

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

C.H., claiming as widow of L.H., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL)
SHIPYARD, Long Beach, CA, Employer)

**Docket No. 12-861
Issued: September 20, 2012**

Appearances:

Sally LaMacchia, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2012 appellant, through her attorney, filed a timely appeal from a November 14, 2011 merit decision of the Office of Workers' Compensation Programs' (OWCP) denying compensation for death benefits. Pursuant to the Federal Employees' Compensation Act¹ (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

On November 25, 1981 the employee, a 51-year-old boilermaker, injured his back when pulling down on a rope to close a door which had jammed. He filed a claim for benefits, which

¹ 5 U.S.C. § 8101 *et seq.*

OWCP accepted for thoracic strain and lumbar muscle spasm with right leg radiculitis. The employee stopped work in 1982.

In a December 15, 2008 report, Dr. Kesho N. Hurria, a specialist in orthopedic surgery, submitted a report in response to an OWCP questionnaire. He 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. Dr. Hurria asserted that the employee's thoracic sprain, lumbar sprain and radiculopathy to both lower extremities had become worse due to aging since his last examination and opined that these were permanent conditions. The employee had a pacemaker and was unable to undergo a new magnetic resonance imaging (MRI) scan or x-ray testing. In response to a question concerning the current treatment plan to facilitate the employee's recovery and return to employment, Dr. Hurria stated that he was not employable due to persistent pain in the thoracolumbar region, radiation of pain to both lower extremities and difficulty in walking. He opined that the employee's condition was the result of the November 25, 1981 injury and had become worse.

By letter dated June 9, 2009, appellant informed OWCP that her husband had died on May 23, 2009. She attached the certificate of death, which listed the causes of death as cardiopulmonary arrest and coronary artery disease, with diabetes mellitus a contributing factor.

Appellant submitted a June 2, 2010 report from Dr. Hurria, which listed the factors he believed were responsible for the employee's death. Dr. Hurria stated that the effects of chronic hypertension were one of the leading risk factors for heart attack, stroke, heart failure and aneurysm; the constant stress on the cardiovascular system by increased pressure meant the heart pumped constantly and worked harder than normal to push blood through the system. He opined that medical researchers had stated that the systems which regulate blood pressure and pain are linked. Dr. Hurria stated:

“In healthy people, a higher resting blood pressure is associated with a decreased sensitivity to acute pain. In other words, if your blood pressure is high, you would not feel as much pain if someone stuck you with a pin. This link between the two systems is a way to restore normal arousal levels after a painful stimulus. The body responds or is aroused, initially by pain, but then the pain signals are turned down so that the rest of the body's systems can return to normal. In people with chronic pain however the relationship between the two systems is reversed. For a chronic pain sufferer, higher blood pressure levels have been associated with an increased or higher, sensitivity to pain, as opposed to a decreased or lower, sensitivity in healthy people. In people with chronic pain, the increased sensitivity extends beyond acute pain as well, with higher blood pressure also being linked to an increased sensitivity to chronic pain. Chronic pain intensity, but not pain duration, was found to be a predictor of hypertension status, independent of the traditional risk factors for hypertension, such as older age, African American race and a family history of hypertension. In the case, of [the employee], there was no intervention on his industrial injury treating his acute or chronic hypertension. This hypertension was the resultant of the industrial injury of November 25, 1981.”

Dr. Hurria opined that the injuries of November 25, 1981 led to a chronic pain syndrome that 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 advised that the employee continued to suffer from hypertension and low back pain until his death on May 23, 2009. He stated:

“It is this examiner's opinion [that] the industrial injuries of November 25, 1981 were the primary cause leading the chronic hypertension, discussion aforementioned, leading to [c]oronary [a]rtery [d]isease that led to cardiopulmonary arrest of [the employee] on May 23, 2009.”

Dr. Hurria 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 walking at the time of his December 15, 2008 examination. He advised that, when he opined in that report that the employee's condition was the result of the November 25, 1981 employment injury, this would have included the coronary artery disease he acquired as the result of the November 25, 1981 work injury.

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 employment.

By letter dated July 21, 2010, OWCP advised appellant that it required additional medical evidence to establish that her husband's death was causally related to factors of his federal employment. It requested that she submit a medical report providing a history of the disease which caused or aggravated resulting in death, a diagnosis of the disease and an opinion bearing on the relationship of disease and death to factors of his employment, including medical reasons for the opinion.

