

# In the United States Court of Federal Claims

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DAWN COOK, \*

Plaintiff, \*

v. \*

UNITED STATES OF AMERICA, \*

Defendant. \*

\* \* \* \* \*

No. 05-1050C

Filed: June 15, 2006

Dawn Michelle Cook, Jonesboro, Georgia, pro se.

John H. Williamson, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington D.C., for defendant. Linda Fallowfield, Office of General Counsel, Office of Justice Programs, United States Department of Justice, Washington D.C., of counsel.

## OPINION AND ORDER

**HODGES**, Judge.

Mrs. Cook filed a claim for survivor benefits pursuant to the Public Safety Officers' Benefits Act. See 42 U.S.C. § 3796. She is the widow of Carnel Cook, a police officer who died soon after an altercation with a student at the school where Officer Cook worked. The Act authorizes a program to provide payment of benefits by the Government to survivors of public safety officers in circumstances where the officer "died as the direct and proximate result of a personal injury sustained in the line of duty." Id. The Government denied Mrs. Cook's claim because it did not believe that Officer Cook suffered a traumatic injury in the line of duty, and she appealed that decision to this court pro se.

Defendant filed a motion for summary judgment on the administrative record. We reviewed the record carefully in light of the statutory requirement that the Government give plaintiff the benefit of any doubts. See 28 C.F.R. § 32.4. The initial ruling by the Bureau of Justice Assistance may contain such doubts, but a hearing in response to Mrs. Cook's motion for

reconsideration provided additional information.<sup>1</sup> We must grant defendant's motion.

## BACKGROUND

Carnel Cook was a police officer employed by the Board of Education to maintain order at a high school in Fulton County, Georgia. A fight broke out between two students at the school in September 1999, and Officer Cook responded. One of the students struggled with Officer Cook for several minutes while he attempted to apply handcuffs. The officer needed help from a substitute teacher.

Officer Cook took the student to the assistant principal's office, where the student complained that the handcuffs were tight on his wrist. Cook accidentally discharged a canister of pepper spray as he tried to loosen the handcuffs. One witness stated that Cook sat on the canister and this caused the pepper spray to discharge. Another officer speculated that Officer Cook had neglected to reset the safety device when he threatened to use the spray as the student resisted Cook's efforts to stop the fight.

Officer Cook left the area contaminated by pepper spray along with others in the room, but witnesses testified that he did not seem particularly affected by the spray.<sup>2</sup> However, Cook began sweating profusely when they reached his office, and he appeared to be having difficulty with motor control. One report stated that Officer Cook was "incoherent and perspiring heavily." Minutes later, he collapsed. The police chief arrived soon thereafter and administered CPR on the scene, but Officer Cook was not responsive. He suffered a heart attack in the hospital and died later the same day. Officer Cook was forty-four years old.

The Bureau of Justice Assistance denied Mrs. Cook's claim for survivor benefits under the Public Safety Officers' Benefits Act because "Officer Cook did not suffer a traumatic injury in the line of duty." Plaintiff's attorney filed a motion for reconsideration in June 2000. See 28 C.F.R. § 32.24(a). The Bureau held a formal evidentiary hearing to reconsider Mrs. Cook's claim later that year. *Id.* The hearing officer agreed with the initial ruling and recommended that the Bureau deny plaintiff's application for survivor benefits.

Mrs. Cook appealed the Bureau's final decision in this court *pro se* on September 29, 2005. The Government filed a motion for judgment on the administrative record pursuant to RCFC 56.1 on February 16, 2006. When plaintiff did not respond, we issued an Order directing

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<sup>1</sup> The Bureau of Justice Assistance is an agency of the Department of Justice, Office of Justice Programs. Among its duties, the Bureau administers the PSOB Program and handles appeals from survivors whose claims have been denied.

