

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSITA MAHANA, claiming as widow of WAYNE MAHANA and
DEPARTMENT OF ENERGY, Albuquerque, NM

*Docket No. 00-2350; Submitted on the Record;
Issued April 17, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the employee's suicide was causally related to factors of his employment.

This is the second appeal in this case.¹ On the first appeal, the Board reviewed a September 6, 1996 decision, by which the Office of Workers' Compensation Programs found that the weight of the medical evidence, represented by the opinion of the impartial medical specialist, Dr. Carol C. Schwartz, established that the employee's suicide was not causally related to factors of his employment. The Board found that, while the Office properly determined that a conflict in medical opinion existed between Dr. Timothy Strongin, whose reports were submitted by appellant, and Dr. William T. Moore, the Office referral physician, the Office improperly selected Dr. Schwartz as an impartial medical specialist to resolve the conflict, because the Office did not give appellant prior notification of the existence of the conflict or of the identity of the physician to whom the case was being referred.² The Board, therefore, set aside the Office's September 6, 1996 decision and directed the Office to refer the case record, after proper notification to appellant, to another impartial medical specialist for a reasoned medical opinion of whether the employee's suicide was causally related to factors of his employment. The complete facts of this case are set forth in the Board's April 13, 1999 decision and are herein incorporated by reference.

¹ 50 ECAB 331 (1999).

² Such notice is required by the Office's procedure manual, which then states, "[n]otification that the examination is being arranged under the provisions of 5 U.S.C. § 8123 will give the claimant an opportunity to raise any objection to the selected physician prior to the examination." Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4d (October 1995) states that information that must be provided to the claimant includes the existence of a conflict and the name and address of the physician selected to serve as the impartial medical specialist. The Board has found this section of the procedure manual equally applicable to a case involving a claim for death benefits. *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

By letter dated January 18, 2000, with copies to appellant and her attorney, the Office referred the case record, together with a statement of accepted facts and list of questions to be answered, to Dr. Keith H. Johansen, a Board-certified psychiatrist, for a determination of whether the employee's suicide was causally related to factors of his employment.

In a report dated April 15, 2000, based on his review of all of the material sent to him, Dr. Johansen diagnosed the employee as having suffered from major depressive disorder, post-traumatic stress disorder and alcohol abuse. He discussed in detail the many factors that contributed to the employee's emotional make-up, including his childhood experiences, such as the divorce of his parents, his estrangement from his father and abusive treatment by his stepfather and his Vietnam service, which left him unable to return to civilian life without intrusive images and thoughts and with hypervigilance. Dr. Johansen also discussed the employee's increasing use of alcohol in an effort to numb his feelings and block out some of the intrusive images and the profound effect on the employee of his mother's suicide approximately two years before his own. He noted that a mental status examination performed shortly before the employee's death revealed pervasive affective numbing, constant thoughts about death and suicide, a longing to be dead and in heaven and a great denial of the risk in which he was placing himself. The employee also felt guilty for his daughter's diabetes and was reminded of her unhappiness when he and her mother divorced and felt distressed by the fact that his son seemed to be more and more like him every day. Dr. Johansen concluded that the employee's psychiatric condition was not employment related, stating:

“[The employee's] death was due to problems arising out of his childhood, his alcohol abuse and the post-traumatic stress of Vietnam and his mother's death. All of this occurred while he was employed by DOE [the Department of Energy], but was in no way caused by the DOE. Nor did his federal employment aggravate his condition and its outcome. It was only the stage on which it occurred.

“[The employee's] suicide was not caused by his federal employment in any way. He could have been totally unemployed and the same forces that brought about his action would still have applied.”

By decision dated April 18, 2000, based on the weight of the medical evidence, as represented by the report of Dr. Johansen, the Office denied appellant's claim for compensation due to her husband's death.

The Board finds that appellant failed to establish that the employee's suicide was causally related to factors of his employment.

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.³ The suicide itself must arise out of appellant's assigned duties to such an extent as to be regarded as arising out of and in the course of employment.⁴

³ *Tess Mazer*, 29 ECAB 582 (1978).

⁴ *Carolyn King Palermo (Dwayne Palermo)*, 42 ECAB 435 (1991).

In determining whether an employee's suicide is causally related to factors of his employment, the Office has adopted the "chain of causation" test.⁵ The Office's procedure manual explains that all suicide claims are not precluded by 5 U.S.C. § 8102(a)(2)⁶ and states 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, result in suicide."⁷ Under the heading "[c]hain of [c]ausation [t]est," the procedure manual states, "[i]f 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."⁸ The procedure manual under this heading contains the following quotation from Larson, *The Law of Workers' Compensation*: "[i]f the sole motivation controlling the will of the employee when he knowingly decides to kill himself is the pain and despair caused by the injury and if the will itself is deranged and disordered by the 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."⁹ In his treatise, Larson expresses the rule in a simpler manner: "[s]uicide under the majority rule is compensable if the injury produces mental derangement and the mental derangement produces suicide."¹⁰

In this case, Dr. Johansen, the impartial medical specialist, reviewed all of the relevant evidence of record and provided an accurate and comprehensive review of the employee's medical and work history and, on the basis of this review, found that the employee's death by suicide was not causally related in any way to factors of his federal employment.

In situations when there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

The Board finds that Dr. Johansen's opinion is well rationalized and is based on a proper medical and factual background and must, therefore, be accorded special weight on the issue of whether the employee's suicide was causally related to his employment.

⁵ *Idella Whitaker*, 38 ECAB 473 (1987).

⁶ This provision precludes payment of compensation for disability or death sustained in the performance of duty where the injury or death is "caused by the employee's intention to bring about the injury or death of himself or another."

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (September 1995).

⁸ *Id.*

⁹ Larson, *The Law of Workers' Compensation* § 36.30 (1990).

¹⁰ *Id.* at § 36.00; see also *Carolyn King Palermo (Dwayne Palermo)*, *supra* note 4.

¹¹ *Mary A. Moultry*, 48 ECAB 566 (1997); *Charles M. David*, 48 ECAB 543 (1997).

The decision of the Office of Workers' Compensation Programs dated April 18, 2000 is hereby affirmed.

Dated, Washington, DC
April 17, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member