

STATE OF NORTH CAROLINA
COUNTY OF LEE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR05094

ESTHER H BEAL, Petitioner, v. OFFICE OF THE CHIEF MEDICAL EXAMINER, Respondent.	FINAL DECISION
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A contested case hearing was conducted in this matter on September 26, 2012, in Raleigh, North Carolina before Beecher R. Gray, Administrative Law Judge. Petitioner, Esther H. Beal, appeared *pro se*. Respondent, Department of Health and Human Services, Office of the Chief Medical Examiner, was represented by John P. Barkley, Assistant Attorney General. A proposed decision was submitted by Respondent on November 01, 2012.

ISSUE

Whether Respondent properly determined that the decedent's manner of death should be classified as suicide.

EXHIBITS

Respondent's exhibits (hereinafter "R. Exs.") 1-7 were admitted.

Based upon the testimony presented at the hearing, the exhibits admitted, and all other relevant material, the undersigned makes the following:

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. On October 22, 2011, Emergency Medical Services ("EMS") was called to the home of Bobby G. Beal, the decedent in this matter. Bobby Beal was a 51-year-old male who was found unconscious with what EMS described as "an apparently self-inflicted gunshot wound to the right chest." EMS took the decedent to Central Carolina Hospital in Sanford where he was pronounced dead 20 minutes after EMS arrived.

3. This death came under the jurisdiction of the Office of the Chief Medical Examiner; the deceased body was sent to the Office of the Chief Medical Examiner in Chapel Hill for autopsy. Following the autopsy and review of all information in the investigation file, Dr. Christopher Gordon, Assistant Medical Examiner and Dr. Clay Nichols, Deputy Chief Medical Examiner, determined that the cause of death was a self-inflicted gunshot wound to the right chest and that the manner of death was suicide.
4. Petitioner, Esther Beal, wife of the decedent, is contesting the classification of the manner of death as suicide. Petitioner argues that the decedent's manner of death should be classified as accidental.
5. Dr. Clay Nichols is the Deputy Chief Medical Examiner for North Carolina, in the Office of the Chief Medical Examiner. Dr. Nichols is board certified in both anatomic and forensic pathology and has over 25 years of experience working as a medical examiner and teaching forensic pathology (R. Ex. 7). During his career, he has made close to 7,000 determinations of the cause and manner of death. Dr. Nichols was tendered and accepted by the Administrative Law Judge as an expert in forensic pathology and forensic examinations.
6. Dr. Nichols testified as to the autopsy and investigation by the Office of Chief Medical Examiner ("OCME") and his participation in the investigation and determination of the manner of death of Bobby Beal.
7. An autopsy on the decedent's body was performed at OCME on October 25, 2011. Dr. Gordon performed the autopsy, with Dr. Nichols supervising. During the autopsy, a "near contact range" gunshot wound to the right chest was found. The autopsy found that "[n]o unburned gunpowder particles or stippling are present on the skin at the entrance wound" and that microscopic evaluation of the entrance wound showed "dark foreign material at the junction between the epidermis and dermis-- findings consistent with soot" (R. Ex. 1). Similar findings were made on the shirt the decedent had been wearing, over the area of the gunshot wound.
8. Dr. Nichols explained that these findings show that the gun was pressed directly against the body, with the only separation being the clothing decedent was wearing. Dr. Nichols testified that this indicates a certain amount of intention to have the gun right up against the chest when the trigger on the gun was pulled. Dr. Nichols testified that if the gun accidentally had fired, it would not have been a near contact range wound exhibiting the signs of soot in the wound and absent unburned gunpowder. In this case, all of the unburned gunpowder went into the wound because the gun was pressed against the body. This shows that the gun was placed directly against the chest and the trigger was pulled, which could not be the result of an accidental shooting.
9. The autopsy determined that the cause of death was a near contact range gunshot wound to the right chest. The autopsy found no other cause contributing to the decedent's death.
10. The medical examiner's report states that "No suicide note was found, but per family

members the decedent was experiencing life stressors and previously had expressed suicidal thoughts” (R. Ex. 2). This included statements by the decedent to his brother that he did not want to live without his wife, which Petitioner admitted in her own testimony at the hearing. One of the life stressors decedent was experiencing was that he and Petitioner were in the process of separating. Petitioner confirmed this in her testimony, stating that it was because of decedent’s long history of mental abuse of her.