<sup>2</sup> His partner reasoned that their training on handling pepper spray and tear gas in a closed space explains Officer Cook's lack of apparent distress. One technique is to take short breaths rather than deep gulps of air.

that she advise the court whether she intended to proceed with her case. Mrs. Cook reported that she did not wish to submit a responsive brief, but she hoped to pursue her appeal. She asked that the court consider her claim on the record and rule on defendant's motion without further briefing.<sup>3</sup>

## DISCUSSION

### A. LEGAL STANDARDS

This court has jurisdiction to review decisions of the Bureau of Justice Assistance denying benefits pursuant to the Public Safety Officers' Benefits Act. Demutiis v. United States, 291 F.3d 1373, 1376 (Fed. Cir. 2002). The Federal Circuit has stated that judicial review of such decisions is limited to (1) whether the Agency complied with statutes and implementing regulations; (2) whether government officials acted arbitrarily or capriciously; and (3) whether substantial evidence supports the decision. Chacon v. United States, 48 F.3d 508, 511 (Fed. Cir. 1995) (citing Morrow v. United States, 647 F.2d 1099, 1102, 227 Ct. Cl. 290, cert. denied, 454 U.S. 940 (1981)).

Plaintiff did not argue that the government officials acted arbitrarily or capriciously, or did not comply with applicable regulations. The issue on appeal is whether substantial evidence supports the Agency's decision, and we review this decision giving appropriate deference to the Agency. See Greenley v. United States, 50 F.3d 1009, 1010-11 (Fed. Cir. 1995). Motions for judgment on the administrative record are reviewed according to the rules governing motions for summary judgment. See, e.g., Banknote Corp. of Am., Inc. v. United States, 365 F.3d 1345, 1352 (2004). The standards are similar. See Bannum, Inc. v. United States, 404 F.3d 1346, 1355 (Fed. Cir. 2005).

Mrs. Cook must prove that Officer Cook "died as the direct and proximate result of a personal injury sustained in the line of duty" to qualify for benefits pursuant to the Public Safety Officers' Benefits Act. See 42 U.S.C. § 3796(a).<sup>4</sup> Plaintiff bears the burden of proving that the injury was a "substantial factor in the officer's death." See 42 Fed. Reg. 23,260 (1977); Morrow, 227 Ct. Cl. at 293; Tafoya v. United States, 8 Cl. Ct. 256, 261 (1985). However, "[t]he Bureau

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<sup>3</sup> We granted Mrs. Cook the procedural latitude due plaintiffs filing pro se in this court. See, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curium).

<sup>4</sup> "Proximate" means "the antecedent event is a substantial factor in the result." 28 C.F.R. § 32.2(d). "Personal Injury" as used in the Act is "any traumatic injury." Id. § 32.2(e). "Traumatic Injury" is defined for our purposes as "a wound or a condition of the body caused by external force, including injuries inflicted by . . . physical blows [or] chemicals, . . . but excluding stress and strain." Id. § 32.2(g).

shall resolve any reasonable doubt arising from the circumstances of the officer's death . . . in the favor of payment of the death benefit." 28 C.F.R. § 32.4.

The issue for review is whether substantial evidence in the record supports the Bureau's conclusion that Officer Cook "did not suffer a traumatic injury in the line of duty." Plaintiff contends that a physical struggle such as that encountered by Officer Cook could be a traumatic event within the meaning of the statute. She also asserts the exposure to the pepper spray may have caused Officer Cook to suffer the heart attack. The Government's position is that Officer Cook's heart attack resulted neither from his struggle when trying to handcuff the student nor from the discharge of the pepper spray. Officer Cook's death was not the direct and proximate result of any "traumatic injury" as defined in the Act's implementing regulations, according to defendant.

## B. AGENCY PROCEEDINGS

Doctor Heninger performed the autopsy on Officer Cook. He noted an abdominal bruise and termed it a "hemorrhage in underlying soft tissue." A section of Cook's death certificate that summarizes the doctor's findings states that a bruise in the "lower right quadrant confirms presence of fresh subcutaneous hemorrhage." The Fulton County Medical Examiner commented on the faint bruise on Officer Cook's abdomen, but he reported "no history or physical evidence to suggest that the juvenile attempted to strike or injure the decedent in any way."

