United States Department of Labor
Employees' Compensation Appeals Board

G.H., claming as widow of D.H., Appellant	)	
and	)	**Docket No. 06-59**
	)	**Issued: August 11, 2006**
SOCIAL SECURITY ADMINISTRATION, Melbourne, FL, Employer	)	

Appearances:
G.H., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 4, 2005 appellant filed a timely appeal from a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated December 17, 2004 affirming the denial of his survivor's claim and a nonmerit decision dated July 29, 2005 denying his request for reconsideration under 5 U.S.C. § 8128. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the July 29, 2005 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has established that the death of his wife on April 4, 2004 was causally related to her accepted employment injury; and (2) whether the Office properly denied his request for reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

The Office accepted that the employee, appellant's wife, sustained chronic depression with anxiety due to factors of her federal employment. She received compensation benefits from 1977 onward.

The employee died on April 4, 2004. On May 12, 2004 appellant filed a claim for survivor's benefits alleging that the employee's death was causally related to her accepted employment injury. He submitted hospital reports dated March 12 to April 3, 2004 in support of his claim. In an admission report dated March 12, 2004, Dr. Craig Snow, Board-certified in family medicine, noted that the employee was recently hospitalized for a vertebral compression fracture and that, following her release, she experienced syncope and was readmitted. He diagnosed syncope, chronic obstructive pulmonary disease (COPD) due to smoking, a history of vertebral fracture, chronic depression and osteoarthritis.[1]

In a hospital report dated March 17, 2004, Dr. Robert E. Cohen, a Board-certified psychiatrist, noted that the employee was delirious following surgery on her right hip. He diagnosed chronic major depressive disorder with a history of psychosis and delirium due to her medical conditions. Dr. Cohen indicated that he could not currently diagnose dementia.

In a discharge summary dated April 3, 2004, Dr. Cohen diagnosed a right hip fracture, vasovagal syncope, peripheral vascular disease, dementia with delirium, depression with anxiety features, COPD and postoperative anemia. He related that, following the employee's hip surgery, she experienced "delirium on top of her dementia requiring psychiatric consultation." Dr. Cohen stated, "[The employee's] nutritional status remained poor, but she and eventually her family both refused [a feeding] tube. At one point, she had a feeding tube placed, but she had pulled that out." Dr. Cohen noted that the employee experienced many medical problems following her hospital admission but that currently her delirium had resolved and she had "no combative behavior or any other psychiatric problems." Dr. Snow released her to hospice care.

In a report dated May 12, 2004, Dr. Burton Podnos, a Board-certified psychiatrist and the employee's attending physician, related that her physical health worsened following a robbery in her home. He stated that after her hospitalization she was "confused and noncompliant with instructions, thus, the employee fell and ultimately, my understanding is that she died of a blood clot in her leg." Dr. Podnos opined that the employee's "mental condition participated prominently in her deterioration and noncompliance with medical instructions."

Appellant submitted a statement received by the Office on June 15, 2004. He related that the employee informed him when she was in the hospital that she was purposefully refusing to eat in order to die. Appellant indicated that she asserted that she was "getting even" with everybody for her depression. He noted that in the hospital the employee refused to follow instructions and her thought processes were impaired.

By letter dated June 17, 2004, the Office requested additional information from appellant, including the death certificate and treatment notes from the employee's attending physician. The Office noted that the hospital physicians did not include depression as a major concern in her treatment immediately prior to her death.

[1] In a hospital report dated March 13, 2004, Dr. Shekhar Desai, a Board-certified orthopedic surgeon, found that the employee required surgery to repair her right hip fracture. He listed diagnoses of intertrochanteric right hip fracture, syncopal episode, osteoporosis, COPD and depression. In a hospital report dated March 20, 2004, Dr. Bhuvaneswari Dandapani, a Board-certified neurologist, noted that the employee was confused following her hip surgery and recommended a computerized tomography (CT) scan of the brain.

The death certificate lists the causes of the employee's death as hypoxia due to respiratory failure due to end stage chronic obstructive lung disease.

In a report dated June 29, 2004, Dr. Podnos again related that following a home robbery the employee "became noncompliant with instructions by reducing food intake and not taking her medications. She had increasing problems with falls, confusion and depression and increasing psychotic ideation." Dr. Podnos noted that Dr. Cohen's March 17, 2004 hospital report diagnosed delirium and major depressive disorder. He opined that due to the employee's mental illness she declined "medications and respiratory aids. Because of this effect of her mental illness, she died of respiratory failure."

By decision dated July 21, 2004, the Office denied appellant's claim for survivor's benefits on the grounds that the medical evidence failed to establish that the employee's death was due to her employment injury. The Office noted that neither the death certificate nor the hospital records contemporaneous with the employee's death established that her depression materially hastened or otherwise caused her death.

