of seconds before getting up and walking away.

38. As Mr. Timmerman walked away, he continued to yell and scream at Mr. Markey. Mr. Markey shouted back at Mr. Timmerman, repeating his plea that Mr. Timmerman not drive off in his truck.

39. When Mr. Timmerman was approximately 20 feet from the bench, he started breathing heavily and leaned against a wall for support. Mr. Markey ran over to Mr. Timmerman to make sure that he did not fall.

40. Mr. Markey again exhorted Mr. Timmerman to calm down. Mr. Timmerman, as he had done previously, told Mr. Markey that he "couldn't." Mr. Timmerman then collapsed in Mr. Markey's arms.

41. After gently lowering Mr. Timmerman to the ground, Mr. Markey ran to Ms. Barnes' office window, which was approximately ten or 15 feet away. When he got Ms. Barnes' attention, he instructed her to "call 911."

42. Paramedics subsequently arrived on the scene. They were unable to revive Mr. Timmerman. He was pronounced dead at 8:35 a.m. on January 23, 1998.

43. An autopsy was performed the following day by Frederick Hobin, M.D., the Medical Examiner for the 19th Medical Examiner District of Florida. Dr. Hobin is a Florida-licensed physician, who is board-certified in anatomic, clinical, and forensic pathology.

44. Following the completion of the autopsy, Dr. Hobin prepared an autopsy report, which contained the following findings and observations, among others (which the undersigned accepts as accurate):

PATHOLOGIST'S OPINION

MECHANISM OF DEATH: SUDDEN CARDIAC DEATH DUE
TO ISCHEMIC CARDIOMYOPATHY

CAUSE OF DEATH: OCCLUSIVE CORONARY
ARTERIOSCLEROSIS

MANNER OF DEATH: NATURAL . . .

GROSS AUTOPSY PROTOCOL

EXTERNAL EXAMINATION . . .

INTERNAL EXAMINATION . . .

CARDIOVASCULAR SYSTEM

The heart weighs 680 grams. The increase in weight is attributed to biventricular hypertrophy. All of the chambers are markedly dilated. There is a dense gray scar throughout the posteroseptal myocardium. There are some focal areas of hyperemia in the inferior septum. The cardiac valves appear functionally intact. The coronary arteries have diffuse calcific occlusive arteriosclerosis. There is indication of a double remote bypass coronary graft procedure. There is some sclerosis of both of the grafts and one of the grafts appears to have been occluded by thrombus material throughout its entire length. The thrombus material appears remote in age and it is gray and friable. There is moderate arteriosclerosis of the aorta with some reduced elasticity. . . .

FINDINGS AT GROSS AUTOPSY

1. Arteriosclerotic cardiovascular disease.
2. Occlusive coronary artery disease.
3. Remote coronary artery bypass graft.
4. Remote thrombosis of coronary artery graft.
5. Ischemic cardiomyopathy.
6. Healed posteroseptal myocardial infarction. . . .

MICROSCOPIC EXAMINATION

HEART

There is marked hypertrophy of the myocardium as well as very extensive scarring. This is associated with sclerosis of the coronary artery bypass grafts and they are occluded by degenerated thrombus material. There appears to be minimal fibrosis of the mitral valve.

Appended to Dr. Hobin's autopsy report were the written results of laboratory tests that had been conducted in conjunction with the autopsy. Such testing, according to the written results, revealed the presence of cannabinoids (cannabis metabolites) in Mr. Timmerman's blood.¹⁰

45. Although at the time of his death, Mr. Timmerman (as the autopsy reflected) was suffering from a chronic, degenerative, life-threatening cardiovascular disease that had evolved over a prolonged period of time, he was able to, and did in fact, lead a relatively normal life notwithstanding his disease. He was still able to work, and he continued his employment with Martin County¹¹ until his death.

46. Mr. Timmerman, however, because of his disease, was vulnerable to sudden cardiac death. Sudden cardiac death is a term the medical profession uses to indicate that a person has undergone a rapid, fatal deterioration as a result of an adverse cardiac event. In most, but not all, instances, the adverse cardiac event is an arrhythmia (as was the situation in Mr. Timmerman's death). Emotional stress and excitement can produce physiological changes that increase cardiac demand and

consequently may precipitate an arrhythmia that leads to sudden cardiac death. Whether a particular incident or situation will produce such a result depends, not only on the individual's physical health, but on his or her emotional makeup as well.