Officer Cook was taking medication for hypertension and for diabetes before his death. The Medical Examiner reported that Officer Cook had "severe atherosclerosis of the coronary arteries." The Bureau's decision denying plaintiff benefits cited a portion of the pathologist's summary stating that Cook's death was "natural."<sup>5</sup> Another statement from the same summary makes the following observation:

It has been reported by witnesses that none of the people present at the time were severely affected by the pepper spray. Approximately three to five minutes after the juvenile was finally detained, the decedent was noted to be extremely diaphoretic and to be experiencing some difficulties with motor control. He collapsed almost immediately thereafter.

Officer Cook's death certificate stated as cause of death "Atherosclerotic Cardiovascular Disease, aggravated by exertion while apprehending another."

The Bureau of Justice Assistance concluded that plaintiff did not establish a traumatic injury was the substantial factor in causing Officer Cook's death. Mrs. Cook sought reconsideration from a hearing officer appointed by the Director of the Bureau of Justice Assistance. The hearing officer's transcript clarified several concerns about the Bureau's initial

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<sup>5</sup> The Bureau's ruling did not mention the fresh bruise on Cook's abdomen.

ruling. For that reason, we include plaintiff's arguments to the Agency on reconsideration and a brief summary of the testimony received by the hearing officer.

## 1. Hearing Testimony

The hearing officer took testimony from Mr. Wiggins, an eyewitness; Mr. Rene, who was Officer Cook's partner for a number of years; Mr. Robinson, an assistant principal at the school; and Mrs. Cook, the plaintiff. He examined witnesses according to very liberal rules of evidence, apparently without concern for normal limits on the presentation of testimony and other evidence, including hearsay. During these proceedings, Mrs. Cook was represented by counsel who had the same opportunity to question witnesses without limitation.

Plaintiff argued that (1) "the physical injuries sustained by Officer Cook during the physical struggle and apprehension of a student w[ere] a substantial factor in his death"; (2) the pepper spray inhaled by Officer Cook was a substantial factor in his death; and (3) the injury to Officer Cook "contribute[d] to [his] death to as great a degree as any other contributing factor such as the preexisting hypertensive and [heart] disease and his diabetes." According to plaintiff, "[t]he physical struggle Officer Cook engaged in prior to his death was a traumatic injury under the regulations. The physical struggle is a traumatic event, and the physical struggle is more than stress and strain." Plaintiff argued further that "the physical struggle caused physical injuries to Officer Cook's cardiovascular system, and it is also shown that a physical struggle can serve as an occasion for the sustaining of injuries." Plaintiff's attorney noted that the "accidental inhaling by Officer Cook of the OC [pepper] gas prior to his death was also a traumatic injury." Plaintiff believed that the "nature, extent, and duration of Officer Cook's struggle with the student" and the extent to which Officer Cook's "preexisting condition adversely affected the incidental ingestion of OC pepper gas" were important factors.

Mr. Wiggins was an eyewitness. As assistant principal, he worked "very, very closely" with the officers assigned to his school. "They assist us in incidents that are major incidents as opposed to just the minor classroom disruptions." He was returning from the lunchroom when he noticed that Officer Cook and Mr. Robinson, another assistant principal, were pursuing a student who was hurrying past him. He turned to assist in the chase, but Officer Cook passed him. The student apparently was attempting to leave the building. According to Wiggins, Officer Cook was "mov[ing] faster than I was moving," and Cook stopped the student.

The student was "very combative," according to Wiggins, and "extremely hostile." The officer was trying to calm him down. Mr. Wiggins testified that the student was "totally belligerent, not following any direction, and the kid was -- it's hard to explain how animated he was and how active he was in resisting Officer Cook." Wiggins referred to the confrontation as a "tussle." He explained the word "tussle" as meaning "in the sense they were both standing there, but there was a tussle."

Officer Cook was struggling to handcuff the student, even after he had wrestled the student to the floor with the help of a substitute teacher, Mr. Brown. When Mr. Wiggins arrived

on the scene, Cook “was not in control of the situation.” He testified, “[i]t was a struggle, and it did take a lot longer than I thought it would. I’m not talking about five or ten minutes, but it took . . . at least a minute to get the handcuffs on.” Wiggins described the student as approximately 5 feet 7 inches, 130 pounds, but “really strong.” He testified that Officer Cook was a “powerful man,” and he thought it “unusual” that Cook was not able to subdue the student. Wiggins testified that Cook was “fumbling” in his efforts to handcuff the student.