On August 12, 2004 appellant requested a review of the written record. He submitted treatment notes from Dr. Podnos dated 2002 to February 2004 and a medical report from him dated August 12, 2004. In his August 12, 2004 report, Dr. Podnos noted that he had treated the employee since approximately 1987. He related:

> "[The employee] had done well for years with her general medical regimen and took her medications faithfully. Her physical problems really started after begin physically attached by a burglar in her trailer, which would serve to increase anyone's paranoia. In any case, [the employee] started being somewhat noncompliant with medication following that and this started getting noted in her medical records. Her physical health worsened in good part due to her noncompliance with medical treatment and medication and she suffered falls, which caused a fracture involving a hospitalization."

Dr. Podnos summarized the hospital reports and noted that the physicians diagnosed both dementia and depression. He related that health professionals who did not specialize in mental health tended to "not pay much attention to psychiatric disorders" and, while not addressing her depression, did note her noncompliance with medication. Dr. Podnos concluded:

> "It is my strong feeling that because of [the employee's] depression and psychotic thinking in paranoid terms toward the end of her life is one of the prime reasons that [the employee] [became] noncompliant with her treatment and medication. All along she had been noncompliant in terms of not quitting smoking. Thus, I feel that a major contribution to [the employee's] demise was her lack of compliance with medical regimens. Not following the directions and taking medications correctly would have made all of her medical conditions worse [--] including respiratory disorders."[2]

[2] By letter dated July 28, 2004, appellant resubmitted the hospital reports with parts that he believed pertinent highlighted.

By decision dated December 17, 2004, the hearing representative affirmed the July 21, 2004 decision. The hearing representative found that the robbery constituted an independent, nonindustrial cause of the employee's mental decline.

On May 19, 2005 appellant requested reconsideration. He contended that there was no independent, intervening cause of the employee's problems as she was not physically attacked by a burglar but was instead robbed by an unseen person. Appellant further argued that the employee was noncompliant with her physician's instructions to quit smoking prior to the robbery and that this noncompliance due to her employment injury contributed to her death. He submitted literature about COPD, dementia and a December 4, 2002 police incident report which indicated that the employee reported that a man entered her trailer and that she subsequently discovered that her purse, keys and automobile were missing.

By decision dated July 29, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review of the case.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act[3] 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.[4] An award of compensation in a survivor's claim, however, may not be based on surmise, conjecture or speculation or on a claimant's belief that the employee's death was caused, precipitated or aggravated by his or her employment.[5] The mere showing that the employee was receiving compensation for total disability at the time of death does not establish that the death was causally related to conditions resulting from the employment injury.[6]

A claimant 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 or her employment. This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[7]

ANALYSIS -- ISSUE 1

The Office accepted that the employee sustained chronic depression with anxiety due to factors of her federal employment. She received compensation from 1977 until her death on April 4, 2004.

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[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8102(a).

[5] *Jimmy Zenny (Ingrid Hall Zenny)*, 54 ECAB 577 (2003); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

[6] *See Susanne W. Underwood (Randall L. Underwood), supra* note 5.

[7] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

The hospital records contemporaneous to the employee's death do not establish that her accepted condition of chronic depression with anxiety caused or precipitated her death. In a hospital report dated March 12, 2004, Dr. Snow noted that the employee was hospitalized following syncope shortly after being released from the hospital after sustaining a vertebral compression fracture. He diagnosed syncope, COPD related to smoking, a history of vertebral fracture, chronic depression and osteoarthritis. In a hospital report dated March 17, 2004, Dr. Cohen diagnosed delirium due to the employee's medical conditions and noted her history of depression with psychotic features. In a discharge summary dated April 3, 2004, he diagnosed a right hip fracture, vasovagal syncope, peripheral vascular disease, dementia with delirium, depression with anxiety features, COPD and postoperative anemia. Dr. Cohen noted that she had pulled out a feeding tube. He found that the employee's delirium had resolved and that she had "no combative behavior or any other psychiatric problems." While Dr. Snow and Dr. Cohen listed depression as a diagnosed condition, neither physician attributed her problems immediately prior to her death to depression or anxiety. The employee died on April 4, 2004. The death certificate lists the cause of death as hypoxia due to respiratory failure due to end stage chronic obstructive lung disease. Consequently, the medical evidence contemporaneous with the employee's death fails to establish her accepted emotional condition of chronic depression and anxiety caused or contributed to her demise.

