United States Department of Labor
Employees' Compensation Appeals Board

K.A., claiming as widow of S.A., Appellant	)	
and	)	**Docket No. 13-274**
	)	**Issued: April 10, 2013**
DEPARTMENT OF DEFENSE, DEFENSE EDUCATION ACTIVITY, Arlington, VA, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 15, 2012 appellant, through her attorney, filed a timely appeal from the September 25, 2012 merit decision 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 appellant met her burden of proof to establish that she is entitled to receive survivor's benefits.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

In a November 1, 2011 decision,[2] the Board affirmed OWCP's September 20, 2010 decision denying appellant's claim for survivor's benefits. The Board found that the medical reports of record, including those of Dr. John Shneerson, an attending physician certified in respiratory and sleep medicine in the UK, and Dr. W.L. White, a certified surgeon in the UK, did not establish that a work injury contributed to the employee's death. With respect to Dr. Shneerson's opinion that a work injury contributed to the employee's death on September 11, 2007, the Board found that it lacked medical rationale because it was general in nature and did not address the specific circumstances of the employee's case.

In a May 21, 2012 letter, counsel requested reconsideration on behalf of appellant, arguing that an enclosed February 27, 2012 report of Dr. Shneerson established appellant's claim for survivor's benefits. Dr. Shneerson discussed the employee's accepted work conditions and his stress from working as a math teacher "around 1970" and in 1983. He described an April 8, 1984 report in which Dr. Ronald L. Harman, a Board-certified psychiatrist serving as an OWCP referral physician, stated that the employee's post-traumatic stress disorder with persistent and recurring depression mixed with anxiety was also manifested by recurrent somatic symptoms resembling a conversion-type disorder (including hypertension). Dr. Shneerson stated that conversion disorders occurred when stress was manifested not by psychological symptoms but through physical symptoms and conditions of which hypertension was one example. He stated that medical evidence of record showed that the employee had developed hypertension as early as August 1983, when he was still working as a teacher and angina pectoris (a manifestation of ischemic heart disease) by November 1985. Dr. Shneerson stated that there was no suggestion that the employee ever developed hypertension prior to his work-related stress and noted that, in his March 23, 1988 report, he confirmed that the employee had undergone an exercise test showing ischemic heart disease. The employee underwent a coronary artery angioplasty in 1990 and a coronary artery bypass operation for worsening angina in 1999. Dr. Shneerson noted that his April 5, 1995 report documented that the employee had recurrent obsessional thoughts and stress about having to teach again because of the fear that this would cause a recurrence of his symptoms. He stated, "The ongoing stress itself would have been sufficient to have contributed to his hypertension and worsening of his ischemic heart disease even though he was no longer employed as a teacher."

[2] Docket No. 11-186 (issued November 1, 2011). On September 9, 1980 the employee, then a 56-year-old teacher, filed an occupational claim alleging that he developed vocal fatigue and laryngitis as a result of classroom conditions, including disciplinary problems, unmotivated students, racial unease, undiversified assignments and inadequate classroom facilities. OWCP accepted that the employee sustained aggravation of chronic anxiety leading to vocal fatigue, aggravation of chronic mild laryngitis and post-traumatic stress disorder. Between 1959 and 1975, the employee taught mathematics at various institutions, including the U.S. Air Force Dependents School in Lakenheath, United Kingdom (UK). He was terminated from the employing establishment in 1975, but was reinstated to federal employment in February 1983 as a math teacher in Germany. OWCP accepted that the employee had a recurrence of total disability on September 20, 1983 (his last work date) and he was separated from the employing establishment effective January 30, 1984. After the employee's death on September 11, 2007, appellant, the employee's widow, filed a claim for survivor's benefits. Appellant alleged that the employee's accepted emotional conditions contributed to the causes of death listed on his death certificate, myocardial infarction and ischemic heart disease.

Dr. Shneerson noted that the employee died on September 11, 2007 and his death certificate listed the cause of death as myocardial infarction and ischemic heart disease. He posited that that myocardial infarction, angina pectoris and ischemic heart disease all reflected the same disease process and that hypertension was a risk factor for developing this disease. Dr. Shneerson stated that it was common for ischemic heart disease to prove fatal after a prolonged interval (such as 20 years) following the development of a risk factor such as hypertension, a condition which caused a gradual chronic degeneration of the walls of the arteries of the heart. He indicated that the final event leading to myocardial infarction or death was usually due to damage to a small area of a coronary artery which caused rupture of a diseased plaque area with subsequent thrombosis formation. Dr. Shneerson stated that this condition occluded or blocked the artery and led to the infarction and death. He noted that the employee had classroom stress which led to conversion symptoms including hypertension which was documented at the time of his work in 1983[3] and stated:

> "Hypertension is recognized to cause ischemic heart disease through mechanisms including those related to increased norepinephrine levels. [The employee] did have ongoing anxiety and stress about the fear of having to teach again throughout the rest of his life. This would have been sufficient to have contributed to the progression of his ischemic heart disease which is a chronic disorder and which by 1990 required an angioplasty and by 1999 required surgery. [The employee's] death from a myocardial infarction in 2007 occurred at an interval of over 20 years after the appearance of the risk factor, hypertension, which is typical for this condition. In my opinion his work[-]related stress contributed materially to his death from a myocardial infarction."

In a September 25, 2012 decision, OWCP denied appellant's claim for survivor's benefits finding that the February 27, 2012 report of Dr. Shneerson did not provide adequate medical rationale to establish that the accepted condition contributed to the employee's death on September 11, 2007.

