

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANET L. MOORE, claiming as widow of DONALD E. MOORE and  
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,  
Wheat Ridge, CO

*Docket No. 01-1111; Submitted on the Record;  
Issued July 19, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the death of appellant's husband was causally related to his federal employment.

Appellant's husband (employee) filed a mental stress claim on April 29, 1975 which the Office of Workers' Compensation Programs accepted for neurotic depression in an obsessive-compulsive personality and paid appropriate compensation.<sup>1</sup>

On September 16, 1996 the employee died of a self-inflicted shotgun wound to the head in a church parking lot. His widow filed a survivor's claim on October 4, 1996. The attending physician, Dr. Gerd C. Leopoldt, a Board-certified psychiatrist, stated on the form that the employee had major depressive disorder, recurrent, due to his work. Dr. Leopoldt added that the employee retired on disability in 1975, had a recurrence of depression in 1988, with hospitalization in 1989 and a "waxing and waning course thereafter until his suicide." Dr. Robert A. Kurtzman, an osteopathic practitioner and forensic pathologist, stated in the autopsy report that the employee's death was due to the shotgun wound and was classified as suicide.

In an October 2, 1996 report, Dr. Leopoldt stated that he had treated the employee for depression since 1988 when a severe recurrence eventually required hospitalization. He concluded that the employee's suicide was directly related to the worsening of his depression, which stemmed from his employment. In a November 5, 1996 letter, Dr. Leopoldt stated that the employee had major depression in 1975 "and a continuous course thereafter. He never had full

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<sup>1</sup> Appellant's husband received compensation from April 13, 1975 through May 20, 1981. Between then and January 31, 1988 he was able to work while receiving retirement benefits from the Office of Personnel Management. He then elected disability benefits and received them until his death.

remission of his disorder,” whose severity “waxed and waned.” The employee was on anti-depressive medication throughout.

In response to the Office’s request for more information, appellant submitted a November 6, 1996 letter from Dr. Frederic B. Walker, Board-certified in internal medicine, who saw the employee twice, shortly before his death. The employee obviously had “significant psychological problems” and reported an increase in his anti-depressant medication. Dr. Walker stated that the employee’s suicide was related unequivocally to his major depressive disorder and “nothing in my assessment” would explain his suicide except for the major depression attributable to his previous employment. Appellant also submitted a detailed statement of her husband’s activities from July 1996 through his death.

On August 16, 1997 the Office denied appellant’s claim on the grounds that the chain-of-causation had been broken by factors unrelated to the employee’s employment and therefore his suicide was not causally related to the accepted emotional condition.

Appellant requested an oral hearing, which was held on February 10, 1998. On April 13, 1998 the hearing representative denied appellant’s claim on the grounds that the medical evidence failed to establish that her husband’s suicide was causally related to the accepted compensable work factors.

Appellant requested reconsideration and submitted a June 22, 1998 report from Dr. Leopoldt as well as legal argument. On August 17, 1998 the Office denied appellant’s request on the grounds that the evidence submitted was repetitious and, therefore, insufficient to warrant review of its prior decision.

Appellant appealed to the Board, which remanded the case for the Office to review the entire case record and issue a *de novo* decision.<sup>2</sup>

On remand the Office reviewed Dr. Leopoldt’s June 1998 report and determined on December 4, 2000 that it was insufficient to warrant modification of its previous denial of survivor’s benefits.<sup>3</sup>

The Board finds that appellant has failed to establish that her husband’s suicide was causally related to his 1975 depression.

Section 8102(a)(2) of the Federal Employees’ Compensation Act<sup>4</sup> provides that payment of compensation for the disability or death of an employee resulting from personal injury

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<sup>2</sup> Docket No. 98-2553 (issued September 19, 2000).

<sup>3</sup> The record contains a January 16, 2001 report from Dr. Leopoldt and a request for reconsideration from appellant’s attorney. Because this report was not before the Office when its December 4, 2000 decision was issued, the Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *Thomas W. Stevens*, 50 ECAB 288, 289 (1999).