11. Dr. Nichols also testified that he had reviewed the investigation report from the Lee County Sheriff’s Office as part of his review of the manner of death. The officer on the scene immediately after the shooting stated that “Once EMS arrived I spoke with Petitioner and she stated that she was sitting in her bedroom with Bobby who put a gun to his chest and said ‘I will end this right now’” (R. Ex. 3).
12. Petitioner does not question that the decedent died as the result of a gunshot wound to the chest. She only contends that it was accidental, not suicide. Dr. Nichols testified that there was never any question for him that the manner of death in this case might be accidental. He said the question for the medical examiner’s office to determine was whether it was suicide or homicide. Initially the gun was not found with the body, and there apparently had been some attempt to clean up the scene, according to the police report. Eventually it was determined that one of the decedent’s sons had moved the weapon; the evidence showed that the decedent was the only one handling the gun. For the reasons stated above, Dr. Nichols’ expert opinion was that the nature of the wound showed that the gun deliberately was placed directly against the decedent’s chest when the gun was fired, and the near contact range wound could not have resulted from an accidental shooting. Either the decedent deliberately shot himself or someone else shot him. From the information OCME had, Dr. Nichols and Dr. Gordon determined to a reasonable degree of medical certainty that the manner of death was consistent with suicide.
13. Based on his education and experience, Dr. Nichols’ expert opinion was that Bobby G. Beal’s manner of death was properly classified as suicide. The near contact range wound, the events in Bobby’s life, the statements in the police report that Bobby made, and previous suicidal thoughts all support this conclusion. Dr. Nichols stated that in his opinion, even if the only information available had been the findings concerning the nature of the wound--which showed that the decedent deliberately held the gun against his chest and pulled the trigger--the manner of death properly was classified as suicide.
14. The testimony and expert opinion of Dr. Nichols, as well as the evidence in Respondent’s exhibits 1-7 admitted into evidence at the hearing, all support the determination by the medical examiner’s office that the decedent’s manner of death was suicide. Dr. Nichols’ testimony as to the nature of the wound, with no unburned gunpowder, soot in the wound, and the evidence showing that the gun had to have been held up against the chest when the trigger was pulled, shows an intentional act on the part of the decedent when he shot himself. The testimonial evidence from Petitioner and her son Chad demonstrates that Bobby Beal was very familiar with guns and with this particular weapon. The evidence also shows that the decedent’s death could not be the result of an accidental shooting

because of what was described by Petitioner as a hairline trigger on the gun. An accidental shooting caused by the gun could not have led to the wound found by the medical examiner's office; such a wound could only have been the result of a deliberate act. Therefore Petitioner's unsupported assertion on this point is contradicted by the evidence.

15. While Petitioner claims that her husband did not mean to commit suicide, but only to scare her, as he had attempted to do multiple times over many years, the evidence of his abuse of Petitioner paints the picture of an unstable individual. The decedent apparently had no compunction about putting a gun to Petitioner's head or actually firing a gun over her head, both of which she testified that he had done during her 30 years with him. She stated that there was something wrong with him, although he never went to get a diagnosis. She was separating from him because of his continuing mental abuse of her. He clearly could act rashly, and was very comfortable in using a gun in dangerous and potentially fatal ways. He had told his brother that he didn't want to live without her. All of these factors support a state of mind at the time he pointed the gun at his chest and pulled the trigger that he intended to commit suicide. Under such circumstances, the statement in the police report that he told Petitioner that "he would end this right now" is credible. Even if he later stated, after the shooting, that he did not want to die, as his son stated in his testimony, that does not mean that he did not intentionally shoot himself. In the light of all of the evidence, I find Respondent's finding of suicide more credible in explaining the decedent's death.
16. Petitioner provided no scientific or medical evidence, or expert testimony, to support her theory of the manner of death as accidental because of an extremely light amount of trigger pressure required to fire the gun.
17. Respondent is charged by G.S. 130A-383 with investigating "the death of any person resulting from violence, poisoning, accident, suicide, or homicide; . . . or occurring under suspicious, unusual, or unnatural circumstances"
18. Under G.S. 130A-385, when a medical examiner takes charge of a body under G.S. 130A-383, the medical examiner is required to make findings regarding the cause and manner of death and report such findings to the Chief Medical Examiner.
19. G.S. 130A-385 requires the medical examiner to complete a death certificate and, "[I]f the death was from external causes, the medical examiner shall state on the certificate of death the means of death, and whether, in the medical examiner's opinion, the manner of death was accident, suicide, homicide, execution by the State, or undetermined." G.S. 130A-385(b).

