

**United States Department of Labor
Employees' Compensation Appeals Board**

D.G., claiming as widow of W.G., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Memphis, TN, Employer)

**Docket No. 08-2139
Issued: December 15, 2008**

Appearances:

*Gregory D. Jordan, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 1, 2008 merit decision denying her claim for survivor's benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions.

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on May 13, 2008 affirming the Office's determination that appellant had not met her burden of proof to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional

conditions.¹ The Office had accepted that by July 1971 the employee, then a 48-year-old air traffic control specialist, sustained anxiety dissociative disease and chronic anxiety state due to his work duties.² It paid compensation for periods of work stoppage beginning in July 1971. The employee retired from the employing establishment on disability retirement in June 1972. In late 1984, he underwent heart bypass surgery but there is no indication that this surgery was necessitated by an employment-related condition.³ On July 25, 2005 the employee died and on August 20, 2005 appellant, his widow, filed a claim for survivor's benefits claiming that his death was related to his accepted employment conditions.⁴ A certificate of death signed on July 25, 2005 by Dr. Lee N. Vieron, an attending Board-certified cardiologist, listed the immediate cause of death as respiratory arrest due to congestive heart failure.

In its May 13, 2008 decision, the Board considered a number of medical reports submitted by appellant but found that they did not contain adequate medical rationale on the issue of causal relationship between the employee's death and his accepted emotional conditions. For example, the Board evaluated an October 18, 2005 report in which Dr. Vieron stated that the employee retired 30 years prior due to "severe anxiety problems" and concluded that these problems caused hypertension and aggravated his diabetes and coronary artery disease. Dr. Vieron suggested that employment-related anxiety contributed to the employee's death due to congestive heart failure and pneumonia. The Board found, however, that his opinion was of limited probative value because it was not based on a complete medical history and he failed to provide any discussion of the medical process of how stress could have contributed to the coronary artery disease that ultimately caused the employee's death in 2005. In a February 14, 2007 report, Dr. David H.S. Iansmith, an attending Board-certified cardiologist, stated that, from the time of his retirement until his death, the employee received benefits and had continuing difficulty in controlling his anxiety. The Board found that Dr. Iansmith's report was of limited probative value because it did not contain an opinion that the employee's accepted employment conditions contributed to his death.⁵ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

¹ Docket No. 08-529 (issued May 13, 2008). The Board also affirmed an Office decision denying appellant's request for further merit review of her claim.

² The employee's claim was also accepted for temporary aggravation of Parkinsonism, but the medical records after the early 1970s only occasionally mention Parkinsonism or Parkinson's disease.

³ The record reveals that the employee had developed diabetes and hypertension by the mid 1980s. These conditions have not been accepted as employment related.

⁴ It appears that at some point the employee elected to receive benefits from the Office rather than from the Office of Personnel Management. He received Office benefits up until the date of his death.

⁵ The Board also found that some medical evidence showed that the employee's death was not related to his employment. Dr. Ajit B. Raisinghani, a Board-certified cardiologist serving as an Office referral physician, concluded in a July 26, 2006 report that the employee's employment-related conditions did not contribute to his death. He indicated that it would be difficult to attribute the medical problems leading to the employee's death, which developed some time after his retirement, to the employment-related anxiety condition he sustained so many years prior.

In documents received on June 13, 2008, appellant, through her attorney, requested reconsideration of the denial of her survivor's benefits claim.⁶ Appellant submitted an undated report in which Dr. Iansmith stated that he was adding medical rationale to his February 14, 2007 report with respect to the cause of the employee's death. Dr. Iansmith indicated that the disability for which the employee was paid compensation was the primary cause of his death on July 25, 2005. The employee was rendered totally disabled from all work due to experiencing stress from his work as an air route traffic controller. Dr. Iansmith stated that the medical records showed that the employee suffered from severe anxiety problems for more than 30 years. He discussed an article from the International Journal of Epidemiology which posited that coronary disease was among those conditions which might result from constitutional weaknesses as well as workplace stresses. Medical studies detailed in the article indicated that the proportion of deaths from coronary disease was well above average in people who worked in more professional positions. Regarding the cause of the employee's death, Dr. Iansmith stated:

“Over the years these anxiety problems, for which he was disabled and retired, caused numerous problems including hypertension, aggravated his diabetes, and caused coronary artery disease. These conditions in turn, led to his death from congestive heart failure and an inability to overcome pneumonia at the time of his death on July 25, 2005. The anxiety which disabled him was difficult to regulate with medication and over time materially aggravated his coronary artery disease, hypertension and diabetes. This anxiety precipitated, made worse and accelerated the coronary artery disease and cerebral vascular disease from which he ultimately expired.”

