

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

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**MELINA MINTER, claiming as widow of  
SHANE C. MINTER, Appellant**

**and**

**DEPARTMENT OF JUSTICE, U.S. BORDER  
PATROL, San Diego, CA, Employer**

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**Docket No. 05-1655  
Issued: June 19, 2006**

*Appearances:*  
*Walter R. Huff, 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 August 5, 2005 appellant, through her attorney, filed a timely appeal of a May 16, 2005 merit decision of the Office of Workers' Compensation Programs, denying compensation for death benefits. Pursuant to 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 the employee's suicide on April 11, 2003 was causally related to factors of his federal employment.

**FACTUAL HISTORY**

On September 8, 1999 the employee, then a 34-year-old supervisory border patrol agent, sustained a right knee injury while crossing railroad tracks in the performance of his work

duties.<sup>1</sup> He stepped on a railroad tie sideways and twisted his right knee. By letter dated October 7, 1999, the Office accepted the claim for dislocation of the right knee and authorized arthroscopic surgery which was performed on October 12, 1999 by Dr. Robert M. Maywood, a Board-certified orthopedic surgeon. On January 16, 2001 Dr. Maywood performed a second surgery on the employee's right knee. On August 1, 2002 the employee underwent further right knee surgery performed by Dr. James E. Tibone, a Board-certified orthopedic surgeon. The Office subsequently accepted patellar tendinitis and a consequential right ankle sprain.

On April 11, 2003 the employing establishment advised the Office that the employee had been found dead in a parking lot in San Diego, California. On April 28, 2003 it informed the Office that the employee committed suicide on April 11, 2003.

On May 10, 2003 appellant, the employee's widow, filed a claim for death benefits. She submitted a death certificate, which indicated that a toxicology report was pending, together with letters written by the employee prior to his death. The employee stated that he had lasted as long as he could and encouraged Dr. Maywood to not blame himself for his death. The employee requested that the physician prepare a final medical report which addressed the right knee surgery performed by Dr. Tibone and forward it to the employing establishment. The employee asked that his employer submit any claim information or payment to appellant. He could no longer bear the pain in his right knee which was due to the September 8, 1999 employment injury.

An April 20, 2003 coroner's report ruled the employee's death a suicide. An amended death certificate listed that he died on April 11, 2003 due to hydrocodone, oxycodone and remazepan toxicity.

The record includes court documents of appellant's November 1, 2002 petition for divorce from the employee. It was noted that the couple had married on May 28, 1988 and separated on June 1, 2002. Appellant requested child and spousal support, the payment of community debts other than a jewelry store account, custody of their two daughters and one-half of the employee's retirement and Thrift Savings Plan balance. The proceeds from the sale of their house were to be divided equally. A status conference was scheduled for April 16, 2003. On April 15, 2003 appellant requested the dismissal of her divorce proceeding which was granted on April 18, 2003.

In a June 4, 2003 letter, appellant contended that the employee's demeanor towards her and their daughters changed as a result of the surgeries related to his September 8, 1999 employment injury. She described his lack of hope in fully recovering from the employment injury or in resolving their marital problems. By letter dated June 18, 2003, the Office advised

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<sup>1</sup> Prior to filing the instant claim, the employee filed a Form CA-1 on March 11, 1994, alleging that on that date he hyperextended his right knee while pursuing a group of illegal aliens. The Office accepted his claim for a fracture of the proximal fibia and mild dislocation of the right knee and authorized arthroscopic surgery which was performed on September 8, 1994 by Dr. Thomas W. Harris, an orthopedic surgeon. By decision dated March 2, 1995, the Office granted the employee a schedule award for a six percent permanent impairment of the right lower extremity. By letter dated July 17, 1996, he requested reconsideration. In an August 13, 1996 decision, the Office granted an additional one percent impairment, totaling seven percent impairment to the right lower extremity.

appellant that the evidence submitted was insufficient to establish her claim. The Office addressed the additional medical and factual evidence needed to support her claim.

In a March 15, 2002 medical report, Dr. Maywood addressed the employee's right knee and right ankle injuries. He noted a chondral defect and medial femoral condyle of the right knee which were status post two surgeries which included microfracture and an osteochondral autograft transfer. Dr. Maywood also listed right ankle overuse syndrome with anterolateral impingement status post right ankle arthroscopy, continued right lower extremity pain in the knee and ankle with persistent lower extremity atrophy of unknown etiology and post-traumatic causalgia. He opined that the employee had reached a permanent and stationary level and had received maximal benefit of medical care.