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.[4] This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[5] An award of compensation may not be based on surmise, conjecture or speculation.[6] The mere showing that

[3] Dr. Shneerson actually listed the date as 1993 but this appears to have been an inadvertent error.

[4] *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).

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

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

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.[7]

The Board has held that the fact that a condition manifests itself or worsens during a period of employment[8] or that work activities produce symptoms revelatory of an underlying condition[9] does not raise an inference of causal relationship between a claimed condition and employment factors.

ANALYSIS

OWCP accepted that the employee sustained aggravation of chronic anxiety leading to vocal fatigue, aggravation of chronic mild laryngitis and post-traumatic stress disorder. The employee last worked for the employing establishment in September 1983 and after his death on September 11, 2007, appellant, the employee's widow, filed a claim for survivor's benefits. Appellant alleged that the employee's accepted conditions contributed to the causes of death listed on his death certificate, myocardial infarction and ischemic heart disease, but OWCP denied appellant's claim in several decisions, including a decision dated September 20, 2010.

In a November 1, 2011 decision, the Board affirmed OWCP's September 20, 2010 decision denying appellant's claim for survivor's benefits. The Board found that the medical reports of record, including those of Dr. Shneerson, an attending physician certified in respiratory and sleep medicine in the UK, did not show that a work injury contributed to the employee's death on September 11, 2007. The Board found that Dr. Shneerson's opinion on causal relationship lacked medical rationale because it was general in nature and did not address the specific circumstances of the employee's case.

Appellant requested reconsideration and submitted a February 27, 2012 report of Dr. Shneerson. In a September 25, 2012 decision, OWCP denied appellant's claim for survivor's benefits finding that the February 27, 2012 report did not contain adequate medical rationale supporting its conclusion on causal relationship.

In his February 27, 2012 report, Dr. Shneerson noted that the medical evidence documented that the employee had hypertension by 1983 and angina pectoris (a manifestation of ischemic heart disease) by November 1985. He posited that the employee's stress from working as a teacher for the employing establishment and his fear of returning to this type of stressful work (after his last day of work on September 20, 1983) contributed to these cardiac conditions. Dr. Shneerson argued that, over the course of more than 20 years, the employee's hypertension contributed to his worsening cardiac condition which in turn led to him suffering a fatal myocardial infarction in September 2007.

The Board finds that Dr. Shneerson's February 27, 2012 report is not sufficiently well rationalized to show that the employee's accepted work injuries contributed to his death on

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

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

[9] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

September 11, 2007. Dr. Shneerson argued that an employment connection between the employee's accepted conditions and his death was shown by the fact that the employee starting developing cardiac conditions in the 1980s, *i.e.,* hypertension in 1983 and angina pectoris in 1985. On appeal, counsel argued that Dr. Shneerson's February 27, 2012 report establishes a relationship between a work injury and these cardiac conditions, but the Board finds that Dr. Shneerson did not adequately explain such a relationship. Dr. Shneerson noted that the employee's fear of returning to stressful teaching work was documented in an April 8, 1984 report of Dr. Harman, a Board-certified psychiatrist serving as an OWCP referral physician, and in his own report dated April 5, 1995. However, the mere fact that the employee reported such stress would not establish, without further explanation, that it was related to an accepted work injury or that it contributed to his hypertension or angina pectoris. The Board notes that the only accepted emotional condition in the present case is post-traumatic stress disorder and Dr. Shneerson did not adequately explain his ostensible opinion that this condition persisted for over 20 years after the employee left his federal work. The Board has held that the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and employment factors.[10] Such a causal connection can only be made by the submission of rationalized medical evidence, but Dr. Shneerson did not provide such rationale.

In his February 27, 2012 report, Dr. Shneerson's opinion on causal relationship was couched in general terms and he did not adequately address the specific circumstances of the employee's case. For example, Dr. Shneerson stated, "The ongoing stress itself would have been sufficient to have contributed to his hypertension and worsening of his ischemic heart disease even though he was no longer employed as a teacher." However, he did not provide adequate explanation for such a conclusory statement. Dr. Shneerson did not provide a comprehensive account of the employee's treatment for cardiac and/or psychiatric conditions between the time he stopped work in September 1983 and his death in September 2007 and, therefore, his opinion on causal relationship is not based on a complete factual and medical history. The Board notes that it has not been accepted that the employee sustained a cardiac condition due to work factors and the medical evidence of record does not establish the existence of such a work-related condition.

In his February 27, 2012 report, Dr. Shneerson further argued that the employee's hypertension contributed to his fatal myocardial infarction in September 2007. On appeal, counsel argued that Dr. Shneerson provided adequate medical rationale to support this opinion. However, Dr. Shneerson discussed the general, possible relationship between hypertension and the occurrence of myocardial infractions without providing a detailed discussion of the employee's specific cardiac condition. As noted, he did not provide any significant discussion of the employee's cardiac condition or explain the medical process through which an accepted work injury could have contributed to his cardiac condition.[11] In fact, the record does not contain any medical records directly describing the employee's myocardial infarction in September 2007.

[10] *See supra* notes 8 and 9.

[11] Dr. Shneerson only noted that his March 23, 1988 report documented that the employee participated in an exercise test showing ischemic heart disease and that he underwent a coronary artery angioplasty in 1990 and a coronary artery bypass operation for worsening angina in 1999.

More than 20 years passed between the time that the employee last worked for the employing establishment (in September 1983) and when he died on September 11, 2007 and Dr. Shneerson did not adequately explain how the employee's cardiac condition continued to be influenced by work factors for such an extended period after he had been removed from the stress in the workplace.

For these reasons, appellant did not show that a work injury contributed to the employee's death and 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 met her burden of proof to establish that she is entitled to receive survivor's benefits.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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