In a July 1, 2008 decision, the Office determined that appellant had not submitted sufficient medical evidence to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions. It indicated that the medical evidence of record, including the opinion of Dr. Iansmith, did not contain sufficient medical rationale to relate the employee's death to the accepted emotional conditions.

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.⁷ This burden includes the necessity of furnishing rationalized medical opinion evidence showing causal relationship between the accepted employment condition and the employee's death.⁸ To be considered rationalized medical evidence, the opinion of the physician must be based on a complete and accurate factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by adequate medical discussion explaining

⁶ Appellant also submitted a December 7, 2007 letter in which her attorney argued that some of the previously submitted medical evidence, including an October 18, 2005 report of Dr. Vieron, established her claim.

⁷ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

⁸ *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

the causal relationship between employment factors and the employee's death.⁹ An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ 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.¹¹

ANALYSIS

Appellant claimed that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions, including anxiety dissociative disease and chronic anxiety state. She submitted an undated report in which Dr. Iansmith, the employee's Board-certified cardiologist, stated that the employee's employment-related anxiety problems, for which he was disabled and retired, caused or aggravated numerous problems including his hypertension, diabetes and coronary artery disease. Dr. Iansmith posited that these conditions in turn led to the employee's death from congestive heart failure and an inability to overcome pneumonia at the time of his death on July 25, 2005. He found that the employee's employment-related stress precipitated, made worse and accelerated the coronary artery disease and cerebral vascular disease from which he ultimately expired. Dr. Iansmith discussed an article from the International Journal of Epidemiology which posited that coronary disease was among those conditions which might result from constitutional weaknesses as well as workplace stresses. Medical studies detailed in the article indicated that the proportion of deaths from coronary disease was well above average in people who worked in more professional positions.

The Board finds that Dr. Iansmith's opinion is of limited probative value regarding the cause of the employee's death because his opinion of causal relationship is not supported by adequate medical rationale. Dr. Iansmith did not provide any notable description of the particular medical conditions which had been accepted by the Office. He did not provide any discussion of the employee's treatment for his anxiety-related condition during the more than 30 years between his work stoppage in 1972 and his death in 2005. Therefore, Dr. Iansmith's opinion is not based on a complete medical history. He failed to provide any discussion of the medical process of how stress could have contributed to the coronary artery disease that ultimately caused the employee's death in 2005. Such rationalized medical discussion is particularly necessary in the present case in that, prior to the first development of the employee's heart condition in the mid 1980s, the employee had not been exposed to stressful employment factors since the early 1970s. Moreover, Dr. Iansmith provided no discussion of nonwork factors which might have explained the heart condition that lead to the employee's death. He generally discussed a medical article regarding the role of stress in aggravating heart disease, but the Board has held that medical articles are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and accepted employment conditions because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular accepted employment condition.¹²

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁰ *Myrl Nix (Earl Nix)*, 15 ECAB 125, 126 (1963).

¹¹ *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

¹² *William C. Bush*, 40 ECAB 1064, 1075 (1989).

As explained by the Board in its May 13, 2008 decision, none of the previously submitted medical evidence contained a rationalized medical opinion relating the employee's accepted emotional conditions to his July 25, 2005 death. For example, the October 18, 2005 report of Dr. Vieron, an attending Board-certified cardiologist, was not based on a complete medical history and did not contain adequate medical rationale on causal relationship. The February 14, 2007 report of Dr. Iansmith did not contain an opinion that the employee's accepted employment conditions contributed to his death. Moreover, Dr. Raisinghani, a Board-certified cardiologist serving as an Office referral physician, concluded in a July 26, 2006 report that the employee's employment-related conditions did not contribute to his death.¹³ The mere fact that the 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.¹⁴

For these reasons, the appellant did not meet her burden of proof to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions.

¹³ Dr. Raisinghani explained that it would be difficult to attribute the medical problems leading to the employee's death, which developed some time after his retirement, to the employment-related anxiety condition he sustained so many years prior.

¹⁴ See *supra* note 11 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 1, 2008 decision is affirmed.

Issued: December 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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