Based upon the foregoing findings of fact, I make the following:

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Petitioner in this matter is contesting the statutorily-required classification of the manner of death by the medical examiner. Therefore, the burden of proof lies with Petitioner.
3. There is substantial evidence in the record to support the action of Respondent in classifying decedent's death as a suicide, and Respondent has demonstrated by a preponderance of the evidence that the decedent's death is properly classified as suicide.
4. Petitioner has not met her burden of proof. Petitioner suggested that the decedent's death was the result of an accidental shooting because of a gun with a hairline trigger. The evidence does not support that theory. The expert testimony demonstrates that the nature of the gunshot wound that killed decedent could not have been the result of an accidental shooting. The expert testimony establishes that the gun was directly held against decedent's right chest when the trigger was pulled and that would have required the decedent to intentionally place the gun to his chest with the intent to shoot himself. Petitioner provided no medical or scientific evidence to refute the medical examiner's findings and made no attempt to refute Dr. Nichols' expert testimony. Petitioner provided no evidence that the gun in question had an extremely light trigger pull or was subject to misfiring. Her only evidence was her statement under oath that she knew he never would commit suicide and her son's testimony that his father had come into the son's bedroom after the shooting and stated that he did not intend to shoot himself. Petitioner has failed to meet her burden of proof and Respondent has demonstrated by a preponderance of the evidence that the decedent's death properly is classified as suicide.
5. The language of the statute also is important in determining the basis for supporting the agency's decision in this case. G.S. §130A-385 requires the medical examiner to "state on the certificate of death the means of death, and whether, *in the medical examiner's opinion*, the manner of death was accident, suicide, homicide, execution by the State, or undetermined." (Emphasis added). The statute simply requires a finding by the medical examiner as to the medical examiner's "opinion" as to the manner of death. Obviously, the medical examiner cannot state to an absolute certainty the manner of death, except in extremely rare circumstances where the medical examiner is present when death occurs. While the means of death is often, but not always, easier to identify, the manner of death must remain an opinion based on the medical examiner's training and experience and the information available to the medical examiner from other sources such as EMS and law enforcement. The medical examiner's opinion cannot be based on pure whim, but it also cannot be held to a standard that requires the medical examiner to prove that his decision is absolutely correct. In the present case, there is ample evidence to show that the medical examiner made a reasoned decision on the evidence available and arrived at a decision based on his training and experience in light of such evidence. The decision was reviewed by another unbiased professional who concurred in this decision. Both Dr.

Gordon and Dr. Nichols determined that suicide was the most probable manner of death based on all of the evidence available.

FINAL DECISION

Based upon the above findings of facts and conclusions of law, I find that in making its decision to classify the manner of death as suicide, Respondent acted properly as required by law or rule; did not act erroneously, arbitrarily or capriciously; and did not substantially prejudice Petitioner's rights. Respondent's action is supported by a preponderance of substantial evidence in the record. Respondent's determination of the manner of death as suicide should be, and hereby is, **AFFIRMED**.

NOTICE

Under the provisions of North Carolina General Statute §150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 14th day of May, 2013.

Beecher R. Gray
Administrative Law Judge