47. In the instant case, it appears, within a reasonable degree of medical probability, that work-related emotional distress (which manifested itself during the confrontations Mr. Timmerman had with Mr. Markey immediately preceding Mr. Timmerman's death) aggravated Mr. Timmerman's preexisting cardiovascular disease and thereby precipitated his demise.

CONCLUSIONS OF LAW

48. Petitioner is the surviving spouse of Ralph Timmerman, who was a member of the Florida Retirement System (hereinafter referred to as the "System") at the time of his death.

49. The "benefits payable under the [S]ystem" are described in Section 121.091, Florida Statutes.

50. Subsection (7) of Section 121.091, Florida Statutes, addresses the subject of "death benefits." It provides, in pertinent part, as follows:

(d) Notwithstanding any other provision in this chapter to the contrary, with the exception of the Deferred Retirement Option Program, as provided in subsection (13):

1. The surviving spouse of any member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime or, if the member was vested, such surviving spouse may elect to

receive a benefit as provided in paragraph (b). Benefits provided by this paragraph shall supersede any other distribution that may have been provided by the member's designation of beneficiary.

51. "Death in line of duty," as used in Chapter 121, Florida Statutes, is defined in Section 121.021(14), Florida Statutes, as follows:

"Death in line of duty" means death arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of death, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

See also Rule 60S-6.001(21), Florida Administrative Code ("DEATH IN LINE OF DUTY-- Means death arising out of and in the actual performance of duty required by a member's employment during his regularly scheduled working hours or irregular working hours as required by the employer.").

52. A deceased member's surviving spouse is entitled to "in line of duty" death benefits pursuant to Section 121.091(7)(d)1, Florida Statutes, if an injury or illness, arising out of and in the actual performance of a duty required by the member's employment, was the substantial producing cause or an aggravating cause of the member's death. See Westbrook v. Division of Retirement, 699 So. 2d 813, 814 (Fla. 1st DCA 1997); Glisson v.

Department of Management Services, Division of Retirement, 621 So. 2d 543, 544 (Fla. 1st DCA 1993); Burd v. Division of Retirement, 581 So. 2d 973, 974 (Fla. 1st DCA 1991); Dixon v. Department of Administration, Division of Retirement, 481 So. 2d 52, 54 (Fla. 1st DCA 1985); Blanton v. Division of Retirement, 480 So. 2d 134, 135 (Fla. 1st DCA 1985).

53. The surviving spouse has the burden of proving his or her entitlement to "in line of duty" death benefits. See Glisson v. Department of Management Services, Division of Retirement, 621 So. 2d 543, 544 (Fla. 1st DCA 1993); Dixon v. Department of Administration, Division of Retirement, 481 So. 2d 52, 54 (Fla. 1st DCA 1985); Blanton v. Division of Retirement, 480 So. 2d 134, 135 (Fla. 1st DCA 1985).

54. The causal connection between the work-related injury or illness and the member's death must be established by the surviving spouse within a reasonable degree of medical probability. "Medical certainty is not the legal test for causation"; nor is medical possibility. Pridgeon v. Division of Retirement, 662 So. 2d 1028, 1030 (Fla. 1st DCA 1995).

55. To meet his or her burden of proof, the surviving spouse need only show that the member had a work-related injury or illness that was an aggravating cause of the member's death. It is not necessary for the surviving spouse to demonstrate that the work-related injury or illness was the sole or major cause of death. See Otero v. State Retirement Commission, 720 So. 2d

1147, 1148 (Fla. 5th DCA 1998); Westbrook v. Division of Retirement, 699 So. 2d 813, 814 (Fla. 1st DCA 1997).

