

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTIE B. EVANS, claiming as widow of CHARLES E. EVANS and
DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Los Angeles, CA

*Docket No. 00-1993; Submitted on the Record;
Issued May 22, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the decedent employee was entitled to augmented compensation under 5 U.S.C. § 8110 during the periods August 31, 1989 to March 28, 1996 and July 9, 1996 to September 27, 1997; and (2) whether the employee's death on December 8, 1997 was causally related to his federal employment.

The Office of Workers' Compensation Programs accepted the decedent employee's claim for aggravation of personality disorder with paranoid and passive-aggressive features. At the time he filed his occupational disease claim, the decedent employee was a 56-year-old sociologist. He ceased work on December 4, 1987, and did not subsequently return. The Office paid appropriate wage-loss compensation until the employee's death on December 8, 1997.

On December 29, 1997 appellant filed a claim for survivors' benefits. She also reiterated an earlier request for augmented disability compensation for the period December 4, 1987 through December 8, 1997.¹

The death certificate, prepared by Dr. Arthur G. Collins, an otolaryngologist, identified the immediate cause of death as cardiopulmonary arrest due to ischemic heart disease. Additionally, Dr. Collins listed "[p]robable [a]lzheimer's [d]isease" under the heading "[o]ther [s]ignificant [c]onditions" contributing to death but not related to the immediate cause of death. In an attending physician's report dated January 6, 1998, Dr. Collins reiterated the findings initially reported on the death certificate and added that the decedent's death "probably resulted" from his "employment-related injury and the cumulative traumas resulting therefrom."²

¹ Although appellant requested augmented disability compensation dating back to the time the employee ceased work on December 4, 1987, the record reveals that the Office paid the employee augmented disability compensation through August 30, 1989 based on the dependent status of his wife and/or daughter. After August 30, 1989, the Office paid compensation at the rate of 66 2/3 percent of the employee's prior wages due to the fact that he and his wife had separated.

² Dr. Collins noted on both the death certificate and the subsequent attending physician's report that he first treated the decedent on September 29, 1997. In the latter report, Dr. Collins explained that while he had not treated the decedent for his employment-related condition, he had reviewed the decedent's "OWCP records."

By decision dated March 4, 1998, the Office denied appellant's claim for survivors' benefits on the basis that she failed to establish that the employee's December 8, 1997 death was causally related to his accepted employment-related condition. The Office further found that the decedent was not entitled to additional augmented compensation based on appellant's claimed status as a dependent spouse.

Appellant subsequently requested an oral hearing, which was held on September 22, 1998. In a decision dated December 29, 1998, the Office hearing representative affirmed the prior decision denying survivors' benefits. Regarding the issue of augmented compensation, the hearing representative modified the prior decision to reflect the decedent's entitlement to augmented disability compensation for the additional periods of March 29 to July 8, 1996 and September 28 to December 8, 1997.

On November 28, 1999 appellant requested reconsideration. The Office reviewed the claim on the merits and by decision dated February 28, 2000, the Office denied modification of the prior decision.

The Board finds that appellant failed to establish that the employee was entitled to augmented compensation for the periods August 31, 1989 to March 28, 1996 and July 9, 1996 to September 27, 1997.

The basic statutory rate of compensation for total disability paid under the Federal Employees' Compensation Act is 66 2/3 percent of the injured employee's monthly pay.³ Where the employee has one or more dependents as defined in the Act, he is entitled to have his basic compensation augmented at the rate of 8 1/3 percent of his monthly pay.⁴ A wife is considered an employee's dependent if: "(A) she is a member of the same household as the employee; (B) she is receiving regular contributions from the employee for her support; or (C) the employee has been ordered by a court to contribute to her support."⁵

Dependent status may also be conferred on an "unmarried child" who lived with the employee or received regular contributions from the employee toward his or her support.⁶ However, the unmarried child must be under 18 years of age or if over 18 years of age, the unmarried child must be "incapable of self-support because of physical or mental disability."⁷ The Act further provides that augmented compensation that would otherwise end because the

³ 5 U.S.C. § 8105(a).

⁴ 5 U.S.C. § 8110(b).

⁵ 5 U.S.C. § 8110(a)(1).

⁶ 5 U.S.C. § 8110(a)(3).