On May 15, 2003 Dr. Maywood addressed his last examination of the employee on April 3, 2003. The employee underwent right knee surgery on August 1, 2002 and had been on narcotic medication since the first knee surgery. Dr. Maywood stated that the employee was unable to be weaned off the narcotic medication and had been referred to Dr. Sam Maywood, a Board-certified anesthesiologist, for a prescription and monitoring of medications. He repeated the diagnoses set forth in the March 15, 2002 report. On July 30, 2003 Dr. Robert M. Maywood addressed the chronic right knee and leg pain the employee experienced as a result of the accepted employment injury. He stated that he was unable to perform his regular activities at work and at home or to provide for his family. On multiple occasions, the employee reported having difficulties with his marriage which he attributed to chronic pain. Dr. Robert M. Maywood opined that the employee's work-related injury and subsequent chronic pain were responsible for his eventual suicide. He stated that the employee felt hopeless after seeing numerous specialists who could not alleviate his discomfort.

Appellant submitted statements from several family friends who described their interactions with the employee. Reba Madden stated that she met appellant, the employee and their daughters through a girls' softball association. The employee served as head coach of one of his daughter's teams and appellant was the team mom. Ms. Madden noted the employee's pleasant demeanor during conversations she had with him regarding the team and coaching strategies. She noted changes in the employee's personality as a result of pain and discomfort. The employee complained about a leg injury and that he was upset that it was not healing. His patience level changed as he became very short and abrupt. Ms. Madden heard him say that his pain medication was not strong enough and that he wanted to be normal again, to have the use of his leg, to go back to work and to stop hurting. Brent Johnson, a coworker, noted that the employee was able to meet the physical demands of his job in the early 1990s. After the employee was injured, his attitude was unchanged and he seemed determined to overcome his disability and continue his career. As time went by the employee's injury became more painful and frustrated due to the inability to relieve the pain and uncertainty of a full recovery. Mr. Johnson stated that the employee became depressed which caused a problem in his personal life because he was unable to return to work.

Shanna Brooks stated that she had known the employee's family since 1986 and had become good friends when their daughters played softball. In 2001, when she and the employee coached an all-star softball team together, it became difficult as he had recently undergone knee surgery. He was limited as to what he could teach due to his leg and every night after practice he

would say that he was going home to ice his knee to be ready for practice the next day. In January 2003, the employee told Ms. Brooks that his physicians were unable to help him. Brian Barnes stated that he had known the employee since 1976 and had introduced appellant to him while in high school. He addressed the employee's complaints of pain following knee surgery. The employee asked him if he had any painkillers because his prescription had run out. Mr. Barnes related that painkillers altered the employee's attitude and he had mood swings which affected his marriage. He concluded that the employee became withdrawn and more depressed in the last few months before his death. Jack Forness, the employee's pastor, counseled the employee and appellant about their marital problems. Mr. Forness indicated that the employee was in pain from a work-related leg injury and that the surgeries and therapy performed did little to restore his health and he took prescription medication for pain. He noted that no amount of scriptural counseling or talking could change the employee's mind or his heart.

Appellant submitted a letter that the employee wrote prior to his death. He instructed her to cancel the divorce proceedings and to tell her lawyer that his death was due to a work injury that caused unbearable pain. The employee provided her with the names and telephone numbers of personnel at the employing establishment to obtain information about filing a claim. He assured her that between the claim money and the proceeds from the sale of their house, there should be enough money for their daughters' college education and vehicles for high school.

In a January 9, 2003 note, Dr. Sam Maywood indicated that the employee experienced significant discomfort in his right ankle. He stated that the employee was compliant with his medications and there was no evidence of drug seeking behavior. Dr. Maywood stated that the employee's pain remained moderately controlled on his regimen, but he was taking too much Norco. He prescribed a sustained release narcotic. In a January 17, 2003 report, Dr. Maywood noted that the employee was experiencing burning and tingling pain in his right lower extremity, particularly in the sural and peroneal nerves. He indicated that neurontin had been shown to alleviate this type of pain and allow a patient to be more functional. Dr. Maywood referred to his January 9, 2003 progress note and requested that the medication be dispensed to the employee. The employee underwent a peroneal and sural nerve block on February 19, 2002.

