United States Department of Labor
Employees' Compensation Appeals Board

F.O. claiming as widow of A.O., Appellant	)	
and	)	**Docket No. 10-2315**
	)	**Issued: August 1, 2011**
TENNESSEE VALLEY AUTHORITY, MAINTENANCE DEPARTMENT, Chattanooga, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 15, 2010 appellant filed a timely appeal from the June 7, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for survivor's benefits. Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 appellant met her burden of proof to establish entitlement to survivor's benefits.

FACTUAL HISTORY

On June 21, 1977 the employee, then a 50-year-old boilermaker foreman, sustained an injury when he twisted his back while climbing a ladder at work. OWCP accepted his claim for

[1] 5 U.S.C. §§ 8101-8193.

lumbar strain and herniated lumbar disc at L4-5. The employee received compensation for periods of disability.[2]

On June 21, 2005 Dr. Peter Boehm, an attending Board-certified neurosurgeon, performed a laminectomy and decompression surgery at L4-5. The procedure was authorized by OWCP. In June and July 2005, the employee underwent hospitalization for five weeks and he had surgical procedures to correct his bladder difficulties.[3]

In May 2008, Dr. Boehm indicated that the employee might have suffered an ischemic-type stroke in April 2008 and noted that he had to have a gastrostomy tube placed for feeding.

The employee died on November 29, 2008. The death certificate completed on December 9, 2008 by Dr. Terry Melvin, an attending Board-certified internist, listed the cause of death as renal failure, thrombocytosis and dementia. On January 26, 2009 appellant, the employee's widow, filed a (Form CA-5) claiming survivor's benefits. In a March 5, 2009 letter, OWCP advised her that additional evidence was needed to support her claim.

In a January 30, 2006 report, Dr. Boehm stated that appellant felt that the employee's abnormal kidney function and bladder difficulties were due to nerve damage that occurred during the June 21, 2005 lumber surgery. He noted that it was not uncommon for patients to experience transient voiding difficulties following back surgery, but indicated that it was extremely rare for these problems to persist for more than a few days and they almost never persisted beyond several weeks. The operation Dr. Boehm performed on June 21, 2005 was only a decompression of the dura and that there was almost no manipulation of nerves. While he was certain that the surgery did contribute to the employee's voiding difficulties, he did not believe this was the entire explanation for appellant's problems. Dr. Boehm noted that the employee did not feel that the problems he was experiencing were coming from his back; rather the employee mentioned stomach, chest and groin pain. He identified diabetes mellitus as another possible contributing factor to the employee's voiding problems.

The medical records show that on November 25, 2008, the employee was admitted to Soddy-Daisy Healthcare Center. Upon admittance to the facility, it was noted that his medical history included various conditions, including anemia, diabetes mellitus, a cerebrovascular accident, coronary artery disease -- status post myocardial infarction, chronic renal insufficiency, urinary tract infections, dementia and pneumonia. A death discharge summary completed on December 3, 2008 by Dr. Tanya Horne, an attending family practitioner, gave the cause of death as recurrent cerebrovascular accident and aspiration pneumonia.[4]

The case was referred to Dr. Howard P. Hogshead, a Board-certified orthopedic surgeon serving as OWCP's medical adviser, on the issue of whether the employee's death was causally related to the accepted work injuries. On May 6, 2009 Dr. Hogshead stated that the employee

[2] The employee underwent a lumbar laminectomy at L4-5 in 1987 which was authorized by OWCP.

[3] Due to chronic urinary infections, the employee later had a superpubic catheter inserted.

[4] Dr. Horne completed a form that listed 22 diagnosed conditions with the date November 24, 2008 written next to each diagnosis.

was admitted to Soddy-Daisy Healthcare Center three days prior to his death. The records revealed that the causes of death were recurrent cerebrovascular accident and aspiration pneumonia. Dr. Hogshead concluded that these conditions were not medically related to or caused by the employee's spinal stenosis or subsequent surgery.

In a January 21, 2010 decision, OWCP denied appellant's claim for survivor's benefits on the grounds that the medical evidence did not establish a causal relationship between the employee's death and the accepted work-related back injuries. It was noted that the causes of the employee's death were not accepted as being causally related to his work-related back injuries or surgeries.