56. The work-related injury or illness may be an emotional one that was the product of the member's reaction to job stress or strain. See Andersen v. Division of Retirement, 538 So. 2d 929 (Fla. 1st DCA 1989); Dixon v. Department of Administration, Division of Retirement, 481 So. 2d 52 (Fla. 1st DCA 1985); Division of Retirement v. Allen, 395 So. 2d 1192 (Fla. 1st DCA 1981); Wilkinson v. Department of Management Services, Division of Retirement, 1993 WL 944124 (Fla. DOAH 1993)(Recommended Order); Clemmons v. Department of Administration, Division of Retirement, 1992 WL 880509 (Fla. DOAH 1992)(Recommended Order).¹²

57. The stress or strain need not have been unusual or atypical for the position held by the member. See Dixon v. Department of Administration, Division of Retirement, 481 So. 2d 52 (Fla. 1st DCA 1985); Division of Retirement v. Allen, 395 So. 2d 1192 (Fla. 1st DCA 1981); Division of Retirement v. Putnam, 386 So. 2d 824, 825 (Fla. 1st DCA 1980).

58. That the member had a preexisting, non-work-related medical condition that made him or her more vulnerable than the average employee to experiencing a fatal reaction to job stress or strain does not foreclose an award of "in line of duty" death benefits to the member's surviving spouse. If the surviving spouse is able to establish, within a reasonable degree of medical probability, a causal connection between the working

conditions the member found to be stressful and the member's death, "in line of duty" death benefits will be awarded notwithstanding that the average employee would not have succumbed under similar circumstances. See Westbrook v. Division of Retirement, 699 So. 2d 813, 814 (Fla. 1st DCA 1997); Burd v. Division of Retirement, 581 So. 2d 973, 974 (Fla. 1st DCA 1991); Dixon v. Department of Administration, Division of Retirement, 481 So. 2d 52 (Fla. 1st DCA 1985); Havener v. Division of Retirement, 461 So. 2d 231, 233 (Fla. 1st DCA 1984); Division of Retirement v. Allen, 395 So. 2d 1192 (Fla. 1st DCA 1981); Bolinger v. Division of Retirement, 335 So. 2d 569, 570 (Fla. 1976); cf. Lum v. Tri-State Insurance Company, 252 So. 2d 157, 160 (La. App. 2d Cir. 1971)("It is elementary that employers take employees as they find them.").

59. In the instant case, Petitioner has established, within a reasonable degree of medical probability, the existence of such a causal relationship. It is apparent from Mr. Timmerman's words¹³ and actions that, immediately preceding his death, he was suffering from a severe emotional disturbance resulting from his reaction to the manner in which he and his staff were treated by his supervisor, Mr. Markey. It further appears, given the timing and other circumstances surrounding Mr. Timmerman's death, considered in conjunction with the greater weight of the expert medical testimony presented at hearing (via deposition),¹⁴ that, within a reasonable degree of medical probability,

Mr. Timmerman's work-related emotional disturbance aggravated his pre-existing heart condition and precipitated his death.

60. Accordingly, Petitioner is entitled to receive "in line of duty" death benefits from the account of her late husband.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Division of Retirement issue a final order finding that Petitioner is qualified to receive "in line of duty" death benefits from the account of her late husband, Ralph Timmerman.

DONE AND ENTERED this 13th day of August, 1999, in Tallahassee, Florida.

STUART M. LERNER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of August, 1999.

ENDNOTES

1/ The hearing was originally scheduled to commence on March 3, 1999, but was continued at the request of Respondent.

2/ Three of these exhibits were depositions of medical experts: Frederick Hobin, M.D., the Medical Examiner for the 19th Medical Examiner District of Florida, who performed the autopsy on

Mr. Timmerman's body; Lawrence Mufson, M.D., Mr. Timmerman's cardiologist; and Andre Jawde, M.D., a cardiac surgeon, who gave expert testimony on behalf of Respondent. Two other exhibits were depositions of two of Mr. Timmerman's co-workers, Patti Smith and Sharon Barnes.

3/ It is unclear from a reading of the article whether the "studies" referenced in the article dealt with a physical confrontation, a verbal confrontation (like the one that preceded Mr. Timmerman's death in the instant case), or a hybrid of these two types of confrontations; neither does the article reveal who performed these studies or any other information that might shed light on the scientific validity of these studies.

4/ There is not adequate information to determine whether the individuals whose medical opinions are set forth in the article have the requisite expertise to render such opinions.

