



and right partial acromionectomy and accepted a recurrence claim on June 26, 1992. Moreover, the employee filed a claim on January 24, 1994 alleging that his depression was due to employment factors. He subsequently committed suicide on February 28, 1994 by a polydrug overdose. The Board found that the case was not in posture for decision as to whether the employee's depression and resulting suicide were causally related to factors of his employment.<sup>1</sup> The Board found a conflict in the medical opinion evidence between Dr. Roger M. Johnson, an attending Board-certified psychiatrist, and Dr. Laura J. Klein, a second opinion Board-certified psychiatrist, on the issue of whether appellant's suicide was employment related. The case was remanded to the Office for referral of the case record and a revised statement of accepted facts to an impartial medical specialist for a rationalized opinion on the issue of whether appellant's suicide was due to his accepted right shoulder condition.

By letter dated April 5, 2002 with copies to appellant and her attorney, the Office referred the case record, together with a statement of accepted facts and a list of questions to be answered, to Dr. Bert S. Furmansky, a Board-certified psychiatrist, selected as the impartial medical specialist.

In a report dated May 9, 2002, Dr. Furmansky reviewed the employment injury history, the medical evidence, factual evidence and a statement of accepted facts to conclude that the employee's suicide was not causally related to factors of his employment. The physician noted that "[l]oss and/or anticipated loss of important emotionally-based relationships such as marital or therapeutic relationships are significant stressors" for people with the diagnosis of borderline personality disorder. Regarding the cause of the employee's suicide, Dr. Furmansky opined:

"From December 1993 to February 1994, [the employee] was experiencing the significant loss of his therapist, Dr. Childers, and worrying about the even more significant possible loss of his wife and sons due to [appellant's] contemplation of a marital separation. It is my medical opinion that the loss of Dr. Childers and possible loss of his third wife and sons were very significant intervening events breaking the chain of causation from [the employee's] work-injury to [the employee's] suicide."

The physician also found that appellant's lithium toxicity was another intervening cause which broke "the chain of causality from the work-related injury in 1991." Dr. Furmansky stated the evidence showed that the employee "knew he would not be returning to the [employing establishment] and would be seeking alternate employment" and, thus, this would preclude a proximate causal relationship between the employee's suicide and his accepted employment injury. The employee's suicide note contained no reference to his employment as a factor in his

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<sup>1</sup> Docket No. 00-5 (issued March 7, 2002). The facts of the case as set forth in the decision are hereby incorporated by reference.

suicide. In support of his opinion that the employee's suicide was not employment related, Dr. Furmansky stated, "the proximate cause of [the employee's] death" was not attributable to the employee's accepted June 14, 1991 employment injury but to intervening causes. He stated:

"[Appellant's] lithium toxicity, an argument with his wife over finances on the morning of his suicide, recent termination of therapy by Dr. Childers, fear of and anticipation of marital separation, failure to find and secure alternative employment despite an allegedly active teaching certificate and law enforcement experience, a strong family history of depression including suicide, his own borderline mediated recurrent seasonal depressive episodes and repercussions of his preexisting borderline personality disorder adversely affecting his interpersonal relationships."

Dr. Furmansky stated, "[the employee] furthermore willfully intended to commit suicide" which was evidenced by [the employee] expressing this "intent to many professionals and drove from Wyoming back to Colorado to avoid being found."

By decision dated June 3, 2002, the Office denied appellant's claim for survivor benefits on the basis that the employee's suicide was not employment related based upon the opinion of Dr. Furmansky, the impartial medical examiner.

Appellant's counsel filed a request for an oral argument by pleading dated July 3, 2002. A hearing was held on December 19, 2002 where appellant was represented by counsel, allowed to testify and submit evidence in support of the claim.

By decision dated March 6, 2003, the hearing representative affirmed the denial of appellant's claim for survivor benefits. He found the opinion of Dr. Furmansky, the impartial medical examiner, to be well rationalized and represented the weight of the medical opinion evidence.

### **LEGAL PRECEDENT**

The Board has approved the majority view as expressed in Larson's treatise on workers' compensation:

"If the sole motivation controlling the will of the employee who decides to commit suicide is the pain and despair caused by the injury and if the will itself is deranged and disordered by these 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."<sup>2</sup>

In his treatise, Larson expresses the rule in a simpler manner: "Suicide under the majority rule is compensable if the injury produces mental derangement and the mental derangement produces suicide."

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<sup>2</sup> Larson, *The Law of Workers' Compensation*, Vol. 2, Chapter 38.03 (Matthew Bender 2001).