In a November 30, 2002 report, Dr. George McClane, a Board-certified emergency medicine specialist, indicated that the employee was evaluated at a hospital emergency room on that date for ankle pain. He diagnosed chronic ankle pain and prescription narcotic dependence and stated that there was drug screening evidence of amphetamine abuse.

By decision dated February 9, 2004, the Office denied the death benefits claim, finding that the evidence of record did not establish that the employee's death was caused by the September 8, 1999 employment injury. The Office noted that appellant refused to submit copies of certain letters written by the employee prior to his suicide addressing personal stressors that may have caused his depression and resultant suicide. The Office, thus, determined that the evidence did not support an unbroken chain of causation resulting in the employee's death.

On March 14, 2005 appellant, through counsel, requested reconsideration. She submitted the notes left by the employee to her and their children and a January 5, 2005 report from Dr. Samuel H. Sandweiss, a Board-certified psychiatrist. He interviewed appellant, who provided a history of the employee's March 11, 1994 and September 8, 1999 employment

injuries and resulting emotional condition. Dr. Sandweiss reviewed the employee's medical records and diagnosed major depression associated with suicide, pain disorder associated with psychological factors and a general medical condition. He also diagnosed opiate use disorders including, opioid dependence, intoxication, induced mood disorder and withdrawal. Dr. Sandweiss indicated that the orthopedic and pain diagnoses were based on the employee's specialists and described the criteria for making the diagnoses. He found nothing in the record to dispute appellant's contention that her marital problems did not arise until the employee became affected by his orthopedic and pain problems. Dr. Sandweiss noted that the October 13, 2003 opinion of a social worker indicated that the employee's marital problems were secondary to his emotional condition. He opined that it was medically probable that the employee's marital discord arose out of the stresses he experienced as a result of his work-related injuries. Dr. Sandweiss described the ways overuse of opiates affected mental and emotional functioning and opined that, even without such overuse, the employee was depressed due to chronic pain and major changes in his lifestyle due to his work-related injuries. He opined that the employee's severe depression led to his suicide and was work related.

In an April 1, 2005 decision, the Office found that appellant's reconsideration request was untimely filed and that she did not submit any evidence establishing clear evidence of error in the prior decision. On April 1, 2005 counsel submitted a copy of the April 23, 2004 request for reconsideration together with a certified mailing receipt which indicated that it was mailed on April 28, 2004. A certified mailing receipt indicated that appellant's April 23, 2004 request for reconsideration was received by the Office on May 3, 2004.

By decision dated May 16, 2005, the Office vacated the April 1, 2005 decision. It conducted a merit review of appellant's claim and found that the evidence submitted was insufficient to establish that the employee's death was caused by the September 8, 1999 employment injury.

### **LEGAL PRECEDENT**

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 death by suicide and factors of his federal employment.<sup>2</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>3</sup>

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<sup>2</sup> *Rosita Mahana (Wayne Mahana)*, 53 ECAB 503 (2002).

<sup>3</sup> *Id.*

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>4</sup> The Office procedure manual explains that all suicide claims are not precluded by 5 U.S.C. § 8102(a)(2)<sup>5</sup> and states:

"[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."<sup>6</sup>

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 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>

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>10</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Section 8102(a)(2) of the Act (5 U.S.C. § 8102(a)(2)), precludes payment of compensation for disability or death sustained in the performance of duty where the injury or death is caused by the employee's intention to bring about the injury or death of himself, herself or another. *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (September 1995).

<sup>7</sup> Larson, *The Law of Workers' Compensation* § 38.01.

<sup>8</sup> *Supra* note 6 at Chapter 2.804.15b(2).

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

<sup>10</sup> *Supra* note 7.

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.”<sup>11</sup>

### ANALYSIS

Appellant has attributed the employee’s death on April 11, 2003 to depression caused by chronic pain resulting from his September 8, 1999 employment injury. In *Carolyn King Palermo (Dwayne Palermo)*,<sup>12</sup> the Board noted that, for compensability to arise from an employee’s suicide under the Act, a direct causal chain must be established with the accepted employment injury. 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 the employee’s death and without which the death would not have occurred. For the employment injury 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>13</sup> In *Palermo*, it was contended 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 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 standard in the present case, the Board finds that the evidence is insufficient to establish that the employee’s suicide on April 11, 2003 was the direct result of his accepted September 8, 1999 right lower extremity injury.

