U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA BENNER-MAKI, claiming as widow of JAMES M. BENNER and U.S. POSTAL SERVICE, POST OFFICE, Greeley, CO

Docket No. 00-5; Submitted on the Record;
Issued March 7, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the employee's suicide on February 28, 1994 was causally related to factors of his federal employment.

On June 14, 1991 the employee, then a 48-year-old city letter carrier, injured his shoulder when he fell while a dog chased him.[1] The Office of Workers' Compensation Programs accepted the claim for right shoulder sprain and rotator cuff tear and authorized surgery for rotator cuff repair and right partial acromionectomy. On June 26, 1992 the Office accepted appellant's recurrence claim.

On January 24, 1994 appellant filed a notice of occupational disease (Form CA-2), alleging that his severe depression was due to employment factors. The employee stopped work on January 4, 1994 and submitted a statement regarding work factors he believed caused his depression.

In a January 24, 1994 report, Dr. Roger M. Johnson, an attending Board-certified psychiatrist, diagnosed recurrent depression of severe intensity. He concluded that the employee's problems had been aggravated by his work and stated:

> "In addition to the depressed mood, he has an associated anxiety. I do believe that given the ongoing suicidal ideation, his above-mentioned depression and work-related problems, that if he w[as] to return to the work setting, he would have a substantial increase in feelings of hopelessness, a sense of inadequacy and stronger and stronger feelings of suicidal ideation which I suspect he might well act on if he felt that he had no other opportunity for relief."

[1] This was assigned claim number A12-123821.

In a February 9, 1994 fitness-for-duty report, Dr. Robert A. Cowan, Jr., found the employee unfit for duty in a February 9, 1994 examination due to a significant depressive disorder. He recommended medical leave and that medical retirement was a possibility.

The death certificate attributed the employee's death to a polydrug overdose on February 28, 1994.

In an August 22, 1994 report, Dr. Amy L. Llewellyn, a coroner, attributed the cause of the employee's death to conflicts with his supervisors over issues of leave and limited ability to perform his job. Dr. Llewellyn also concluded that the employee's accepted shoulder injury and "related-work problems combined to make" him increasingly depressed. She also noted that the employee had "little sense that he could do anything to get out of [that] situation."

On September 13, 1994 appellant filed a survivor's claim.

On October 5, 1994 the Office prepared a statement of accepted facts and a list of questions to be resolved by a Board-certified psychiatrist. In the statement of accepted facts, the Office identified several compensable employment factors which included his depression due to residuals of his accepted employment injury, that his assignment to numerous jobs at the employing establishment was overwhelming and difficult for the employee and that the employee had been informed, Jane Croissant stated that he would be out the door if he was not back on his route.

In a December 12, 1994 report, Dr. George E. Kalousek, a second opinion Board-certified psychiatrist stated that the employee was under investigation for fraud in regard to his June 14, 1991 employment injury and that this fact was "quite important to keep in mind in this postmortem psychiatric evaluation." He noted that psychiatric reports indicated that the employee "was on minor tranquilizers and a fair amount of alcohol during the last year or two of his life" and noted in support the employee's mild fatty liver found in the autopsy report and the minor tranquilizers the employee had been prescribed. Based upon the employee's actions of getting life insurance, refinancing his home and completing a will, Dr. Kalousek concluded that the employee had decided to kill himself. The physician noted that the employee had several family members who either attempted or successfully committed suicide. As to the cause of the employee's suicide, the physician opined that he agreed with the treating psychiatrists that the employee had preexisting conditions, which were aggravated by his federal employment. He then stated he had "mixed feelings about it" as the employee:

> "[S]et himself up for some of the things that happened to him. There is a large component to this case that [the employee] alone is responsible for. Overall I consider the [employing establishment's] involvement to be a mild aggravation to [the employee] in terms of his clinical state. Much more serious were his state of health, his probable noncompliance with treatment for the major depression and probably some domestic stress. In no way does his situation with the [employing establishment] directly precipitate his suicide attempt. It appears to me given his actions in the month or two prior to his death that he had planned this quite carefully."

In response to an Office request for clarification, Dr. Kalousek concluded that the employing establishment did not cause or aggravate the employee's death which he attributed to the employee's "substance abuse and noncompliance added to his misery and general health" in a December 19, 1994 report.

By decision dated February 7, 1995, the Office denied appellant's claim for survivor benefits.

Appellant's counsel requested an oral hearing in a letter dated March 7, 1995 and contending that Dr. Kalousek's opinion was flawed and based upon erroneous information. Specifically, appellant noted that the employee had not been under investigation for fraud in connection with his 1991 employment injury and that he was not an alcoholic as Dr. Kalousek opined.