<sup>4</sup> 5 U.S.C §§ 8101-8193.

sustained while in the performance of duty may not be made where the injury or death is “caused by the employee’s intention to bring about the injury or death of himself or another.”<sup>5</sup>

While the Act seems to preclude compensation for an employee’s death by suicide, the Board has approved the majority view as expressed in Larsen’s treatise on workers’ compensation:

“If the sole motivation controlling the will of the employee who decides to commit suicide is the pain and despair caused by the injury, and if the will itself is deranged and disordered by these consequences of the injury, then it seems wrong to say that this exercise of will is ‘independent’ or that it breaks the chain of causation. Rather, it seems to be in the direct line of causation.”<sup>6</sup>

In his treatise Larson expresses the rule in a simpler manner: “Suicide under the majority rule is compensable if the injury produces mental derangement and the mental derangement produces suicide.”

Appellant has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the existence of a causal relationship between the employee’s suicidal death and factors of his employment.<sup>7</sup> The suicide itself must arise out of the employee’s assigned duties to such an extent as to be regarded as arising out of and in the course of employment.<sup>8</sup> Thus, the issue is one of proximate versus independent intervening cause.<sup>9</sup>

In determining whether an employee’s suicide is causally related to factors of his employment, the Office has adopted the “chain of causation” test.<sup>10</sup> The Office’s procedure manual explains that: “[C]ompensation can be paid if the job-related injury (or disease) and its consequences directly resulted in the employee’s domination by a disturbance of the mind and loss of normal judgment which, in an unbroken chain, resulted in suicide.” The emphasis is on a showing of genuine brain derangement or psychosis, as distinguished from mere melancholy, discouragement or other sane condition such as depression.<sup>11</sup>

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<sup>5</sup> 5 U.S.C. § 8102(a)(2). This prohibition against compensation for suicide or attempted suicide has been in the Act since its enactment on September 7, 1916 and has not been altered or changed despite periodic amendment of the Act by Congress.

<sup>6</sup> Larson, *The Law of Workers’ Compensation*, Vol. 2, Chapter 38.03 (Matthew Bender 2001).

<sup>7</sup> *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250, 254 (1997).

<sup>8</sup> *Judith L. Albert*, 47 ECAB 810, 815 (1996).

<sup>9</sup> *Supra* note 6 at 38.01.

<sup>10</sup> *Linda Krotzer*, 46 ECAB 754, 760 (1995).

<sup>11</sup> *Supra* note 6 at 38.03.

Under the chain of causation test, the Office's procedure manual states:

"If the injury and its consequences directly resulted in a mental disturbance, or physical condition which produced a compulsion to commit suicide, and disabled the employee from exercising sound discretion or judgment so as to control that compulsion, then the test is satisfied and the suicide is compensable."<sup>12</sup>

The procedure manual adds that, for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken.<sup>13</sup>

In this case, the medical evidence is insufficient to show that the employee's death by suicide was directly related to compensable factors of his employment. Further, the record establishes that intervening nonwork factors broke the chain of causation between the employee's work-related depression and his suicide.

In a March 16, 1988 report, Dr. Leopoldt stated that appellant's husband had had one previous severe depression in 1975, which was work related, but had been "doing well until about two months ago" when he found out his 1985 and 1986 tax returns would be audited. Dr. Leopoldt stated that the employee thought the employing establishment, for whom he had worked and which had audited his 1983 and 1984 tax returns, was harassing him.<sup>14</sup> The employee had "thought about suicide three times," including shooting himself, and "was frightened" by the prospect. Dr. Leopoldt noted that the employee had "no past history of suicide attempts."

Dr. Gilbert I. Madison, Jr., a general practitioner, stated in an August 2, 1988 report that appellant's husband had been "having marked difficulties with the employing establishment over the past" few years, which had exacerbated his depression and abdominal pain. Dr. Madison provided chart notes documenting his discussions with the employee regarding the employing establishment audits and his treatment of the employee for depression and other physical ailments.