In a July 30, 2003 medical report, Dr. Robert M. Maywood, an orthopedic surgeon, described the employee’s history of treatment for complaints of right knee and ankle pain. He addressed the surgeries performed and consultations with various specialists for symptoms of right knee pain. Dr. Maywood noted that the employee was on narcotic medication and had expressed frustration with the inability to obtain relief from his discomfort. On April 3, 2002 appellant was last seen by Dr. Maywood while awaiting consultation for further treatment recommendations. He generally described the psychological profile of a man who experienced chronic pain as the employee and was unable to perform his regular work activities or provide for his family. Dr. Maywood noted that potentially his marital problems had something to do with his suicide and that the employee had expressed difficulties in his marriage. However, the employee attributed this to his chronic pain. Dr. Maywood opined that the employee’s suicide was caused by the September 8, 1999 work-related injury and the development of pain that was refractory to any form of care. He stated that the employee felt hopeless after his specialists could not alleviate his discomfort.

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<sup>11</sup> *Id.* at 36.00; see also *Carolyn King Palermo (Dwayne Palermo)*, 42 ECAB 435 (1991).

<sup>12</sup> 45 ECAB 308 (1994).

<sup>13</sup> *Id.* at 313.

In a January 5, 2005 report, Dr. Sandweiss, a psychiatrist, noted that he obtained a history from appellant, who felt that the employee was depressed for the last two years of his life. He noted that approximately a year prior to his suicide, the employee separated from his wife and lived in a rented apartment. After five months, the couple reunited but appellant subsequently filed for divorce. After some counseling, she stopped the proceedings but indicated that the employee was out of emotional control and she started the divorce proceedings again, approximately three months prior to the suicide. Appellant described personality changes which she attributed to the employee's leg pain and overuse of narcotic medications. After reviewing the medical records, Dr. Sandweiss addressed the note written by the employee to his two daughters, quoting that "the pain in my leg along with your mother's attitude towards me has finally become too much to bear. She told me I need to leave the house and that I'll get the final divorce papers in a few weeks." As noted by Dr. Sandweiss, the employee indicated that he barely got through his last separation from his daughters and there was no way he could do it again. The note also discussed how the employee believed his wife disrespected him by calling guys while he was at the house, stating that she wanted somebody else in her life. As a comment, Dr. Sandweiss noted that appellant told him that if she called anyone, it was some of the employee's coworkers or fundraising activities. The psychiatrist also quoted from the note to the daughters, "It's no secret how she talks to me and treats me, you guys have seen it." In another comment, Dr. Sandweiss noted that appellant stated that she never talked back to her husband and had treated him with respect. She stated that he had abused her in front of the children and that she ultimately had to tell him to leave. Appellant attributed the employee's behavior to his pain medication.

Dr. Sandweiss diagnosed major depression associated with suicide, pain disorder associated with psychological factors, a general medical condition and opiate use disorders which included, opioid dependence, intoxication, induced mood disorder and withdrawal. He opined that the employee suffered from severe depression secondary to chronic pain and major lifestyle changes that were causally related to his accepted employment injury and led to his suicide. Dr. Sandweiss stated that the employee was dealing with emotional reactions caused by his work-related injuries and complications associated with these injuries including opiate overuse that were too much for him to handle and caused him to commit suicide on April 11, 2003.

While Dr. Sam Maywood and Dr. Sandweiss generally supported appellant's claim, the physicians did not provide sufficient medical opinions to establish that the employee's death by suicide on April 11, 2003 was a natural or continuous sequence of the September 8, 1999 injury unbroken by any independent causes or to establish that the employment injury was the sole motivation for his suicide. Dr. Maywood provided a very minimal description of his discussions with appellant, particularly involving matters giving rise to the noted marital discord. Dr. Sandweiss provided additional information in this regard. He never treated the employee during his lifetime and relied primarily upon information obtained from appellant to form the basis for his opinion on causal relationship. Dr. Sandweiss' report addresses the marital problems resulting in the employee's separation from his family and the divorce proceedings instituted November 1, 2002. The employee's note to his daughters addresses not only the pain experienced as a residual of the employment injury but also issues concerning his deteriorating relationship with appellant and pending divorce. His death on April 11, 2003 came about shortly before the scheduled April 16, 2003 conference in the divorce proceedings. The evidence



supports that such other factors contributed to his major depression and that the 1999 employment injury was not the sole motivation in the suicide.

**CONCLUSION**

Appellant has failed to establish a direct causal relationship between the employee's accepted 1999 injury and his death on April 11, 2003. Therefore, the Board finds that she has failed to establish her claim for death benefits

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 16, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 19, 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