United States Department of Labor
Employees' Compensation Appeals Board

C.H., claiming as widow of L.H., Appellant	)	
and	)	**Docket No. 13-1467**
	)	**Issued: November 6, 2013**
DEPARTMENT OF THE NAVY, NAVAL SHIPYARD, Long Beach, CA, Employer	)	

Appearances:
Sally LaMacchia, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 4, 2013 appellant, through her attorney, filed a timely appeal from the January 9 and May 16, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the employee's death on May 23, 2009 was causally related to factors of his federal employment.

FACTUAL HISTORY

This is the second appeal before the Board. The employee injured his back in the performance of duty on November 25, 1981. OWCP accepted a claim for thoracic strain and lumbar muscle spasm with right leg radiculitis. The employee stopped work in 1982.

[1] 5 U.S.C. § 8101 *et seq.*

In a December 15, 2008 report, Dr. Kesho N. Hurria, a specialist in orthopedic surgery, stated that the employee was experiencing persistent low back derangement, radiculopathy to both lower extremities, numbness in both legs, coronary artery disease, diabetes and difficulty in walking. He noted that the employee's thoracic sprain, lumbar sprain and radiculopathy to both lower extremities had become worse due to aging since his last examination. Dr. Hurria opined that these were permanent conditions. He advised that the employee had a pacemaker and was, therefore, unable to undergo a new magnetic resonance imaging (MRI) scan or x-ray testing. Dr. Hurria opined that the employee's condition was the result of the November 25, 1981 injury and had become worse.

The employee died on June 9, 2009. The certificate of death listed the causes of death as cardiopulmonary arrest and coronary artery disease, with diabetes mellitus a contributing factor. In a June 2, 2010 report, Dr. Hurria stated that the effects of chronic hypertension were one of the leading risk factors for heart attack, stroke, heart failure and aneurysm. He advised that the constant stress on the cardiovascular system by increased blood pressure caused the heart to pump constantly and work harder to push blood through the system. Dr. Hurria stated that the employee was a chronic pain sufferer with high blood pressure; this caused increased sensitivity to pain which frequently resulted in even higher blood pressure. He stated that the 1981 work injury led to a chronic pain syndrome which caused a chronic cardiac hypertension, which led to chronic edema to the lower extremities, causing decreased circulation to the heart muscle. This caused hypertrophy to the heart that eventually led to the employee's coronary heart attack and coronary bypass surgery in 2009. Dr. Hurria stated that the employee's hypertension and low back pain continued until his death on May 23, 2009. He opined that the 1981 work injury resulted in chronic hypertension, leading to coronary artery disease that led to his fatal cardiopulmonary arrest on May 23, 2009.

On June 15, 2010 appellant filed a Form CA-5 claim for death benefits, alleging that her husband's death was causally related to his accepted employment injury.

In a May 22, 2009 hospital report/discharge summary, received by OWCP on August 17, 2010, Dr. Kenneth Shapiro, Board-certified in internal medicine, stated that appellant was admitted on May 16, 2009, with a diagnosis of congestive heart failure. The discharge diagnosis was also congestive heart failure, with severe ischemic cardiomyopathy, anasarca, chronic and acute renal failure, diabetes, lower extremity ulcers infected with methicillin resistant staphylococus aureus and status post coronary artery bypass grafting.

In a January 6, 2011 report, Dr. Ellen Pichey, an OWCP medical adviser, reviewed Dr. Hurria's June 2, 2010 report and disagreed with his opinion. She noted that the employee was 81 years of age, had a triple bypass and pacemaker, diabetes, hypertension and a family history of cardiac disease.[2] Dr. Pichey stated that it was not reasonable to conclude that his death was a consequence of thoracic and lumbar sprains and radiculitis from 30 years prior.

[2] On appeal appellant's attorney asserts that Dr. Pichey erred in stating that the employee died at the age of 81 and that he had a family history of cardiac disease. The Board notes that the employee died at age 79, as stated above. With regard to his family history of cardiac disease, it is noted that counsel states in the appeal to the Board that the employee's father died of a heart attack at age 64.

In a decision dated March 29, 2011, OWCP denied appellant's claim, finding that the evidence failed to establish that the employee's death was due to factors of his federal employment. By decision dated November 14, 2011, an OWCP hearing representative affirmed the March 29, 2011 decision.

In a September 20, 2012 decision,[3] the Board set aside OWCP's decisions, finding an unresolved conflict in medical opinion between Dr. Hurria and Dr. Pichey regarding whether the employee's death was causally related to his accepted conditions. The Board remanded the case for referral to an appropriate impartial medical specialist to resolve the outstanding conflict in the medical evidence.