By decision dated April 18, 1996 and finalized April 19, 1996, the hearing representative set aside the February 7, 1995 decision and remanded for further development of the evidence. The hearing representative found that Dr. Kalousek based his opinion on inaccurate statement that appellant was under investigation by the employing establishment for fraud in connection with his accepted 1991 work injury as well as making an assumption of alcohol abuse without providing the factual basis for his opinion.

Appellant submitted an April 1, 1996 affidavit, Christine Childers, Ph.D., a licensed clinical psychologist, in which she diagnosed depression which became severe subsequent to the employee's 1991 employment injury. Dr. Childers indicated that appellant's coping skills deteriorated following the 1991 work injury and noted that the employee was teased and ridiculed by his coworkers because his injury was caused by an small dog attack. In addition, she noted that the employee was subjected to "repeated questioning of the significance and validity of his injury and the impact it had on is ability to do his job by coworkers, supervisors and the post mistress." She concluded that the "harassment, taunting and questioning of his integrity at work (there was a belief that [the employee] was exaggerating his injuries) significantly worsened his depression. Regarding nonwork stressors, Dr. Childers stated that these were secondary and that the employee's work environment was the most stressful factor in his life. Lastly, she noted that the employee "was able to satisfactorily cope" with his depressive episodes prior to the 1991 employment injury and that "the injuries, job-related stress, resentment and harassment he experienced on the job combined to cause the severity of depression he experienced prior to his suicide."

In a June 26, 1996 report, Dr. Johnson, after a review of Dr. Kalousek's opinion, the medical records and the hearing representative's decision concluded that the employee's work limitations and physical stated, resulting from his 1991 employment injury caused "significant stressors in the development of the last major depressive episodes. He also attributed the employee's suicide to his depression, which had been aggravated by his employment. Dr. Johnson indicated that while the employee "appeared stable he was deeply troubled by feelings of inferiority and inadequacy" and his "feelings were aggravated by his shoulder injury in 1991 and the hostile communications of his superiors." In addition, Dr. Johnson stated that the employee's "injury in 1991 and the subsequent poor recovery limited his usefulness" which he opined "returned him to the state of despair that he had encountered with his parents."

Dr. Johnson concluded that there was a direct cause between appellant's suicide, major depression and supervisory comments made regarding his condition.

On August 12, 1997 the Office referred the claim to Dr. Laura J. Klein, a Board-certified psychiatrist, for a second opinion as to whether appellant's suicide was related to his employment.

In a report dated October 28, 1997, Dr. Klein, based upon a review of the medical records, statement of accepted facts, concluded that the employee's suicide was not employment related. In reaching this conclusion, Dr. Klein relied upon Dr. Kalousek's determination the employee had an alcohol and drug problem as well as the statement that the employee was being investigated for fraud in the filing of his compensation claim at the time of his death. She noted that the compensable factors identified by the Office "could not have led to a severe depression resulting in suicide" in and of themselves. Specifically she noted:

> "[I]n a person with a long-standing extremely negative self image, with a super imposed depression and a perception that he was physically deteriorating and in legal trouble, could contribute to a downward emotional spiral. However, it is important to differentiate that his perceptual disturbance was brought to the situation by him. An ordinary worker without a preexisting personality disorder might have an emotional reaction to having difficulty learning new jobs assigned, but I do n[o]t believe any psychiatrist would say that it could result in major depression and ultimately suicide. Threatened job loss certainly was an issue. But, one must also again take into account the factors that there was a realistic fear that this man would lose his job based on his own behaviors, including being investigated for deleting earlier medical history from his medical claim which might have resulted in punishment to him."

In addition, Dr. Klein believed that the question of alcohol or drug abuse asserted by Dr. Kalousek should be addressed and indicated that the finding of a mildly fatty liver supported that the employee had an alcohol abuse problem. She noted, however, that laboratory results from the 1970s showed "a consistently normal mean corpuscular volume on the blood cell count and a normal GGT, a sensitive indicator of alcohol abuse and that "[v]ery mild fatty changes in the liver can be indicative of brief alcohol episodes or chronic long term."

By decision dated November 4, 1997, the Office denied appellant's claim finding that Dr. Klein's October 28, 1997 report represented the weight of the evidence.

Appellant's counsel requested an oral hearing by letter dated December 4, 1997.