5/ The undersigned also deferred ruling on Respondent's Exhibit 3, a Notice of Denial sent by Mr. Timmerman's employer's workers' compensation insurance carrier to the Florida Department of Labor and Employment Security, Division of Workers' Compensation, on February 5, 1999, denying, "on the issue of compensability," a claim concerning Mr. Timmerman and stating the following reasons for the denial:

1. Employee's medical condition was personal to him and not the result of his employment.
2. Employee did not have accident or injury arising out of the course and scope of employment.
3. Any other valid reason which may hereafter appear.

At the close of the final hearing, the undersigned advised the parties that, with respect to Petitioner's Exhibit 7 and Respondent's Exhibit 5, "If the offering party does not present argument [in that party's proposed recommended order] concerning the admissibility of those exhibits, I will assume that the offer of those exhibits has been withdrawn." In her Proposed Recommended Order, Petitioner presented argument regarding the admissibility of Petitioner's Exhibit 7. Respondent's Proposed Recommended Order, however, does not contain any argument concerning the admissibility of Respondent's Exhibit 5. Accordingly, Respondent's Exhibit 5 is deemed to have been withdrawn. (In any event, it does not appear that the disposition of the workers' compensation claim that is the subject of Respondent's Exhibit 5 should have any bearing on the outcome of the instant case. See Dixon v. Department of Administration, Division of Retirement, 481 So. 2d 52, 54 (Fla. 1st DCA 1985)("The Commission is apparently applying the test used in workers' compensation cases to internal failure situations, requiring that for an accident to arise out of employment, the claimant must show unusual strain or stress resulting from a specifically identifiable effort not routine to the type of work the claimant was accustomed to performing. . . . We have consistently refused to apply this standard to retirement disability benefit cases under Section 121.021(13).").

6/ Respondent filed an Amended Proposed Recommended Order on July 29, 1999, "to correct certain scrivener's errors."

7/ This occurred at least twice a month.

8/ This conduct contrasted sharply with his behavior at home, where he acted in an easygoing and laid back manner.

9/ He did not single-out any staff member for criticism.

10/ There is no record evidence indicating that there was any causal relationship between the cannabinoids detected in Mr. Timmerman's blood and his death.

11/ Although aware of Mr. Timmerman's heart problems, Martin County did not take any action to terminate his employment on the ground that he was unable to perform his job duties.

12/ In both the Wilkinson case (where it was found that the member's "mental condition was caused or aggravated by the stress resulting from his employment with the Manatee County Sheriff's Department, and that his [death by] suicide was the result of his mental illness") and the Clemmons case (where it was found that "the precipitating cause of death [of the member, who was employed as a correctional officer] was his emotional reaction to acute stress following [an] altercation with [an] [ilnmate]"), the Division of Retirement adopted the recommendation of the Hearing Officer that the member's surviving spouse receive "in line of duty" death benefits.

13/ The statements that Mr. Timmerman made (the day of his death and the day before) in which he expressed his feelings regarding the treatment he and his staff received from Mr. Markey fall within the "then-existing state of mind" exception to the hearsay rule described in Section 90.803(3), Florida Statutes.

14/ Where medical experts express conflicting opinions in their testimony, it is "the duty and responsibility of the [Administrative Law Judge] . . . to accept the opinion of the expert or experts he determine[s] to be comports with logic and reason, taking into consideration all of the other pertinent evidence he ha[s] before him." Reed v. Whitmore Electric Company, 141 So. 2d 569, 571 (Fla. 1962). The undersigned has determined that the expert opinion testimony of Drs. Hobin and Mufson, to the extent that it conflicts with Dr. Jawde's expert opinion testimony, is more "comports with logic and reason, taking into consideration all of the other pertinent evidence," and therefore he has credited their testimony over Dr. Jawde's testimony to the contrary.

COPIES FURNISHED:

Robert B. Button, Esquire
Division of Retirement
Cedars Executive Center
Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

Stanley M. Danek, Esquire
2114 Great Oak Drive
Tallahassee, Florida 32303

A. J. McMullian, III, Director
Division of Retirement
Cedars Executive Center
Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

¹ The hearing was originally scheduled to commence on March 3, 1999, but was continued at the request of Respondent.

