

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSANNE W. UNDERWOOD, claiming as dependent child of RANDALL L. UNDERWOOD and DEPARTMENT OF THE AIR FORCE, FIRE DEPARTMENT, ANDREWS AIR FORCE BASE, MD

*Docket No. 00-2007 Submitted on the Record;
Issued October 2, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof in establishing that her father's death was causally related to factors of his federal employment or to his August 23, 1996 accepted injury.

On December 21, 1999 Cheryl Chaney-Semola, the legal guardian of Susanne W. Underwood (appellant), the minor child of the deceased federal employee, filed a claim for death benefits (Form CA-5). She submitted a death certificate dated October 24, 1999, indicating that the employee died from a blunt traumatic injury in a motor vehicle accident.

The record reflects that the employee was a 38-year-old-firefighter, who sustained injury to his back on August 23, 1996 when he stepped from a fire truck.¹ The employee did not return to work at the employing establishment following the August 23, 1996 injury. He received appropriate workers' compensation benefits.

By letter dated January 4, 2000, the Office requested detailed factual and medical information from appellant.

By letter dated January 14, 2000, the guardian responded to the Office's request for information, noting she had requested a copy of the autopsy report. She indicated that the employee was addicted to prescription drugs and illegal drugs and alcohol. The guardian explained that the blood alcohol level and the drugs found in the employee's system contributed to his death. She also indicated that workers' compensation benefits were paid to the employee

¹ The Office of Workers' Compensation Programs accepted the August 23, 1996 injury for low back strain, herniated nucleus pulposus at L4-5, emotional overlay and drug dependency. The employee had three other work-related injuries to his back dated September 25 and November 10, 1993 and February 16, 1994, which were accepted by the Office.

to attend drug and alcohol rehabilitation due to emotional problems associated with his accepted injury.

On January 18, 2000 the Office received a copy of the Florida Highway Patrol traffic investigation. The investigator, Corporal J.A. Hilliard, determined that the employee was in violation of Florida statutes for driving under the influence and failure to wear his seatbelt. The chemical tests revealed that he had a blood alcohol content of 0.209 and his drug screening test was positive for Doxylamine, Sertraline, Desmethylertraline, Cannabinoids, Doxylamine, Ephedrine/Pseudoephedrine and Gabapentin.

On February 11, 2000 the Office received a copy of the employee's October 25, 1999 autopsy report. It was issued by Dr. Susan Rendon, an anatomical and clinical pathologist, noting findings as: Multiple rib fractures anteriorly, both left and right with multiple right pleural lacerations and defects; right pulmonary lacerations, left pulmonary contusions; bilateral hemothorax; right pneumothorax and fracture of the right clavicle. The autopsy found that the employee died as a result of a blunt traumatic injury in a motor vehicle accident.

In a decision dated March 14, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the death of the employee was causally related to factors of his federal employment.

The Board finds that appellant has failed to meet her burden of proof in establishing that the employee's death was causally related to work factors or to his August 23, 1996 accepted injury.

In the instant case, appellant's guardian alleged that the blood alcohol and drugs found in the employee's system contributed to his death. She referred to the fact that employee's claim was also accepted for emotional overlay and drug dependency, which led to his accident.

The Federal Employees' Compensation Act provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² However, an award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation, or on appellant's belief that the employee's death was caused, precipitated or aggravated by his employment.³ The mere showing that the employee was receiving compensation for total disability at the time of his death does not establish that his death was causally related to conditions resulting from the employment injury.⁴

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to factors of his

² 5 U.S.C. section 8102(a).

³ *Juanita Terry (Rex Terry)*, 31 ECAB 433, 434 (1980).

⁴ *Id.*

employment.⁵ This burden includes the necessity of furnishing a rationalized medical opinion based on an accurate factual and medical background and supported by medical rationale explaining the nature of the cause and effect relationship between the employee's death and specific employment factors.⁶

In this case, the employee had not worked for the employing establishment since his August 23, 1996 employment injury. Appellant has not provided any information to suggest that the employee was performing any work-related duties on the date of his death. Appellant alleges that the employee's addiction to drugs and alcohol stemmed from his accepted conditions of emotional overlay and drug dependency and contributed to his death. If the employee's drug dependency could be attributed to his disability, then the side effects of such dependency could be considered a consequential injury.⁷ However, appellant did not submit a medical report explaining how the accepted injury of August 23, 1996 or the accepted conditions of emotional overlay and drug dependency caused or contributed to the employee's death. The only medical report submitted was the autopsy report, which listed the cause of death as blunt traumatic injury. The report did not address or explain the chain of causation as arising out of appellant's employment or any of the accepted conditions.

None of the medical evidence submitted provided a physician's rationalized medical opinion causally relating the employee's death on October 24, 1999 to factors of his federal employment. By letter dated January 4, 2000, the Office advised appellant of the specific evidence needed to establish her claim, but such evidence has not been submitted. Appellant's belief that the employee's work injury of August 23, 1996 led to his death on October 24, 1999 is insufficient, absent medical rationale, to establish the requisite causal relationship.

Because appellant did not provide any medical evidence to establish that the employee's death on October 24, 1999 was due to a "natural progression" of his accepted back conditions his death on October 24, 1999 is not established as compensable under the Act.

⁵ *Judith L. Albert (Charles P. Albert)*, 47 ECAB 810 (1996).

⁶ *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827, 832 (1994).

⁷ When an injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. *Dennis J. Lasanen*, 41 ECAB 933, 937 (1990).

The March 14, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 2, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member