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.<sup>3</sup> The suicide itself must arise out of the employee's assigned duties to such an extent as to be regarded as arising out of and in the course of employment.<sup>4</sup> Thus, the issue is one of proximate versus independent intervening cause.<sup>5</sup>

In determining whether an employee's suicide is causally related to factors of his employment, the Office has adopted the "chain of causation" test.<sup>6</sup> The Office's procedure manual explains 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, resulted in suicide." The emphasis is on a showing of genuine brain derangement or psychosis, as distinguished from mere melancholy, discouragement or other sane condition such as depression.<sup>7</sup>

Under the chain of causation test, the Office's procedure manual states:

"If 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."<sup>8</sup>

The procedure manual adds that, for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken.<sup>9</sup>

### ANALYSIS

On a prior appeal the Board remanded the case for resolution of a conflict in the medical opinion evidence between Dr. Roger M. Johnson, an attending Board-certified psychiatrist, and Dr. Laura J. Klein, a second opinion Board-certified psychiatrist, on the issue of whether appellant's suicide was employment related. The Office properly referred appellant to Dr. Furmanky for resolution of the conflict in the medical opinion evidence pursuant to 5 U.S.C. § 8123(a).

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<sup>3</sup> *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250, 254 (1997).

<sup>4</sup> *Judith L. Albert*, 47 ECAB 810, 815 (1996).

<sup>5</sup> *Supra* note 2 at 38.01.

<sup>6</sup> *Linda Krotzer*, 46 ECAB 754, 760 (1995).

<sup>7</sup> *Supra* note 2 at 38.01.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15.b.(2) (September 1995).

<sup>9</sup> *Id.* at Chapter 2.804.15(b)(3) (March 1994).

The Board has explained in *Carolyn King Palermo (Dwayne Palermo)*<sup>10</sup> that for compensability to arise for the employee's suicide under the Act, a direct causal chain must be established between an employment injury, which was the cause for the employee's depression, which was of such a degree as to override his normal and rational judgment and which resulted in his suicide. The proximate cause of the employee's death must be established in an employment injury, which in a natural and continuous sequence unbroken by any new or independent causes produced his death and without which the death would not have occurred. For compensable factors to merely contribute to the mental disorder and the suicide is not sufficient; the compensable factors must be a direct cause without which the suicide would not have occurred.<sup>11</sup> In *Palermo*, the Board considered the appellant's argument that the Office had erroneously found that the compensable factors of employment must be the sole motivation for the suicide. The Board explained that the medical evidence of record must establish that compensable factors of employment not only merely contributed to the mental disorder and the suicide, but that the compensable factors were the direct cause, without which the suicide would not have occurred.

Applying this test in the present case, the Board finds that the evidence does not establish that the employee's suicide was the direct result of his employment injuries

Dr. Furmansky attributed the employee's suicide to non-employment factors such as worry about the possible loss of his wife (appellant) and children due to appellant's contemplation of a marital separation, the significant loss of Dr. Childers as his therapist, an argument with his wife over finances on the day of the suicide, his failure to find and secure alternative employment despite his law enforcement experience and teaching certificate, a family history of depression, his preexisting borderline personality disorder, borderline mediated recurrent seasonal depressive episodes and the employee's lithium toxicity. Specifically, Dr. Furmansky concluded that these factors were a proximate and intervening cause of his suicide.<sup>12</sup> The physician also noted that the employee's willful intent to commit suicide was evidenced by the employee expressing this "intent to many professionals and driving from Wyoming back to Colorado to avoid being found." Furthermore, the suicide note left by the employee contained no reference to the employee's employment or any employment related injury. Thus, Dr. Furmansky concluded, contrary to Dr. Johnson, that the employee's employment injury and aggravation of his depression by work factors were not a direct cause of the employee's suicide. But rather that the suicide was due to the significant nonemployment factors referenced above, which led to the employee's willful intent commit suicide. Dr. Furmansky thus substantiated that the suicide would have occurred regardless of any employment factor. Based on his review of the evidence, he found that the employee's death by suicide was not causally related 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

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<sup>10</sup> 45 ECAB 308 (1994).

<sup>11</sup> *See id* at 313.

<sup>12</sup> *See id*.

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>13</sup>

Contrary to appellant's contention, the Office provided an accurate statement of accepted facts which correctly delineated those factors of the employee's work which were compensable and which were noncompensable. Contrary to appellant's assertion, the Board notes that Dr. Furmansky relied upon the medical reports submitted by the employee's physicians in concluding that the employee's suicide was not employment related. Dr. Furmansky provided a well-rationalized report based upon a proper factual and medical background and a comprehensive review of the voluminous record. Thus, the Board finds that Dr. Furmansky'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.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's claim for survivor benefits as the special weight of the medical evidence established that the employee's suicide on February 28, 1994 was not causally related to factors of his federal employment.

### **ORDER**

**IT IS HERBY ORDERED THAT** the March 10, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 2, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>13</sup> *James F. Weikel*, 54 ECAB \_\_\_\_ (Docket No. 01-1661, issued June 30, 2003).