

**United States Department of Labor
Employees' Compensation Appeals Board**

M.P. claiming as widow of R.P., Appellant)	
)	
and)	Docket No. 06-688
)	Issued: August 18, 2006
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF INDIAN AFFAIRS, Portland, OR, Employer)	
)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 30, 2006 appellant filed a timely appeal from the August 10 and December 30, 2005 merit decisions of the Office of Workers' Compensation Programs denying her claim for survivor benefits. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that the employee's death on April 3, 2003 was causally related to factors of his federal employment.

FACTUAL HISTORY

The employee worked as a legal instrument examiner in the titles and records section of the real estate services branch of the employing establishment at the time of his death on April 3, 2003 when he was 68 years old. His major duties were to conduct the audit and prepare abstracts of titles affecting Indian land. Such duties were sedentary and required, as noted by the position description, "long periods of sitting in one position, intense concentration, viewing microfilmed

documentation and encoding information into a personal computer. Many titles are urgent and are requested by individuals who call at the office personally and it is necessary for the examiner to work at top speed for several hours and under pressure.” On the April 4, 2003 certificate of death, the certifying medical examiner, Dr. Oisín O’Neill, a Board-certified neurological surgeon, listed the cause of death as subarachnoid hemorrhage and attributed the employee’s death to natural causes.

On October 27, 2004 appellant filed a claim for survivor’s benefits claiming that the April 3, 2003 death of the employee was caused or aggravated by conditions of his employment. She submitted a certified copy of her marriage certificate to the employee on July 5, 1956. In a July 12, 2004 letter, Dr. Rosemary A. Nowins, a Board-certified internist, indicated that the employee had mild hypertension and high cholesterol conditions, but noted that she had not seen him since September 10, 2001 and that his last blood test was on November 1, 2001. The employee’s family provided a history of the employee having blood clots in his leg that eventually developed into a pulmonary embolism and a stressful job requiring sitting all day with very limited physical activity. Dr. Nowins opined that the employee’s subarachnoid blood/hemorrhage and death was a consequence of his poor health condition as a result of his employment. She explained that the employee’s inactivity and stress in his employment contributed to the worsening of his obesity, hypertension and development of adult onset of diabetes. Dr. Nowins further explained that the stress and hypertension and Coumadin anticoagulation contributed to his subarachnoid hemorrhage.

In a letter dated January 28, 2005, the Office advised appellant that the information submitted was insufficient to establish her claim for survivor benefits. She was requested to provide further factual and medical information in support of her claim.

In an April 7, 2005 report, Dr. Gordon L. Wolfe, a Board-certified internist, noted becoming the employee’s attending physician on July 9, 2002. He described the employee’s job duties which involved long hours of sitting without breaks and that he had gained 45 pounds since he had assumed his new job. Dr. Wolfe opined that the employee’s job was very stressful with respect to uncovering evidence regarding confiscation of Indian lands in the 19th and 20th centuries. He noted that the employee had indicated his disgust at the ethical and moral implications of his findings and that he was particularly distressed at his inability to affect a change or at least any attention to his findings. Dr. Wolfe noted that, on more than one occasion, the employee had told him that he was perceived as “not being a team player.” He opined that the employee’s job involving long hours of sedentary stressful work had led to his gaining 45 pounds and had a direct bearing on the development of the cardiometabolic syndrome, diabetes, worsening lipid abnormalities and clots in his legs. Dr. Wolfe indicated that the leg clots had led to pulmonary emboli, which necessitated the employee being on the blood thinner Coumadin. He opined that the necessity of the employee being on Coumadin had a direct bearing on the severity of the subarachnoid hemorrhage that led to his death. Dr. Wolfe explained that had the employee not been on this blood thinner, the bleeding that had occurred would not have been as severe and the employee would have had a better chance of surviving. He noted that other contributing factors included the employee’s worsening hypertension and onset of diabetes.

In a July 28, 2005 report, Dr. L.J. Weaver, a Board-certified pulmonologist and an Office medical consultant, opined that the Coumadin anticoagulation for pulmonary emboli likely contributed to the employee's subarachnoid hemorrhage and subsequent death. However, he opined that there was "no unusual circumstance described in the medical reports to support a causal relation between the employee's sedentary work and his subsequent death from subarachnoid hemorrhage related to Coumadin anticoagulation for pulmonary emboli." Dr. Weaver noted that many individuals are employed in sedentary occupations and that the employee's work as an attorney would not generally require work in very confined spaces that would result in unusual limitations in mobility or in unusual limitations in lower extremity movement that would predispose an individual to pulmonary emboli. He further explained that the employee would have had the ability to move his lower extremities at will, alternate positions and take normal breaks. Dr. Wolfe noted that many lifestyle choices could be made to alter inactivity, weight, hypertension, diabetes and high cholesterol.

By decision dated August 10, 2005, the Office denied the claim finding that it was not medically established that there was any unusual circumstance to support a likely relation between the employee's sedentary work as an attorney and his subsequent death from a subarachnoid hemorrhage. It also found that the employee's stress over his inability to affect a change was considered self-generated. The Office noted that the employee's weight gain was also self-generated as he had the ability to move, alternate positions, stand/sit and take normal breaks. It found that there was no causal relationship between the employee's federal work factors and the fact that the employee was on Coumadin, which likely contributed to his death.