In a report dated May 12, 2004, Dr. Podnos, the employee's attending physician, found that her health deteriorated after she was robbed in her home. He stated that after she was hospitalized she became uncooperative, fell and then "died of a blood clot in her leg." Dr. Podnos opined that the employee's "mental condition participated prominently in her deterioration and noncompliance with medical instructions." He did not, however, provide a specific diagnosis of her mental condition or attribute the decline in her condition to her accepted employment-related condition of depression with anxiety. Further, Dr. Podnos' report is based on an inaccurate history of injury, that of the employee dying of a blood clot in the leg instead of hypoxia caused by respiratory failure due to COPD and thus, it is of little probative value.[8]

In a report dated June 29, 2004, Dr. Podnos asserted that the employee decreased her eating and failed to take her medication after she was robbed in her home, which in turn increased her confusion, depression and psychosis. He opined that, due to her mental illness the employee declined "medications and respiratory aids. Because of this effect of her mental illness, she died of respiratory failure." Again, Dr. Podnos did not provide an opinion that the employee's accepted condition of depression with anxiety caused or contributed to her death but instead generally found that her mental condition, which included psychosis and confusion, contributed to her failure to follow medical advice. The Office accepted the employee's claim only for chronic depression with anxiety. Appellant thus, has the burden of proof to submit rationalized medical evidence establishing that the accepted condition of chronic depression with anxiety caused or precipitated the employee's death.[9] Further, Dr. Podnos attributed the decline in the employee's mental condition to a robbery in her home. While the Board has held that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is

[8] *See John W. Montoya*, 54 ECAB 306 (2003).

[9] *See Lois E. Culver (Clair L. Culver)*, *supra* note 7.

compensable if it is the direct and natural result of a compensable primary injury,[10] in this case Dr. Podnos did not address the issue whether the decline in the employee's mental health triggered by the home robber was a direct and natural result of her employment injury. Consequently, his opinion is insufficient to meet appellant's burden of proof.

In a report dated August 12, 2004, Dr. Podnos discussed his treatment of the employee since 1987. He indicated that she had done well before an intruder attacked her in her home, at which time she stopped complying with medical recommendations and began falling. Dr. Podnos noted that physicians in the hospital reports diagnosed dementia and depression and found that the employee was not compliant with medications. He attributed her noncompliance to her depression and paranoid psychotic thought process. Dr. Podnos noted that she never quit smoking as recommended and that he consequently believed that "a major contribution to her demise was her lack of compliance with medical regimens" which would have "made all of her medical conditions worse -- including respiratory disorders." He did not, however, specifically attribute the employee's worsened medical condition and noncompliance with medical advice to her employment injury, but instead to her general mental condition which he found deteriorated following an attack by an intruder in her home. As noted, Dr. Podnos did not explain how the robbery and resulting deterioration in the employee's mental condition constituted a direct and natural result of her accepted employment injury, his opinion is insufficient to meet appellant's burden of proof.[11]

The Board finds that Dr. Podnos' opinion is insufficient to meet appellant's burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to her federal employment as he did not provide a reasoned medical opinion attributing the employee's death to her accepted employment injury.[12] Without providing a detailed explanation as to how the employment-related condition of anxiety and depression contributed to the employee's death, his reports are insufficient to meet appellant's burden of proof, especially given that the death certificate and the medical evidence contemporaneous with the employee's death failed to support that her death was caused, precipitated or aggravated by her employment injury.[13]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[14] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not

[10] *Charles W. Downey*, 54 ECAB 421 (2003); *see also* Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 10.01 (2004).

[11] *Id*.

[12] *See Lois E. Culver (Clair L. Culver), supra* note 7.

[13] *See Suanne W. Underwood (Randall L. Underwood), supra* note 5.

[14] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

previously considered by the Office.[15] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[16] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[17]

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant submitted published articles about the conditions of COPD and dementia. The underlying issue in this case, however, is medical in nature and thus, the articles have no probative value. Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[18] Consequently, the articles about COPD and dementia are insufficient to warrant merit review of the case.

Appellant further maintained that the employee was not physically attacked by a burglar as reported by Dr. Podnos in his August 12, 2004 report, but was instead robbed by an intruder. He submitted a December 4, 2002 police incident report which establishes that the employee stated that a man entered her trailer and then left and that she later found that her purse, keys and automobile were missing. The relevant issue in this case, however, is the causal relationship between the employee's death and her employment injury which is medical in nature and can only be resolved by the submission of medical evidence.[19]

The lay representative further argued that the employee failed to quit smoking as advised by her physicians and that this contributed to her death. His lay opinion on the cause of the employee's death cannot discharge his burden of proof in this matter.[20]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

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[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.607(a).

[17] 20 C.F.R. § 10.608(b).

[18] *Eugene Van Dyk*, 53 ECAB 706 (2002).

[19] *See Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004).

[20] *Id*.

CONCLUSION

The Board finds that appellant has not established that the death of his wife on April 4, 2004 was causally related to her accepted employment injury. The Board further finds that the Office properly denied his request for reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 29, 2005 and December 17, 2004 are affirmed.

Issued: August 11, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board