Appellant requested a telephonic hearing before OWCP's hearing representative. During the April 21, 2010 hearing, she testified that after the June 21, 2005 surgery the employee did not urinate on his own and he had a tube placed in his penis that had to be opened and drained every now and then. Appellant asserted that the employee had a colon problem and multiple urinary infections after the June 21, 2005 surgery and never recovered from these conditions. Due to the multiple infections, the employee had a superpubic catheter put in and a home healthcare service came in once a month to change it. Appellant claimed that he did not have any bladder problems prior to the June 21, 2005 surgery and asserted that his nerves were cut during the surgery.

Appellant submitted additional evidence after the hearing, including reports and clinic notes dated between August and October 2006 from Dr. Oliver Benton, III, an attending Board-certified urologist; reports dated between October and November 1, 2005 from Dr. Boehm; laboratory tests dated between August 1 and December 2005; a December 20, 2005 cardiac consult report from Dr. Dennis Hood, an attending Board-certified cardiologist; December 20, 2005 hospital admission and operative reports; and a January 4, 2006 hospital discharge report.

In an August 2, 2005 report, Dr. Benton stated that after his June 21, 2005 surgery the employee had some lower extremity weakness with numbness and difficulty with bowel control. Prior to June 21, 2005, the employee had no history of urinary tract infection or voiding symptoms, although "he did have frequency." Dr. Benton noted that the employee had diabetes and hypertension and underwent hernia surgery the previous year and stated that his urinary retention possibly was neurogenic and that he could well have a lower motor neuron lesion. He indicated that the lumbar laminectomy was at about the level of the sacral cord and the employee could have denervation of the bladder. In a September 12, 2005 report, Dr. Benton indicated a diagnosis of "[i]ncontinence, probably overflow incontinence" and also stated under the diagnosis section of the report, "[r]etention that I think is most likely on a neurogenic basis. This began after a spinal stenosis procedure and unfortunately [the employee] is not really voiding well."

The December 20, 2005 hospital admission report indicated that the employee was admitted for transurethral resection of the prostate secondary to urinary retention. The final diagnosis was given as urinary retention secondary to benign prostatic hypertrophy, diabetes, hyperthyroidism, hypotension, cardiomyopathy, aortic stenosis, constipation, anemia and thrombocytopenia. The December 20, 2005 operative report indicated that the employee had a cystoscopy with transurethral resection of the prostrate and evacuation of a clot. The prostate

pathology report found benign nodular prostatic glandular and stromal hyperplasia and the postoperative diagnosis was urinary retention secondary to benign prostate hyperplasia.

In a December 20, 2005 report, Dr. Hood stated that the employee had a history of coronary artery disease, heart murmur and likely aortic stenosis and was status post cerebrovascular accident. He noted that the employee was not very active and developed substernal chest discomfort at low levels of activity. The January 4, 2006 discharge report indicated that the employee's electrocardiogram findings were notable for some bradycardia and segment changes suggestive of a recent interior lateral myocardial infarction over the past years versus a significant increase in aortic stenosis. The report noted that chest x-rays showed atheromatous changes of the aorta and extensive pleural plaque.

In a May 17, 2010 statement, appellant asserted that the additional medical evidence established that the employee's death on November 29, 2008 was related to the June 21, 2005 surgery performed by Dr. Boehm. She contended that the employee died from urinary and kidney problems, that his diabetes was well controlled and that there was no evidence of cerebrovascular accident, Alzheimer's disease or neuropathy.

In a June 7, 2010 decision, OWCP's hearing representative affirmed the January 21, 2010 OWCP decision.

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 employment.[5] This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[6] An award of compensation may not be based on surmise, conjecture or speculation.[7] The mere showing that an employee was receiving compensation at the time of his death does not establish that his death was causally related to conditions resulting from the employment.[8]

ANALYSIS

On June 21, 1977 the employee sustained a work-related lumbar strain and herniated lumbar disc at L4-5 when he twisted his back while climbing a ladder at work. On June 21, 2005 Dr. Boehm, an attending Board-certified neurosurgeon, performed OWCP's authorized laminectomy and decompression surgery at L4-5.

[5] *Gertrude T. Zakrajsek* (*Frank S. Zakrajsek*), 47 ECAB 770 (1996); *Carolyn P. Spiewak (Paul Spiewak),* 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert),* 33 ECAB 1111, 1120 (1982).