In an August 31, 1988 letter, the employee wrote to the Office requesting that he be placed back on disability "because of deteriorating mental health," due to "continued harassment by the [employing establishment]." He stated that in May 1981 he chose retirement benefits because he wanted to reenter the work force -- he obtained a preaching certificate and started selling life and health insurance. The employee stated that he "was doing really satisfactory" until the spring of 1985 when the IRS began auditing his tax returns. He added that he began experiencing increased depression and by January 1988 he had lost his self-confidence and had "strong suicidal tendencies."

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<sup>12</sup> Federal (FECA) Procedure Manual, Claims -- *Performance of Duty*, Chapter 2.804.15.b.(2) (September 1995).

<sup>13</sup> *Id.* at Chapter 2.804.15.b.(3) (March 1994).

<sup>14</sup> A social security earnings statement showed significant wages from 1983 through 1987 and lesser amounts in 1991 to 1992.

Upon the employee's admission to the hospital on April 20, 1989, Dr. Leopoldt stated that he had not seen him since March 16, 1988, during which time he had stopped medication and was feeling much better. Dr. Leopoldt diagnosed major depressive episode.

While hospitalized, Dr. Lyn Allen, a staff psychologist, diagnosed adjustment disorder with anxious mood and paranoid personality disorder. He stated that the employee's circumstantial factors caused his "unusually high" anxiety and discomfort.

In June 1989 appellant's husband underwent psychological testing by Dr. Leslie Cohen, a licensed clinical psychologist, who diagnosed major depression in partial remission. Dr. Cohen concluded that the employee had "recovered from the 1975 depression" and that his present depression was due to the "fresh triggers" of increasingly persistent audits and collection efforts by the employing establishment and the absence of retirement income.

In a July 1989 report, Dr. Randolph W. Pock, a Board-certified psychiatrist to whom the Office had referred appellant's husband, summarized his work-related depressive disorder and stated that the employee reported that his previous symptoms of depression returned when the employing establishment began harassment. The employee considered the audits an intentional, deliberate attempt by the employing establishment "to get" him. Dr. Pock stated that, in the aftermath of these audits, the employee experienced the onset of severe depression, marked by frequent uncontrolled crying spells, feeling of worthlessness, hopelessness and helplessness, difficulty in sleeping, impaired concentration, decreased interest in sex, chest pain, headaches and episodes of uncontrollable rage. He concluded that the employee's symptoms of depression were recurrent and would likely decrease when the employing establishment issues were resolved. The employee's feelings of harassment and injustice stemming from the employing establishment were permanent.

In a June 26, 1991 report, Dr. Leopoldt stated that appellant remained moderately depressed but had reached a maximal level of improvement with a diagnosis of major depressive episode. On June 28, 1993 he indicated that little had changed and that he saw appellant every six weeks for medication management. In a July 21, 1994 report, Dr. Leopoldt stated that appellant remained moderately depressed, a state that "waxes and wanes," and that in general he had been able to function in nonstressful, nonemployment situations. He added that stress-induced depression had responded as well as it was going to. Dr. Leopoldt's July 18, 1996 report conveyed similar findings.

Following the employee's suicide, Dr. Leopoldt stated that, in his November 5, 1996 report, appellant's husband had "never had full remission of his depressive disorder," and that the relationship of his ongoing depression from 1975 through 1996 to the initial stressor of his work situation was clear. The work situation caused his depression and the depression never went away. The suicide was a direct result of a worsening of the husband's major depressive disorder that had been ongoing since 1975. He had needed anti-depressant medication throughout the entire time.

Responding to the Office's request for clarification, Dr. Leopoldt stated in a December 3, 1996 letter that whatever might have been on the employee's mind on the day of his suicide or in the week prior, it could not conceivably be construed to lead to suicide if not for the fact that the

employee suffered from a major depressive disorder arising from his employment. The “sole motivation” controlling appellant’s husband on the day he decided to kill himself was despair directly caused and magnified by his major depression, resulting from his employment. Dr. Leopoldt added that the employee’s will was “deranged and disordered” by the consequences of depression because “suicide is not an expectable result of contact with the usual problems of life,” such as financial worries, health concerns or the employing establishment audits.