Wiggins followed the group to Mr. Robinson’s office where Officer Cook was standing, and the student was sitting in a chair. The student had complained that the handcuffs were too tight, and Cook had unintentionally discharged a canister of pepper spray in the process of trying to loosen the handcuffs. As he approached the office, Wiggins was

hit by this pepper gas. And it affected me very, very quickly and then I started coughing, and I just walked out and continued to cough and try to clear my throat . . . Mr. Robinson came out coughing, and Officer Cook brought the student out, but I never did see Officer Cook cough . . . in fact, he wasn’t affected by the pepper spray, and he was the closest to it. But he seemed to be in full control of the situation as far as the student [was concerned].

The group moved to Cook’s nearby office, and Wiggins followed. The student no longer was aggressive. Mr. Wiggins noticed that Officer Cook was “perspiring heavily” then. Cook “walked over to his file cabinet, and he picked up some paper towels, and started patting his forehead, and I asked him, ‘are you OK?’ And he said ‘I’m OK.’” According to Wiggins’ testimony, the officer went to his desk and picked up a bottle of water, took a drink, patted his head with a paper towel, “[a]nd then he fell to the floor. And he never -- once he fell to the floor, we immediately called for assistance.” Wiggins testified that the Chief of Police appeared almost immediately and began CPR on Officer Cook. Cook was alive but not conscious.

Mr. Wiggins did not see any blows land during the “tussle.”<sup>6</sup> He did not see any “flailing or banging of bodies” but “[t]he kid was resisting with all his might.” Wiggins testified that the incident was “very vivid” in the end because “[h]e was standing there, and the file cabinet was right there, and it was very, very close quarters.” Officer Cook grabbed some paper towels “but I could see the perspiration on his face.” Then Cook “took the drink, and he was standing there, and he fell.” Mr. Wiggins added, “it’s not a thing you can forget.”

The next witness was Officer Rene, a twelve-year veteran of law enforcement. He and Officer Cook volunteered for the assignment at the troubled school. “[W]e were both seasoned officers, so we were excited about the opportunity to go in an environment where they didn’t really have any police presence, any serious law enforcement officers to address a lot of issues that goes on in that school.” He testified that he and Cook had made many arrests and had

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<sup>6</sup> The hearing officer established that Mr. Wiggins was not in the room when the gas first escaped from the canister.

participated in intervention programs with the students. He noted that students in that school were “volatile.” Officer Rene said he and his partner had handled “a lot of fights [and] dealt with a lot of issues.” Officer Cook never had problems handling such situations.

Officer Rene testified about the physical training that prepared them for the job, including how to make arrests, how to manage pepper gas and tear gas, and how to handle combative subjects. Asked about Officer Cook’s attempt to handle the incident without backup, Mr. Rene testified, “it is proper protocol for a single officer to attempt to arrest a single individual under those circumstances, that is the person being combative.” While Rene testified that “it’s extremely difficult in our business to handcuff a subject that doesn’t want to be handcuffed,” he acknowledged that an officer has to do what is necessary in a “real tough environment. We are in a situation where we don’t have the backup that we would have on a regular basis like we do on the street.”<sup>7</sup>

Rene had no knowledge from his discussions with individuals who were involved in this incident that the student “physically struck Officer Cook during the struggle.” He testified that “[n]obody saw [the student] strike [Officer Cook]” but that the student “resisted [Cook’s] every effort” to handcuff him.<sup>8</sup>

Officer Rene testified that he and Officer Cook were authorized to carry pepper spray or gas:

We have certification to carry the gas. Now, we don’t have department-issued OC [pepper] gas. But we can go out and buy OC gas that we feel that we can use, so I know that Officer Cook had his gas[.] I don’t have OC gas. I’d rather -- I don’t carry that myself.

He does not carry the gas because “it could go off accidentally and affect the room in a hurry, or it can affect the people in the room in a hurry.” Rene opined that Officer Cook likely did not

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<sup>7</sup> The witness could not understand why Officer Cook had his handcuffs available but could not put them on, stating “[i]t shouldn’t be a major problem.” Officer Rene described an occurrence in which Cook handled an incident by himself that seems to have been far more complicated and explosive than this one. “[H]e had one subject on his right side and the other one on his left side. He was escorting them to the front office.”

