

The issue is whether appellant has met his burden of proof to establish that the employee's death was causally related to her employment injury. On appeal, counsel contended that the report of the employee's attending physician, Dr. William W. Stout, was sufficient to establish entitlement.

FACTUAL HISTORY

On November 27, 1972 the employee, appellant's mother, then a 62-year-old teacher, sustained an employment-related fractured left little finger and thoracic subluxation when she fell in the snow. She was hit by a student in 1974, and on January 20 and July 18, 1975 she again slipped and fell. Appellant was placed on the periodic rolls at the 2/3 rate effective July 22, 1976. The record provides that the accepted conditions were aggravation of preexisting cervical/lumbar degenerative disc disease and the hand fracture. By letter dated December 13, 1988, the Office informed the employee that her compensation was changed to the 3/4 rate, effective July 22, 1976, because of her dependent adult son, the appellant.

The employee was admitted to the hospital on September 6, 2003 and died there on September 19, 2003. The death certificate lists the causes of death as congestive heart failure, upper gastrointestinal bleeding, chronic atrial fibrillation and volume depletion with a urinary tract infection as a significant contributing cause.

Medical records were submitted from Texas Tech University Health Sciences Center clinics dating from November 19, 2001 to August 19, 2003 and from Northwest Texas Healthcare System regarding the employee's terminal hospitalization. The admission note, electronically signed by Dr. Brent W. Sherwood, Board-certified in family medicine, provided an assessment of volume overload, syndrome of inappropriate antidiuretic hormone secretion (SIADH),¹ hyponatremia, hypochloremia, atrial fibrillation, hypertension, dementia, osteoporosis, thoracic spine compression fractures, constipation and ileus. A chest x-ray performed on September 18, 2003 revealed interval development of bibasilar effusions and possible infiltrate with a differential diagnosis of edema/congestive heart failure versus pneumonia. An underlying neoplasm could not be completely excluded.

Following inquiry from Senator Hutchinson, by letter dated October 30, 2003, the Office explained that, if appellant believed the employee's death was caused by her employment injury, he should submit a death claim and a reasoned medical opinion from a physician explaining how her employment injuries caused her death.

In a report dated December 12, 2003, Dr. William W. Stout, the employee's attending family physician, advised:

“I had intimate knowledge of [the employee's] work-related injury having treated those injuries over a 15-year period, during which I performed several of her annual exam[ination]s. I can say the injury-induced arthritis to her back and its debilitating effects on her health were directly related to her death. Her death certificate does not accurately describe the degree to which [her] back injury exacerbated the condition, which lead [sic] to her death.”

¹ Fluid and electrolyte imbalance in this syndrome results from the inability to excrete dilute urine, retention of water within the body and low sodium levels. The most common cause of SIADH is a type of lung cancer called “oat cell” or small cell, which secretes excessive ADH. Medline Plus Medical Encyclopedia (online).

On January 13, 2004 appellant, through Senator Hutchinson's office, filed a death claim. At the advice of an Office medical adviser, by letter dated February 11, 2004, the Office requested that Dr. Stout provide a report, with medical rationale, regarding the relationship between the employee's work injury and her death. Dr. Stout did not respond to this letter.

By decision dated June 14, 2004, the Office denied the claim for death benefits, finding that Dr. Stout's report did not provide a reasoned explanation of how the 1972 employment injury caused the employee's death.

LEGAL PRECEDENT

The Federal Employees' Compensation Act² provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ An award of compensation in a survivor's claim, however, may not be based on surmise, conjecture or speculation or on appellant's belief that the employee's death was caused, precipitated or aggravated by his or her employment. The mere showing that the employee was receiving compensation for total disability at the time of death does not establish that the death was causally related to conditions resulting from the employment injury.⁴

A claimant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his or her employment. This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁵

ANALYSIS

In this case, the accepted injuries were aggravation of preexisting cervical and lumbar degenerative disc disease and a fractured left little finger. The medical evidence relevant to the cause of the employee's death on September 19, 2003 includes the death certificate which lists the causes of death as congestive heart failure, upper gastrointestinal bleeding, chronic atrial fibrillation and volume depletion with a urinary tract infection as a significant contributing cause. The admission note for the employee's terminal hospitalization includes diagnoses of volume overload, SIADH, hyponatremia, hypochloremia, atrial fibrillation, hypertension, dementia, osteoporosis, thoracic spine compression fractures, constipation and ileus. A chest x-ray performed on September 18, 2003 revealed interval development of bibasilar effusions and possible infiltrate with a differential diagnosis of edema/congestive heart failure versus pneumonia. An underlying neoplasm could not be completely excluded.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8102(a).

⁴ See *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

⁵ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

Appellant's attending family physician, Dr. Stout, submitted a report dated December 12, 2003 in which he advised that appellant's injury-induced arthritis to her back and its debilitating effect on her health were contributory causes of her death and opined that the death certificate did not accurately describe the degree to which her back injury exacerbated her condition which led to her death. By letter dated February 11, 2004, the Office requested that Dr. Stout provide a reasoned explanation regarding the relationship between the employee's work injury and her death. Dr. Stout did not respond.

The Board finds that Dr. Stout's report, standing alone is insufficient to meet appellant's burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to her federal employment as he did not submit a narrative medical report providing a history and a reasoned medical opinion with respect to causal relationship between the employee's death and her employment injuries. Without providing a factual and medical background and a clear explanation as to how the employment-related condition contributed to the employee's death, this report is insufficient to meet appellant's burden of proof.⁶ The death certificate and medical evidence contemporaneous with the employee's death do not indicate that her death was caused, precipitated or aggravated by her employment injuries.⁷

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that the employee's death was causally related to her employment injuries.⁸

⁶ *Id.*

⁷ *Susanne W. Underwood, supra* note 4.

⁸ The Board further notes that an award of disability compensation is personal to the recipient, based on the individual's need for a substitute for his or her lost wages and injury to earning capacity. There is no property right in an award of compensation that can survive in favor of heirs. Only compensation accrued but unpaid before death survives as an asset of the estate like any other debt. *Carol T. Collins (Harold Turner)*, 54 ECAB ____ (Docket No. 01-1560, issued February 24, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2004 be affirmed.

Issued: August 22, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board