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 the employee was admitted on May 16, 2009, with 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 in fact with methicillin resistant staphylococcus aureus and status post coronary artery bypass grafting. Dr. Shapiro stated that the employee was 79 years old and had severe congestive heart failure and severe ischemic cardiomyopathy. He advised that medical attempts to control the employee's symptoms had caused a worsening of renal failure. The employee had been admitted to the hospital for dialysis. He was highly symptomatic with fatigue, shortness of breath and extreme weakness. Dr. Shapiro advised that the employee had class 4 congestive heart failure and his symptoms had resisted outpatient attempts to relieve with medication therapy and adjustment of his pacemaker. During the course of therapy at the hospital, the employee's blood pressure decreased precipitously and he was intolerant to the dialysis procedure, requiring transfer to the intensive care unit for blood pressure support with Levophed.

Dr. Shapiro related that, after initially accepting dialysis, the employee decided that he did not want to have it any longer. The employee requested to go home with hospice care and

that comfort care measures are instituted in the hospital. He asked his managing cardiologist to deactivate his cardiac defibrillator. Dr. Shapiro advised that all other medications were discontinued and the employee was placed on medications only for comfort measures.

In a January 6, 2011 report, Dr. Ellen Pichey, an OWCP medical adviser, reviewed Dr. Hurria's June 2, 2010 report. She stated:

"Dr. Hurria gives his opinion, but no one can state with certainty that this was the case for this claimant, who died at age 81, after a triple bypass and pacemaker, had diabetes, a prime accelerant of coronary and vascular disease, as well as hypertension and a family history of cardiac disease. It does not seem reasonable to conclude that the claimant's death at age 81 was a consequence of his accepted thoracic and lumbar sprains and radiculitis from 30 years earlier."

In a decision dated March 29, 2011, OWCP denied appellant's claim as the evidence failed to establish that the employee's death was due to factors of his federal employment.

By letter dated April 14, 2011, appellant requested an oral hearing, which was held on August 15, 2011. She did not submit any additional evidence in support of her request.

By decision dated November 14, 2011, an OWCP hearing representative affirmed the March 29, 2011 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 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.²

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.³ 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,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified.⁶

² *Kathy Marshall (James Marshall)*, 45 ECAB 827, 832 (1994); *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990).

³ *See Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

⁴ *William Nimitz, Jr.* 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

Section 8123 of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.⁷ The implementing regulations refer to this as a referee examination and provide that OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸

ANALYSIS

Appellant filed a claim for compensation based on the May 23, 2009 death of the employee. The employee's death certificate listed the causes of death as cardiopulmonary disease and coronary artery disease, with diabetes mellitus a contributing factor. At the time of his death, the employee had an accepted claim and was receiving compensation benefits for a November 25, 1981 work injury which OWCP had accepted for thoracic strain and lumbar muscle spasm with right leg radiculitis.

Appellant alleged that the employee's chronic pain from his accepted lumbar and lower extremity conditions contributed to his hypertension and coronary disease. The issue of causal relationship is a medical question.

Dr. Hurria stated in a June 2, 2010 report, that the employee's coronary artery disease was a reaction to years of chronic pain caused by his accepted back condition. He described the process through which appellant's accepted back conditions caused or contributed to the cardiopulmonary arrest and coronary artery disease, which resulted in the employee's death. Dr. Hurria stated that the systems that regulate blood pressure and pain were linked and chronic pain was associated with an increased risk of hypertension. He explained that the employee's November 25, 1981 injuries led to a chronic pain syndrome, that caused a chronic cardiac hypertension, that led to chronic edema of the lower extremities causing decreased circulation of the heart muscle causing hypertrophy to the heart muscle, which eventually led to a coronary artery disease and heart attack.

Dr. Pichey found that there was no causal relationship between the employee's death and his accepted employment injuries. She stated that it was not reasonable to find that his death at age 81 was a consequence of his accepted thoracic and lumbar sprains and radiculitis from 30 years earlier. Dr. Pichey noted that the employee died at age 81, after a triple bypass and pacemaker and had diabetes, which was a prime accelerant of coronary and vascular disease, as well as hypertension and a family history of cardiac disease. The Board finds that a conflict exists in the medical opinion evidence as to whether the employee's death was causally related to his accepted medical conditions.

In view of the conflict in the medical evidence on this issue, the Board will remand the case for referral to a impartial medical specialist pursuant to 5 U.S.C. § 8123(a). After such further development as OWCP deems necessary, it should issue an appropriate decision.

⁷ 5 U.S.C. § 8123.

⁸ *W.P., (E.P.)*, Docket No. 11-1479 (issued January 26, 2012).

CONCLUSION

The Board finds that there is a conflict in the medical evidence regarding causal relationship between employee's death on May 23, 2009 and his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: September 20, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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