<sup>8</sup> Q: Nobody saw him strike him, just that he did not cooperate and did not --

A: That’s true.

Q: He made Officer Cook work to get those handcuffs on him?

A: Yes.

Q: He resisted every effort?

A: That’s correct.

react to the gas as everyone else did because “he’s familiar with the gas.” His training enabled him to avoid the impact that it had on others who were not so trained. “Officer Cook would know what to do” in such a situation, “and he would be comfortable with the reaction of the gas.”

Rene said he had no concern about using pepper spray around students or anyone else because

it’s not a lethal force weapon . . . it’s something that you use to really calm a subject, a volatile subject. So it’s something that -- its pepper spray, so it’s a natural. It’s supposed to be a natural ingredient. [There’s] not anything artificial in it so [it’s] like having pepper in your food.”

(emphasis added).

The final witness was Mr. Robinson, an assistant principal assigned to Tri-Cities High School. He confirmed that the pepper spray did not seem to affect Officer Cook as it did the others. Cook was “perspiring very heavily,” however, and

he was fatigued. He was fatigued after the struggle. I stepped outside in the hallway, and I saw him escorting a young man back towards the office. So I was of kind of walking towards to meet them half way, and then we went out in the front of the building, but he appeared to be fatigued and sweating. [Cook] appeared to be perspiring very heavily and started sweating, and he said he needed some water.

Robinson testified that Mr. Wiggins approached the room as the group was evacuating. Cook radioed for assistance, and then the chief and the deputy chief arrived on the scene. They moved to Cook’s office to escape the spray.

The hearing officer asked Mr. Robinson to speculate from his discussions with others, “what caused this to happen to Cook.” Robinson responded,

[t]he testimony was about 50/50. Some say it was job related, that the young man that he was trying to subdue had . . . worked [Cook’s] heart rate up to the point where it caused him to go into a cardiac arrest. And the others felt, though, that it was a preexisting medical problem that caused it.

Robinson verified that it “[t]ook a lot out of [Cook] to subdue the young man” before the pepper spray incident, but “[w]hen we got into his office after the pepper spray had discharged, it was worse.”

Q: And the main thing you saw was the heavy perspiration?

A: And his eyes had started turning colors.

Q: Uh-huh, you -- you said turning colors, what do you mean?

A: Like a yellowish light color, you know, his eyes.<sup>9</sup>

Q: That was just before he fainted?

A: Right, just before he collapsed.

## 2. Ruling of the Hearing Examiner

The hearing examiner listed the determinative factual issue as, “[d]id Officer Carnel Cook sustain a traumatic injury in the line of duty which was a substantial factor in his death as required by PSOB regulations?” The examiner noted that the potentially qualifying injuries in this case were “a blow from the student during the struggle, intentional or not; and the inhalation of pepper spray.” The Bureau had rejected plaintiff’s claim because “Officer Cook did not suffer a traumatic injury in the line of duty . . . . [T]he standard in the PSOB Act and implementing regulations does not include heart trouble or stress standing alone as a personal traumatic injury.”

The hearing officer acknowledged Police Chief Rucker’s letter speculating that Cook had sustained a blow to his chest, “which might have caused an electrical imbalance to the heart.” The hearing officer disregarded the Chief’s comment because “[n]o evidence appears to support this speculation, [and] the eyewitness Wiggins did not see any blows landed[,] describing the incident as ‘a tussle.’”

Officer Cook said nothing about being hurt or in distress to anyone, according to the hearing officer, and reports by the medical examiner’s office found “no history or physical evidence to suggest that the juvenile attempted to strike or injure the decedent in any way.” Moreover, no evidence from the autopsy “suggest[ed] that exposure to pepper spray contributed in any fashion to the decedent’s demise.” The hearing officer noted further that the “Armed Forces Institute of Pathology in its review of this matter . . . specifically concurred in the conclusion of the Fulton County Medical Examiner that the minimal abdominal trauma did not contribute to the cause of death.”