In a June 22, 1998 report, Dr. Leopoldt stated that his comments in previous reports that the employee was doing well did not mean that his condition was in remission. His condition was never in remission, but rather waxed and waned, and always required treatment with psychotherapy and medication. Further, no acute event intervened to cause the suicide. Dr. Leopoldt noted that the stressful factors from the employing establishment audits were not near the time of the employee’s death and his widow had indicated that he was not under any undue stress then.

Dr. Leopoldt stated that the husband was suicidal in 1975, 1979, 1980, 1981 and 1989 and that he would often “experience acute despair with no external precipitant.” He opined that the husband’s condition would vary irrespective of the degree of stress to which he was exposed or even whether he was exposed to stress at all. Dr. Leopoldt concluded:

“It is a medical fact that depression can lead to suicide. How the accepted job factors caused the suicide is through a chain of events. The job factors were the initial precipitants and direct causative factors. These factors set in motion the causal sequence leading to the suicide, namely, a mental derangement that never cleared. The depressive disorder caused a serious mental disturbance that impaired his normal rational judgment. Depression by its nature generates feelings of despair. These feelings of despair ultimately led to suicidal ideation, which in turn was impossible to fight off due to the depression[-]related despair. The suicide is thus traced directly to the accepted factors of employment.

“But for the work-related depression, the death by suicide would not have occurred. Without the work-related depression, he would not have developed a mental disorder to such a degree as to impair his normal rational judgment and would not have committed suicide. Since this was a permanent injury, the passage of time did not weaken the causal link. He remained at risk for suicide during the entire course of his illness.”

The test that must be met is that the employee’s suicide was caused by some mental derangement arising out of his employment, and by an unbroken chain-of-causation link to the accepted emotional condition. Here, the suicide did not result from any compensable factors of employment,<sup>15</sup> and the chain of causation was broken by a period of self-rehabilitation in the

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<sup>15</sup> Compensable work factors included having to complete higher-level work without supervision, train other revenue agents without having taken instruction courses himself and handle twice the usual case load without assistance.

early 1980s, the auditing of the employee's tax returns by the employing establishment and the remission of symptoms in the early 1990s.

Dr. Leopoldt's conclusions prior to his suicide in September 1996 indicated that the employee's stress-induced depression had reached a maximum level of improvement following his hospitalization for the major depressive episode provoked by the employing establishment audits. He stated that appellant was generally able to function in everyday situations. None of Dr. Leopoldt's reports prior to the employee's suicide establish any derangement of his mental faculties. Rather, they show that the employee was recovering from the major depressive episode in 1989 caused by the employing establishment audits and that his moderate depressive state waxed and waned.

The conclusions of Dr. Leopoldt are insufficient to show that, without the aggravation of the employee's depression related to the compensable factors, he would not have developed a mental disorder of such a degree as to impair his normal and rational judgment and would not have committed suicide. For compensable factors merely to contribute to the mental disorder resulting in suicide is not sufficient; the compensable factors must be a direct cause, without which the suicide would not have occurred. The medical evidence is insufficient to establish that any compensable factors that caused appellant's depression in 1975 also caused his suicide in 1996.<sup>16</sup>

Appellant's attorney argues that because the Office accepted the recurrence of the employee's depressive condition in 1988 to 1989, thus finding that it continued to be work related, the Office cannot now reverse that conclusion. However, the fact that an employee was receiving disability compensation at the time of his death is not proof of a causal relationship between his death and the accepted condition.<sup>17</sup>

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<sup>16</sup> See *Carolyn King Palermo (Travis Palmero)*, 45 ECAB, 308, 315 (1994) (finding that the evidence failed to establish that the employee's suicide was directly traceable to accepted work factors).

<sup>17</sup> *Bertha J. Soule (Ralph G. Soule)*, 48 ECAB 314, 317 (1997).

The December 4, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
July 19, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member