In a letter dated November 29, 2005, appellant, through her attorney, requested reconsideration. Counsel referenced the Office's August 10, 2005 decision which stated that no "unusual conditions of employment" were noted and argued that the showing of some unusual condition or event was not a prerequisite for compensability. Counsel also referenced the employee's position description, which stated that he was required to sit in a fixed position for extended periods of time under time pressure and argued that this was contrary to the Office medical adviser's opinion that he was able to take breaks and move around. Counsel also argued that the employee had experienced emotional stress caused by his work duties which had contributed to the development of his hypertension and blood clots, which required Coumadin, which had contributed to his subarachnoid hemorrhage and subsequent death. Newspaper articles relating to royalty payments to Native Americans were submitted.

By decision dated December 30, 2005, the Office denied modification of the August 10, 2005 decision.

LEGAL PRECEDENT

The United States shall pay compensation for the death of an employee resulting from personal injury sustained while in the performance of duty.¹ If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal

¹ 5 U.S.C. § 8102(a).

to 50 percent of the monthly pay of the deceased employee to the widow or widower, if there is no child.²

An award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation or a claimant's belief that the employee's death was caused, precipitated or aggravated by the employment.³ Additionally, workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.⁴ The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his duties.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.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 federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a complete factual and medical background. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.⁷

Section 8123(a) of the Act provides, [i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ In situations where there are 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 on a proper factual background, must be given special weight.⁹

² *Id.* at § 8133(a)(1).

³ *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁶ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004). *See also Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁸ 5 U.S.C. § 8123(a).

⁹ *Barbara J. Warren*, 51 ECAB 413 (2000).

ANALYSIS

Appellant alleged that the employee's death on April 3, 2003 was a consequence of his employment. There is no dispute that his position was sedentary and involved researching various issues involving titles to Indian land.

Dr. Wolfe indicated that the employee was disgusted at the ethical and moral implications of his findings, his inability to make a change and being perceived as "not being a team player." However, the Board has consistently held that frustration from not being permitted to work in a particular work environment is not a compensable factor under the Act.¹⁰ While appellant has submitted newspaper articles relating to the employing establishment's accounting of royalty payments to Native Americans, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and federal employment as such materials are of general application and are not determinative of whether a specific condition claimed is related to particular employment factors of incidents.¹¹ Thus, the employee's reaction to the very topic and nature of his work is considered self-generated and not a compensable factor of employment as it relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.¹²

The position description indicates that "long periods of sitting in one position, intense concentration, viewing microfilmed documentation and encoding information into a personal computer" were involved in the employee's work and that it is "necessary for the examiner to work at top speed for several hours and under pressure." A condition resulting from actual performance of the employee's duties, of course, would be an employment factor. However, to the extent that the employee felt the assignment of duties was improper, the Board has held that, although the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹³ The Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁴ The Board notes that appellant has not submitted any evidence to show that the employing establishment committed error or abuse with respect to the employee's work assignments. For example, there is no evidence that the employee was denied breaks or not allowed to change positions in the performance of his sedentary position. Thus, appellant has

¹⁰ See *Cyndia R. Harrill*, 55 ECAB ____ (Docket No. 04-399, issued May 7, 2004).

¹¹ *Gloria J. McPherson*, 51 ECAB 441, 448 (2000).

¹² See *Lori A. Facey*, 55 ECAB _____ (Docket No. 03-2015, issued January 6, 2004). See also *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹³ *Id.*

¹⁴ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

not established a compensable work factor with respect to the assignment of the employee's work as having caused or contributed to the development of his physical condition.

Appellant submitted medical reports from Dr. Nowins and Dr. Wolfe, which attributed the employee's subarachnoid blood/hemorrhage and death as a consequence of his poor health condition and the sedentary nature of his employment. Dr. Nowins and Dr. Wolfe opined that the sedentary nature of the employee's work duties led the employee to gain weight, which had a direct bearing on the development of his various medical conditions, which necessitated him being on the blood thinner Coumadin, which had a direct bearing on the severity of the subarachnoid hemorrhage, which led to his death. Dr. Weaver, however, opined that there were no "circumstance described in the medical reports to support a causal relation between the employee's sedentary work and his subsequent death from subarachnoid hemorrhage related to Coumadin anticoagulation for pulmonary emboli." He noted that the employee's work did not involve limitations in either his mobility or lower extremity movement, which would have predisposed the employee to pulmonary emboli while in the performance of a sedentary position and, thus, rationalized that he had the ability to move his lower extremities at will, alternate positions of stand/sit and take normal breaks. Dr. Weaver concluded that there was no circumstance described in the medical reports to support a causal relation and explained that many lifestyle choices could have been made to alter the employee's conditions of inactivity, weight, hypertension, diabetes and high cholesterol.

The Board finds that there is a conflict in the medical evidence between Dr. Wolfe, the employee's treating physician, and Dr. Weaver regarding the causal relation of the sedentary nature of the employee's position to the employee's development of his various medical conditions, including the development of pulmonary emboli, which necessitated him being on the blood thinner Coumadin, which had a direct bearing on the severity of the subarachnoid hemorrhage, which led to his death.¹⁵

On remand the Office should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After such further development as the Office deems necessary, it should issue an appropriate decision regarding appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

¹⁵ 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 30 and August 10, 2005 are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: August 18, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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