The Government must “resolve any reasonable doubt arising from the circumstances of the officer’s death in favor of payment of the death benefit.” See 28 C.F.R. § 32.4. However, the hearing examiner ruled that “there is insufficient evidence offered regarding the presence of a traumatic injury to enable the PSOB to possess a reasoned doubt.” The hearing officer concluded, “[h]aving examined the facts and the issues presented above, it is the conclusion of this hearing officer that the death of Officer Carnel Cook resulted from a combination of heart disease, stress and strain, and is therefore not covered under PSOB regulations as set out in 28 C.F.R. Part 32.”

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<sup>9</sup> This is the only mention in the record of his eyes “turning colors.” Neither the hearing officer nor plaintiff’s attorney pursued the matter. The autopsy report does not address the issue, nor does it arise elsewhere in the record to our knowledge.

### C. RULING ON REVIEW

An important limitation on benefits under this statute is that the injury, in cases of heart attack deaths, must be suffered in the line of duty and must contribute to the death “in as great a degree as the underlying heart disease, or is sufficient in itself to cause death, regardless of the heart disease.” See Morrow, 647 F.2d at 1099; Smykowski v. United States, 647 F.2d 1103 (Ct. Cl. 1981). The Court of Claims found in Smykowski that a “physical struggle can serve as the occasion for the sustaining of injuries.” Id. at 1106. However, the court rejected plaintiff’s claim for benefits in that case, noting that “the words ‘struggle’ and ‘injury’ convey totally different notions.” Id. at 1105. Plaintiff’s burden was to show that the struggle resulted in an injury or “traumatic event.” Id.

The hearing officer did not always connect his findings and conclusions or explain how and where he obtained inferences from such findings. For example, he must have inferred that Officer Cook’s heart problems caused the sweating, the loss of energy, the loss of motor control, and other symptoms that Cook demonstrated. This is a reasonable inference from the testimony, though the examiner did not explain that this conclusion was an inference taken from the record before him. The hearing officer did not address testimony regarding Officer Cook’s eyes turning yellow, but Mrs. Cook was represented by counsel at that hearing and he did not pursue the issue.

We made an effort to insure that the examiner’s findings were supported by facts or reasonable inferences where he did not tie his conclusions together in a logical sequence. For example, Officer Rene, who clearly had admiration and affection for his partner, stated that he could not understand why Cook could not subdue the student, though he was a “powerful” man and they had many years of experience working together on “hundreds” of similar cases. Witnesses testified that he was “not in control” of the situation. It is reasonable to infer that Cook’s heart condition or his diabetes caused him to lose control of this routine confrontation with a student. Officer Cook was exhausted by his oncoming heart attack. Cook’s pre-existing physical conditions explained the heavy sweating and the loss of motor control that several witnesses mentioned to the hearing examiner’s satisfaction

A court’s review of the Bureau’s actions is limited. See, e.g., Greenley, 50 F.3d at 1010 (court considers only whether the Agency has complied with the statute and its implementing regulations; whether government officials have acted arbitrarily or capriciously; and whether substantial evidence supports the decision) (citing Morrow, 227 Ct. Cl. at 296). A trial court reviewing the examiner’s report can perceive the connection between the examiner’s findings in this case and the inferences he made to reach his conclusions. So long as this court can identify the process that the examiner used to make those connections, and that process is reasonable, we will not substitute our judgment for his.

## CONCLUSION

The Government has an obligation to “resolve any reasonable doubt arising from the circumstances of the officer’s death in the favor” of the claimant seeking the benefits. 28 C.F.R. § 32.4. Mrs. Cook has not been represented by an attorney in this court. She did not submit briefs or other arguments in response to the Government’s position. We took special care to consider the points discussed briefly above, and to locate sources in the record to support the hearing officer’s recommendations. Given the standards that limit this court’s review, however, we must rule for the Government on the record before us.

Defendant’s motion for summary judgment is GRANTED. The Clerk of Court will dismiss plaintiff’s complaint. No costs.

s/ Robert H. Hodges, Jr.  
Robert H. Hodges, Jr.  
Judge