² Three of these exhibits were depositions of medical experts: Frederick Hobin, M.D., the Medical Examiner for the 19th Medical Examiner District of Florida, who performed the autopsy on Mr. Timmerman's body; Lawrence Mufson, M.D., Mr. Timmerman's cardiologist; and Andre Jawde, M.D., a cardiac surgeon, who gave expert testimony on behalf of Respondent.

³ It is unclear from a reading of the article whether the "studies" referenced in the article dealt with a physical confrontation, a verbal confrontation (like the one that preceded Mr. Timmerman's death in the instant case), or a hybrid of these two types of confrontations; neither does the article reveal who performed these studies or any other information that might shed light on the scientific validity of these studies.

⁴ There is not adequate information to determine whether the individuals whose medical opinions are set forth in the article have the requisite expertise to render such opinions.

⁵ The undersigned also deferred ruling on Respondent's Exhibit 3, a Notice of Denial sent by Mr. Timmerman's employer's workers' compensation insurance carrier to the Florida Department of Labor and Employment Security, Division of Workers' Compensation, on February 5, 1999, denying, "on the issue of compensability," a claim concerning Mr. Timmerman and stating the following reasons for the denial:

-
1. Employee's medical condition was personal to him and not the result of his employment.
 2. Employee did not have accident or injury arising out of the course and scope of employment.
 3. Any other valid reason which may hereafter appear.

At the close of the final hearing, the undersigned advised the parties that, with respect to Petitioner's Exhibit 7 and Respondent's Exhibit 5, "If the offering party does not present argument [in that party's proposed recommended order] concerning the admissibility of those exhibits, I will assume that the offer of those exhibits has been withdrawn." In her Proposed Recommended Order, Petitioner presented argument regarding the admissibility of Petitioner's Exhibit 7. Respondent's Proposed Recommended Order, however, does not contain any argument concerning the admissibility of Respondent's Exhibit 5. Accordingly, Respondent's Exhibit 5 is deemed to have been withdrawn. (In any event, it does not appear that the disposition of the workers' compensation claim that is the subject of Respondent's Exhibit 5 should have any bearing on the outcome of the instant case. See Dixon v. Department of Administration, Division of Retirement, 481 So. 2d 52, 54 (Fla. 1st DCA 1985)("The Commission is apparently applying the test used in workers' compensation cases to internal failure situations, requiring that for an accident to arise out of employment, the claimant must show unusual strain or stress resulting from a specifically identifiable effort not routine to the type of work the claimant was accustomed to performing. . . . We have consistently refused to apply this standard to retirement disability benefit cases under Section 121.021(13).").

⁶ Respondent filed an Amended Proposed Recommended Order on July 29, 1999. "to correct certain scrivener's errors."

⁷ This occurred at least twice a month.

⁸ This conduct contrasted sharply with his behavior at home, where he acted in an easygoing and laid back manner.

⁹ He did not single out any staff member for criticism.

¹⁰ There is no record evidence indicating that there was any causal relationship between the cannabinoids detected in Mr. Timmerman's blood and his death.

¹¹ Although aware of Mr. Timmerman's heart problems, Martin County did not take any action to terminate his employment on the ground that he was unable to perform his job duties.

¹² In both the Wilkinson case (where it was found that the member's "mental condition was caused or aggravated by the stress resulting from his employment with the Manatee County Sheriff's Department, and that his [death by] suicide was the result of his mental illness") and the Clemmons case (where it was found that "the precipitating cause of death [of the member, who was employed as a correctional officer] was his emotional reaction to acute stress following [an] altercation with [an] [i]nmate"), the Division of Retirement adopted the recommendation of the Hearing Officer that the member's surviving spouse receive "in line of duty" death benefits.

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¹⁴ Where medical experts express conflicting opinions in their testimony, it is "the duty and responsibility of the [Administrative Law Judge] . . . to accept the opinion of the expert or experts he determine[s] to be comfortable with logic and reason, taking into consideration all of the other pertinent evidence he ha[s] before him." Reed v. Whitmore Electric Company, 141 So. 2d 569, 571 (Fla. 1962). The undersigned has determined that the expert opinion testimony of Drs. Hobin and Mufson, to the extent that it conflicts with Dr. Jawde's expert opinion testimony, is more "comfortable with logic and reason, taking into consideration all of the other pertinent evidence," and therefore he has credited their testimony over Dr. Jawde's testimony to the contrary.