

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

M.P. claiming as widow of R.P., Appellant

and

**DEPARTMENT OF THE INTERIOR, BUREAU
OF INDIAN AFFAIRS, Portland, OR, Employer**

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**Docket No. 07-866
Issued: August 6, 2007**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 8, 2007 appellant filed a timely appeal from the October 6, 2006 merit decision of the Office of Workers' Compensation Programs' denying her claim for survivor benefits and a January 18, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the employee's death on April 3, 2003 was causally related to factors of his federal employment, thus entitling his widow to survivor's benefits; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a). On appeal, appellant's attorney argued that the report of Dr. William Stewart, a Board-certified internist and the impartial medical examiner, required clarification.

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated August 18, 2006, the Board set aside the Office's August 10 and December 30, 2005 decisions denying appellant's claim for survivor's benefits on the grounds that a conflict of medical opinion evidence existed between Dr. Gordon L. Wolfe, the employee's treating physician and a Board-certified internist, and Dr. Weaver, a Board-certified pulmonologist and an Office medical consultant, 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 lead to his death.¹ The Board directed the Office to arrange for an independent medical examiner to opine on the issue of causal relationship. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On remand, the Office referred the entire case file, along with a statement of accepted facts, a memorandum of conflict of medical opinion and a list of questions, to Dr. Stewart. In an October 2, 2006 report, Dr. Stewart related that he was asked to address the cause of the employee's death; whether the employee's death was caused by, or contributed to, factors of his employment; and whether there was anything in the medical evidence of file which may indicate other factors causing the employee's death. He reviewed the record and opined that the immediate and direct cause of death was bleeding from an acute subarachnoid hemorrhage and that Coumadin was a factor aggravating the severity of the hemorrhage. Dr. Stewart opined that there was no causal relation between the employee's job conditions as described to either the presence of metabolic syndrome, vascular disease or the fatal subarachnoid hemorrhage. He noted that the employee had obesity, hyperlipidemia, hypertension and diabetes, also known as the metabolic syndrome, at the time of death. Dr. Stewart advised that such medical conditions were thought to be risk factors for the development of vascular disease and which create a risk of subarachnoid hemorrhage. He explained that, while it was common for these medical conditions to exist for years and never result in a subarachnoid hemorrhage, a sedentary or stressful job did not, by itself, create a sedentary or stressful lifestyle, metabolic syndrome, or subarachnoid hemorrhage. Dr. Stewart additionally explained that while these medical conditions and job stress may coexist in an individual at the same time, there was no cause and effect relationship and their coexistence was not a predictor of subarachnoid hemorrhage. He concluded that from the available medical evidence of file, there was no medical evidence to indicate that anything other than a subarachnoid hemorrhage was the cause of death.

By decision dated October 6, 2006, the Office denied the claim on the basis that the medical evidence failed to demonstrate a causal relationship between the employee's job conditions to the vascular disease, metabolic syndrome or the subarachnoid hemorrhage. Determinative weight was given to the impartial medical report of Dr. Stewart.

On October 17, 2006 appellant, disagreed with the Office's October 6, 2006 decision and requested reconsideration. She argued that Dr. Stewart's answers were of a general nature and

¹ Docket No. 06-688 (issued August 18, 2006).

addressed only direct causation. Appellant requested that the Office ask Dr. Stewart additional questions, which she provided, to clarify his report. In a letter dated December 19, 2006, she argued that the Office had an affirmative duty to seek clarification from the report of an impartial medical specialist when the report is vague or does not answer the questions with medical rationale. No additional medical evidence was submitted.

By decision dated January 18, 2007, the Office denied appellant's request for reconsideration finding that the evidence submitted in support of the request did not warrant a merit review.

On appeal, appellant asserts that Dr. Stewart's answers were of a general nature and addressed only direct causation. She reiterated her request that a clarification report be obtained from Dr. Stewart.

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the death of an employee resulting from personal injury sustained while in the performance of duty.² If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to 50 percent of the monthly pay of the deceased employee to the widow or widower, if there is no child.³

An award of compensation in a survivors 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.⁴ 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.⁵ 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.⁶ 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.⁷

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8133(a)(1).