⁷ *Id.*

child attained the age of 18 shall continue if the child is a student.⁸ Augmented compensation will be paid for so long as the child continues to be such a student or until he or she marries.⁹

In a letter dated August 25, 1992, appellant advised the Office that, due to her husband's stress, they were forced to separate as of August 30, 1989. She further stated "[m]y daughter and I live alone and he lives separate from us." Appellant noted, however, that she and her husband were still legally married. As the employee no longer resided with his wife, the Office reduced his disability compensation to 66 2/3 percent of his monthly wages effective August 31, 1989.

Appellant was the employee's authorized representative prior to his death. And in this capacity, she attempted on numerous occasions to resolve the issue of her husband's alleged entitlement to augmented compensation. As the matter had not been resolved to the employee's satisfaction prior to his December 8, 1997 death, appellant continued to pursue the issue following her husband's death.

In its March 4, 1998 decision, the Office denied augmented disability compensation for any periods after August 30, 1989. However, the Office hearing representative found that appellant and the employee resided together during the periods March 29 to July 8, 1996 and September 28 to December 8, 1997. Consequently, the Office hearing representative awarded augmented disability compensation for those discrete time periods.

The fact that the employee was married does not, of itself, establish that his wife was a "dependent," as that term is defined under the Act. Although appellant and the employee were married for all relevant periods prior to his death, the record indicates that appellant and the employee lived apart for extended periods of time. During these periods of separation the employee did not regularly contribute to appellant's support. In fact, appellant represented at the hearing that she had not received regular contributions from the employee and that he was not obligated by court order to contribute to her support. Thus, the only viable means of establishing appellant's status as a dependent spouse after August 30, 1989 was by demonstrating that she was a member of the same household as the employee.

As previously noted, appellant and the employee separated on August 30, 1989 and as of August 25, 1992 appellant advised that she and her daughter, Denise Evans, continued to live apart from the employee.¹⁰ This information is consistent with information provided by the employee on Form CA-1032, also dated August 25, 1992. Furthermore, the employee did not claim additional compensation for dependents in CA-1032 forms submitted May 27, 1994 and February 17, 1995. And in the latter submission, the employee specifically noted that his wife did not live with him and that he did not make regular direct payments for her support.

⁸ 5 U.S.C. § 8110(a).

⁹ *Id.* A student is defined as "an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training...." 5 U.S.C. § 8101(17).

¹⁰ The employee's stepdaughter, Ms. Evans, born May 7, 1970, attained the age of 18 prior to August 30, 1989. There is no evidence that after she attained the age of 18 her father regularly contributed toward her support while a full-time student. Consequently, Ms. Evans does not qualify as a dependent child under the Act. *See* 5 U.S.C. §§ 8101 (17), 8110(a)(3).

In a letter dated March 29, 1996, the employee stated that he was moving back to Riverside, CA. Additionally, in a Form CA-1032 dated June 10, 1996, the employee indicated that he was residing with his wife in Riverside, CA.

On July 9, 1996 the employee executed a power of attorney in favor of his daughter, Stephanie Evans-Porter. The power of attorney indicated that the employee and Ms. Evans-Porter resided at the same address in Antelope, CA. Ms. Evans-Porter later authorized her sister, Dhana Holley Evans, to correspond with the Office on their father's behalf.

In a letter dated November 21, 1996, Ms. Dhana Evans advised the Office that her father resided in Perris, CA. She later submitted a July 16, 1997 Form CA-1032 indicating that her father was not currently residing with his wife.

From February 1 through September 28, 1997, the employee lived at the Hacienda Residential Care facility. On September 30, 1997 the employee advised the Office that he returned to his wife's home on September 28, 1997. After returning home to his wife on September 28, 1997, there is no indication from the record that the employee resided elsewhere prior to his death on December 8, 1997.

In this case, the record establishes that the employee and his wife separated on August 30, 1989 and that the two maintained separate residences until March 29, 1996. Additionally, there is no evidence establishing that the employee either contributed to his wife's support or was obligated by court order to do so during their approximate six and a half years separation from August 1989 to March 1996. After less than four months of cohabitation, the employee and his wife again separated on July 9, 1996. This second separation continued until September 28, 1997, when the employee returned to his wife's home after having resided at the Hacienda Residential Care facility for the previous eight months. The record does not demonstrate that the employee resided elsewhere prior to his death on December 8, 1997. As was the case with the initial separation, there is no evidence establishing that during the second separation the employee regularly contributed to his wife's support or was under court order to do so. Accordingly, the Board finds that the employee was not entitled to augmented compensation during the periods August 31, 1989 through March 28, 1996 and July 9, 1996 through September 27, 1997.