The case was referred to Dr. Ram K. Setty, a Board-certified cardiologist. In a November 9, 2012 report, he listed the risk factors for coronary artery disease and hypertension as family history of coronary artery disease, diabetes mellitis, hypertension, cigarette smoking and dyslipidemia. Dr. Setty stated that the more risk factors a patient had the higher the chance of coronary artery disease. With regard to whether chronic pain could produce hypertension, he advised that the available medical data indicated that acute pain from any reason, including anxiety, could raise blood pressure. The fact that the employee was treated for both back pain and hypertension, and the fact that he did not have hypertension before experiencing back pain, indicated that hypertension may have been caused by his back pain. Dr. Setty also indicated that hypertension may have contributed in small part to his developing coronary artery disease. He stated, however, that it was not the sole cause, as the employee had two major risk factors, diabetes and a family history of coronary artery disease.

Regarding the issue of whether back pain could produce coronary artery disease, Dr. Setty stated that this was "flimsy ground," especially as the employee was being treated for back pain as well as hypertension. The employee had a recorded blood pressure of 130/90 in 1996, which he classified as mild hypertension with a low comorbidity rate. Dr. Setty reiterated that developing hypertension due to chronic back pain alone was difficult to accept when a patient was being treated for both back pain and hypertension, and that the employee's coronary artery disease was associated with major, "heavyweight" risk factors like his family history of coronary artery disease and diabetes. He concluded that mild, treated hypertension was hard to accept as the sole cause of coronary artery disease, though it might have played a minor role.

By decision dated January 9, 2013, OWCP denied the claim for death benefits. It found that Dr. Setty's impartial medical opinion represented the weight of the medical evidence.

On January 24, 2013 appellant requested a review of the written record.

By decision dated May 16, 2013, an OWCP hearing representative affirmed the January 9, 2013 decision.

[3] Docket No. 12-861 (issued September 20, 2012).

LEGAL PRECEDENT

Appellant 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 federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.[4]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

It is not necessary to provide a significant contribution of employment factors for the purpose of establishing causal relationship.[9]

Once OWCP starts to procure a medical opinion, it must do a complete job.[10]

ANALYSIS

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

On appeal, appellant's attorney argues that OWCP erred in finding that the employee's death due to coronary artery disease was not causally related to his work-related 1981 back injury based on Dr. Setty's impartial medical report. Counsel notes that Dr. Setty indicated that hypertension, produced by chronic back pain, may have contributed in small part to the development of the employee's coronary artery disease, although it was not the sole cause. She asserts that the Board has held that where the medical evidence indicates a work factor contributed in any way to the employee's condition, the condition is compensable.

In the present case, there was a conflict in the medical evidence between Dr. Pichey, OWCP's referral physician, and Dr. Hurria, the employee's physician, as to whether the

[4] *Kathy Marshall (James Marshall)*, 45 ECAB 827, 832 (1994); *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990).

[5] *See Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *See Richard E. Simpson*, 55 ECAB 490 (2004).

[10] *See Beth P. Chaput*, 37 ECAB 158 (1985); *William N. Saathoff*, 8 ECAB 769 (1956).

employee's death was causally related to his 1981 work injury. Dr. Hurria, the employee's treating physician, opined that the 1981 work injury resulted in chronic hypertension, leading to coronary artery disease that led to his fatal cardiopulmonary arrest on May 23, 2009. In contrast, Dr. Pichey, OWCP's referral physician, opined that, due to the employee's advanced age, his long personal and family history of coronary artery disease, it was not reasonable to conclude that his 2009 death was causally related to thoracic and lumbar sprains and radiculitis in 1981. When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires OWCP to appoint a third or "referee" physician, also known as an "impartial medical examiner." Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[11] However, when OWCP secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.

Dr. Setty stated in his November 9, 2012 report that developing hypertension due to chronic back pain alone was difficult to accept when a patient was being treated for both back pain and hypertension, and that a mild, treated hypertension was hard to accept as the sole cause of his coronary artery disease, especially in light of the fact that it was linked to major risk factors like a family history of heart disease and diabetes. He indicated that hypertension caused by chronic pain might have played at least a minor role in the development of the coronary artery disease which resulted in the employee's death.

The Board finds that Dr. Setty's opinion is insufficient to resolve the conflict in medical evidence, as his opinion requires clarification as to whether appellant's death was due, in any part, to his accepted condition. Accordingly, OWCP's January 9, 2013 decision is hereby set aside and remanded for further development. On remand, it should request that Dr. Setty submit a report clarifying his opinion as to the outstanding issue of whether the employee's death was causally related to his 1981 work injury. After such development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The decision dated January 9, 2013 is therefore set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

[11] *Regina T. Pellecchia,* 53 ECAB 155 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 16 and January 9, 2013 are set aside and remanded.

Issued: November 6, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board