[6] *Martha A. Whitson (Joe E. Whitson),* 43 ECAB 1176, 1180 (1992).

[7] *Myrl Nix (Earl Nix),* 15 ECAB 125, 126 (1963).

[8] *Leonora A. Buco (Guido Buco),* 36 ECAB 588, 594 (1985).

The employee died on November 29, 2008 and the death certificate completed on December 9, 2009 by Dr. Melvin, an attending Board-certified internist, listed the cause of death as renal failure, thrombocytosis and dementia. A death discharge summary completed on December 3, 2008 by Dr. Horne, an attending family practitioner, listed the cause of death as recurrent cerebrovascular accident and aspiration pneumonia. On January 26, 2009 appellant, the employee's widow, filed a Form CA-5 claiming survivor's benefits. On May 6, 2009 Dr. Hogshead, a Board-certified orthopedic surgeon serving as OWCP's medical adviser, determined that she had not shown a work-related cause for the employee's death. OWCP denied appellant's claim for survivor's benefits finding that she did not submit sufficient medical evidence in support of her claim.

The Board finds that appellant did not submit sufficient medical evidence to meet her burden of proof to establish entitlement to survivor's benefits.

The Board notes that, other than the death discharge summary completed on December 3, 2008 by Dr. Horne, the death certificate completed on December 9, 2009 by Dr. Melvin and the May 6, 2009 report of Dr. Hogshead, the record does not contain any medical evidence produced after the employee's November 29, 2008 death which discusses the cause of his death.

Appellant has claimed, both before OWCP and on appeal to the Board, that medical evidence produced prior to the employee's death shows that his death was related to employment factors. She asserted that unspecified nerves were cut during OWCP's authorized June 21, 2005 laminectomy and decompression surgery performed by Dr. Boehm and that the employee's urinary problems resulted from this surgery.[9] Appellant further argued that this situation contributed to the employee's renal failure that in turn contributed to his death.

Although the medical evidence submitted by appellant suggests that there might have been some relationship between the employee's June 21, 2005 surgery and his urinary problems, the fact that these reports were produced years before the employee's death on November 29, 2008 means that they are of insufficient probative value regarding the question of whether work-

[9] In an August 2, 2005 report, Dr. Benton, an attending Board-certified urologist, stated that prior to the June 21, 2005 surgery the employee had no history of urinary tract infection or voiding symptoms. He indicated that the lumbar laminectomy was at about the level of the sacral cord and the employee could have denervation of the bladder. In a September 12, 2005 report, Dr. Benton indicated that a diagnosis of "[i]ncontinence, probably overflow incontinence" and also stated under the diagnosis section of the report, "[r]etention that I think is most likely on a neurogenic basis. This began after a spinal stenosis procedure and unfortunately [the employee] is not really voiding well." In a January 30, 2006 report, Dr. Boehm stated that the June 21, 2005 surgery contributed to the employee's voiding difficulties, but Dr. Boehm noted that the employee's surgery involved almost no manipulation of nerves.

related conditions contributed to the employee's death. It is further noted that the reports submitted by appellant do not provide a clear opinion that the June 21, 2005 surgery contributed to renal failure or any other condition which might have contributed to the employee's death.[10] Despite being provided an opportunity to submit probative medical evidence, appellant did not submit any medical reports produced after the employee's death which discussed the cause of his death.

Appellant did not submit any medical evidence containing a rationalized medical opinion that a work-related condition contributed to the employee's November 29, 2008 death. Therefore, OWCP properly denied her claim for survivor's benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish entitlement to survivor's benefits.

[10] There is medical evidence of record from December 2005 which suggests that the employee's urinary retention was related to nonwork-related conditions including benign prostatic hypertrophy, diabetes, hyperthyroidism, hypotension, cardiomyopathy, aortic stenosis, constipation, anemia and thrombocytopenia. On appeal, appellant indicated that OWCP's decisions contain various errors, including those relating to the employee's date of birth and his date of death. She did not explain how any factual discrepancy would establish that the employee's death was employment related. Appellant asserted that he did not actually have various medical conditions cited in the medical reports of record, but her opinion on such medical matters would not have probative value.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board