As to the issue of appellant's entitlement to survivors' benefits, the Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

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. This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.¹¹ The mere showing that an employee was receiving compensation for total disability at the time of death does not establish that the employee's death was causally related to his or her federal employment.¹² The

¹¹ *Bertha J. Soule*, 48 ECAB 314, 316 (1997); *Gertrude T. Zakrajsek*, 47 ECAB 770, 773 (1996).

¹² *Elinor Bacorn*, 46 ECAB 857, 860-61 (1995).

medical evidence of record must substantiate with medical rationale how the accepted employment-related condition caused or contributed to the employee's death.¹³

Appellant's theory of the case is that her husband's employment-related psychiatric condition either caused or contributed to his diagnosed hypertension, which in turn contributed to his December 8, 1997 cardiopulmonary arrest due to ischemic heart disease.

In denying appellant's claim for survivors' benefits, the Office noted, among other things, that it had not accepted that the employee's hypertension was related to his federal employment. The Office further noted that the record lacked reliable medical evidence relating the employee's hypertension to specific factors of his federal employment.

Generally, where appellant claims that a condition not accepted or approved by the Office was due to the employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁴ However, in order to prevail on her survivors' claim appellant need not establish a direct causal relationship between the employee's hypertension and factors of his federal employment. The issue is not whether appellant's hypertension was caused by his previous employment exposure, but whether the employee's accepted psychiatric condition caused or contributed to his hypertension, which in turn contributed to his death due to cardiopulmonary arrest. Thus, the fact that the Office has not accepted that the employee's hypertension was directly related to his employment exposure does not preclude appellant from otherwise establishing a causal link between the employee's accepted psychiatric condition and his death.

While appellant submitted numerous hospital and treatment records as well as several medical studies and journal articles, the most pertinent medical evidence submitted to date consists of the aforementioned death certificate and the January 6, 1998 attending physician's report, both of which were prepared by Dr. Collins. In addition, appellant submitted a February 23, 1998 report from Dr. Collins wherein he stated that "the decedent had experienced a job-related injury which cumulated (sic) in December 1987, from which he continued to experience symptoms of depression, ... hypertension, chest pains ... and other psychiatric disabilities which historically leads to heart disease." Dr. Collins reviewed the employee's medical records, his Office file and the results of his prior physical examination. And based upon this information, he concluded that the employee's December 8, 1997 death was "**directly** related to the job-related injury."¹⁵ Appellant also submitted an October 20, 1998 report from Dr. Donald J. Feldman, a Board-certified psychiatrist, who concurred with Dr. Collins assessment that the employee's death was directly related to his accepted psychiatric condition.¹⁶

¹³ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728, 733 (1991).

¹⁴ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

¹⁵ In a March 26, 1999 affidavit, Dr. Collins further explained the basis for his opinion that the employee's death was related to his accepted psychiatric condition. Appellant also submitted an April 8, 1999 report from Dr. Harvey L. Alpern, a Board-certified internist, who reviewed the employee's medical records, Dr. Collins' opinion and various medical literature on depression and the risk of coronary artery disease. He concluded that the "nexus between the depression and [the employee's] death ... is evident."

¹⁶ In 1992 the Office referred the employee to Dr. Feldman, who examined the employee on four separate occasions between March and May 1992 and he submitted a report dated July 7, 1992.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹⁷ Although the reports of Drs. Collins and Feldman do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that the employee's December 8, 1997 death was causally related to his accepted psychiatric condition, these reports raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.¹⁸

On remand, the Office should refer the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether the employee's December 8, 1997 death was causally related to his accepted psychiatric condition. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The February 28, 2000 decision of the Office of Workers' Compensation Programs is affirmed with respect to the determination regarding the employee's entitlement to augmented compensation. However, the decision is set aside with respect to the finding that appellant failed to establish that the employee's death was causally related to his employment. Accordingly, the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
May 22, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁸ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).