At the hearing on December 8, 1998, Dr. Johnson testified that the employee had major depression. He noted that the employee managed well until his June 14, 1991 employment injury when he "began a downhill course psychologically which culminated in his suicide in February of 1994." Dr. Johnson noted the increasing hostility the employee faced by management and his peers and opined that the employee's negative experiences at the employing establishment was having an adverse impact on his health. He testified that he thought "because of the sustained and rather chronic nature of the injury that produced an atmosphere at work that,

as I said, was hostile and somewhat unforgiving" was demoralizing and "ultimately seriously aggravated his depression." Regarding the question of whether the employee had an alcohol or drug problem, Dr. Johnson noted that there would be more than mild fatty liver changes for an individual who chronically abused alcohol. He also disagreed with Dr. Klein regarding her opinion that the employee had a drug and alcohol problem and stated that he thought "she was reaching and not basing it on a lot of factual material" when she diagnosed a borderline personality.

In a decision dated May 28, 1999 and finalized on June 4, 1999, the hearing representative found that appellant had failed to establish that the employee's suicide was due to his federal employment and therefore affirmed the denial of survivor's benefits.

The Board finds that the case is not in posture for a decision.

Section 8102(a) of the Federal Employees' Compensation Act[2] provides in relevant part that compensation shall be paid for the death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is caused by the employee's intention to bring about the injury or death of himself. While the statute's language seems to preclude compensation for suicide,[3] the Office has adopted and the Board has approved the chain-of-causation test in determining whether an employee's suicide is compensable under the Act.[4]

The chain-of-causation test states that suicide is compensable if a work-related injury produces mental derangement and the mental derangement produces suicide. However, as noted by Professor Larson, the injury must have arisen out of and in the course of employment and the suicide must be traced directly to it.[5] If there is no work-related injury that eventually leads to the employee taking his own life, or if nonemployment influences account for the death, the suicide is not compensable.[6]

In applying the chain-of-causation test, the Office has adopted guidelines for the development of evidence in suicide claims. The Office's procedure manual provides that for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken. Therefore, if the evidence indicates or suggests the existence of other factors in the employee's life such as personal or family problems or nonwork-related injuries, the Office must develop such factors to determine what effect, if any, they had in causing the employee to

[2] 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8102(a)(2).

[3] The prohibition against compensation for suicide has existed in the Act since its passage on September 7, 1916 and has not been altered or changed despite periodic amendment of the Act by Congress.

[4] *See Carolyn King Palmero (Dwayne Palmero)*, 45 ECAB 308, 312 (1994).

[5] A. Larson, *The Law of Workers' Compensation*, Vol. 1A, Chap. VI, § 36.40.

[6] *See Elaine D. Brewer (John F. Brewer)*, 42 ECAB 929, 934 (1991) (finding that the chain of causation test could not be applied to an employee's suicide because no work-related injury had been established).

commit suicide and whether they constitute independent intervening factors sufficient to break the direct chain of causation from the injury to the suicide.[7]

As noted by other courts applying the chain-of-causation test, the evidence in each case must be examined to determine whether, but for the employment injury, the employee would have committed suicide.[8] As Professor Larson states, if 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 the employee's exercise of will in taking his life seems to be in the direct line of causation.[9]

In this case, for the employee's suicide to be compensable under the Act, a direct causal chain must be established between his employment injury, which, in turn, was the cause of his depression, which, in turn, was sufficient to override his normal and rational judgment and result in his suicide. The proximate cause of the employee's death must be established to the June 14, 1991 employment-related right shoulder sprain and rotator cuff tear which, in a natural and continuous sequence, unbroken by any new or independent causes, produced his death and, without which, it would not have occurred.

Appellant has the burden of proof in establishing by the weight of the reliable, probative, and substantial evidence that the employee's death by suicide was causally related to factors of his federal employment.[10] 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.[11]

In this case, the record contains the reports of Dr. Klein and Dr. Johnson on the issue presented. Dr. Johnson continued to support causal relationship with employment in light of the "chain-of-causation" test that is applied in suicide cases. On the other hand, Dr. Klein found that the employee's depression and subsequent suicide were unrelated to the original accepted employment injury or the compensable factors identified by the Office regarding his depression. Since Dr. Johnson and Dr. Klein have submitted rationalized reports, based on a complete background, that are in conflict on the issue of causal relationship between the employee's suicide and his employment injuries, the case will be remanded to the Office for resolution of the

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15(c)(3) (March 1994); *see Tess Mazer (Louis Mazer)*, 29 ECAB 582 (1978) (finding that the case must be remanded for appellant to submit a rationalized medical opinion and for the Office to apply the chain-of-causation test).

[8] *See Carolyn King Palmero (Dwayne Palmero), supra* note 4 at 313 n.12.

[9] Larson, *supra* note at § 36.30.

[10] *Shgaron Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997); *Judith L. Albert (Charles P. Albert)*, 47 ECAB 810 (1996).

[11] *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827, 832 (1994).

conflict.[12] After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated May 28, 1999 and finalized on June 4, 1999 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
March 7, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[12] Section 8123(a) of the Act provides that when there is disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.