⁴ *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁷ *Lori A. Facey*, 55 ECAB 217 (2004); *see also Pamela R. Rice*, 38 ECAB 838, 841 (1987).

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.⁸

Section 8123 of the Act provides that, if 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.⁹ In situations where there exist 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 upon a proper factual background, must be given special weight.¹⁰

ANALYSIS -- ISSUE 1

Pursuant to the Board's remand instructions in its August 18, 2006 decision, the Office referred the employee's case file to an impartial medical examiner, Dr. Stewart, to resolve the conflict of medical opinion between Dr. Wolfe and Dr. Weaver regarding the causal relationship of the sedentary nature of the employee's position to the employee's various medical conditions which necessitated him being on the blood thinner Coumadin, which contributed to the fatal subarachnoid hemorrhage.

In his October 2, 2006 report, Dr. Stewart reviewed the employee's medical records along with a statement of accepted facts and opined that there was no causal relation between the employee's position to the presence of metabolic syndrome, vascular disease or the fatal subarachnoid hemorrhage. He explained this conclusion by discounting that a sedentary or stressful job would create a sedentary or stressful lifestyle or the development of the employee's medical conditions. Dr. Stewart explained that the employee had many preexisting conditions such as obesity, hyperlipidemia and diabetes which were noted risk factors for the development of vascular disease which creates a risk of subarachnoid hemorrhage. He further explained that, while the medical conditions the employee had and job stress may coexist, their coexistence was not a predictor of subarachnoid hemorrhage. Dr. Stewart concluded that there was no basis on which to link the job conditions to the employee's medical conditions. The Board finds that the opinion of Dr. Stewart is entitled to the special weight of the medical evidence because it is well rationalized and based on a thorough review of the employee's medical history.

The Office denied the survivor's claim based on Dr. Stewart's opinion that there was no causal relation between the employee's position to the presence of metabolic syndrome, vascular disease or the fatal subarachnoid hemorrhage. The Board finds that the Office properly relied on Dr. Stewart's opinion, which resolved the conflict of medical opinion between the employee's

⁸ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁹ 5 U.S.C. § 8123; see *Charles S. Hamilton*, 52 ECAB 110 (2000).

¹⁰ *Barbara J. Warren*, 51 ECAB 413 (2000).

treating physician and the Office's medical consultant. As Dr. Stewart's report constitutes the special weight of the medical evidence, the Office properly denied the survivor's claim.

LEGAL PRECEDENT -- ISSUE 2

The Act¹¹ provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.¹²

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹³

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.¹⁴ Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

ANALYSIS -- ISSUE 2

Appellant did not show that the Office erroneously applied or interpreted a specific point of law. In her request for reconsideration (and on appeal), appellant argued the Office improperly relied upon Dr. Stewart's impartial medical opinion as further clarification regarding causation was needed and the Office had the affirmative duty to seek clarification of an impartial medical specialist's report. While appellant questions the evidentiary weight of Dr. Stewart's report, the Office previously considered the matter when it relied upon Dr. Stewart's report in denying her survivor claim. Additionally, as noted above, the Board found that Dr. Stewart provided a well-rationalized report addressing the cause of the employee's death. As Dr. Stewart's opinion constitutes the special weight of the medical evidence, there is no need for the Office to seek clarification of his opinion. Thus, appellant's argument is insufficient to show that the Office erroneously applied or interpreted a specific point of law and it also does not advance a relevant legal argument not previously considered by the Office. Further, appellant did not submit relevant and pertinent new evidence not previously considered by the Office. The Board finds

¹¹ 5 U.S.C. § 8101 *et seq.*

¹² 20 C.F.R. § 10.605.

¹³ 20 C.F.R. § 10.606.

¹⁴ *Donna L. Shahin*, 55 ECAB 192 (2003).

¹⁵ 20 C.F.R. § 10.608.

that appellant is not entitled to a review of the merits of her claim based on the above-noted requirements under section 10.606(b)(2).¹⁶

As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.

CONCLUSION

The Board finds that the Office properly denied the survivor's claim by according special weight to the impartial medical report of Dr. Stewart. The Board further finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 18, 2007 and October 6, 2006 are affirmed.

Issued: August 6, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ 20 C.F.R. § 10.606(b)(2).