United States Department of Labor
Employees' Compensation Appeals Board

D.S., claiming as widow of J.S., Appellant	)	
and	)	
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Birmingham, AL, Employer	)	**Docket No. 07-2130** **Issued: April 9, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 15, 2007 appellant filed a timely appeal from a May 14, 2007 merit decision of the Office of Workers' Compensation Programs denying her claim 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 death on November 15, 2000 was causally related to his accepted employment injury.

FACTUAL HISTORY

On May 22, 2002 appellant filed a claim for survivor's benefits on behalf of herself and the employee's daughter. She contended that the November 15, 2000 death of her husband, a 55-year-old former special agent, was due in part to his accepted emotional condition. In correspondence with the Office dated February 19, 2001, appellant related that she and the

employee married on August 10, 1985 and divorced on February 25, 1999. She and the employee entered into a common-law marriage on January 1, 2000. On January 15, 2002 the Circuit Court of Lauderdale County, Alabama, determined that appellant and the employee were "legally married, by common law," at the time of his death on November 15, 2000.

On November 29, 1994 the Office accepted that the employee sustained an aggravation of alcohol dependence, paranoid personality and paranoid delusional disorder due to work factors. The Office also accepted the claim to include dementia. The Office paid him compensation for total disability from the mid-1990s until his death. The death certificate listed the cause of death as cardiopulmonary arrest with a seizure disorder as a significant contributing condition.

In a May 22, 2002 form report, Dr. I. Lyman Mitchell, a Board-certified internist, related that he had treated the employee for many years for paranoid delusional disorder, alcoholism with seizures and withdrawal, depression and alcoholic hepatitis. He attributed the employee's death to cardiopulmonary arrest and listed grand mal seizure, the neurologic disorders resulting from the late consequences of alcoholism and paranoid delusional disorder as contributory causes. Dr. Mitchell stated, "The psychiatric abnormalities [appellant] suffered from with the deterioration of his overall health due to years of alcoholism contributed to the neurological disorder, which consequently resulted in his death."

On July 24, 2002 an Office medical adviser reviewed the evidence and noted that appellant presented to the emergency room in complete cardiac arrest. He opined that the evidence was insufficient to establish that the employee's cardiopulmonary arrest was causally related to the accepted employment injury.

The Office determined that a conflict in medical evidence existed between Dr. Mitchell and the Office medical adviser regarding whether the employee's death was related to his employment injury. The Office referred the record to Dr. William H. Heaton, a Board-certified internist, for an impartial medical opinion. On January 17, 2003 Dr. Heaton determined that it was "highly probable that the chronic seizure disorder was due to multiple falls with head trauma, associated with alcoholism." Dr. Heaton noted that acute withdrawal from alcohol and hypoglycemia could cause seizure disorder, and opined that these conditions were directly related to the accepted conditions. He stated, "Whether the inciting event causing his heart to stop and breathing to cease was due to a heart attack, stroke, head trauma, or virtually anything other than provide homicide from an outside force, the mechanism of death would be causally related to his alcoholism and psychiatric problems."

In a report dated August 18, 2003, Dr. Mitchell related that the employee sustained employment-related post-traumatic stress disorder, which resulted in alcohol abuse. The employee's alcohol abuse resulted in seizures. Dr. Mitchell asserted, "When [the employee] presented in full arrest on the 15th of November 2000, it was clear that this was precipitated by a seizure, which again was related to his alcohol intake…." He opined that the employee's death was directly related to his employment.

On September 9, 2003 an Office medical adviser found that Dr. Heaton's report was insufficiently rationalized to show that the employee's death was due to the accepted conditions.

On April 6, 2004 an Office medical adviser reviewed the evidence relevant to a claim the employee filed as a result of a fall on September 13, 1994, assigned file number 060609150.[1] He found that the employee's death was not caused by his employment.

On April 13, 2004 the Office referred the case record to Dr. Isabella K. Sharpe, a Board-certified internist, for an opinion regarding whether the employee's death was related to factors of his federal employment. In an undated report, Dr. Sharpe found that the employee's mental illness was not "life threatening" and concluded, "He died of a heart attack not aggravated by his blood pressure or other chronic processes."

By decision dated May 3, 2004, the Office denied appellant's claim on the grounds that the evidence did not establish that the employee's death was caused or hastened by his federal employment. Appellant requested an oral hearing. In a decision dated October 10, 2004, an Office hearing representative vacated the May 3, 2004 decision and remanded the case for the Office to obtain a supplemental report from Dr. Heaton, the impartial medical specialist. The hearing representative determined that Dr. Heaton's report was not fully rationalized as he did not adequately explain the mechanism by which the employee's alcoholism caused his death.

On November 8, 2004 the Office requested that Dr. Heaton provide a reasoned description of how the employee's alcoholism caused his death. On November 23, 2004 Dr. Heaton informed the Office that his report "indicated an opinion of standard and well-known facts regarding alcoholism" and advised that the Office "may wish to seek a medical opinion from another source."

The Office referred the case record to Dr. Alan Jay Schimmel, a Board-certified internist, for an impartial medical examination. In a report dated January 6, 2005, Dr. Schimmel reviewed the evidence and noted that the employee had recurrent seizures after his 1994 hospitalization. He noted that the seizures "were felt to be secondary to his alcoholism" and asserted that it was "virtually impossible at this time to determine what the etiology of these episodes was." Dr. Schimmel indicated that, between 1994 and his death, the employee may have developed alcoholic cardiomyopathy. He noted that the employee's death "appears to be of cardiac etiology either from an ischemic event or an arrhythmia. This would be impossible to prove at this time as no cardiac diagnostic studies were performed from 1994 until the time of [his] death in November 2000." Dr. Schimmel also asserted that a seizure might show severe ischemic episode and found that the employee may have had undiagnosed ischemia and coronary artery disease. He stated:

> "In conclusion, it is my feeling that the probable cause of [the employee's] demise was a cardiac cause, either on the basis of ischemia or a primary arrhythmia secondary to heart muscle disease. It is unlikely that the cause of death was directly related to the work[-]related conditions that have been previously accepted. If [his] alcoholism was responsible for his death, it would most probably be due to the development of heart muscle disease."

[1] In a letter dated February 26, 2004, appellant specified that she was not claiming that the employee's death resulted from his September 1994 head injury. The Office denied the employee's claim for a September 13, 1994 employment injury.

By decision dated January 25, 2005, the Office denied appellant's claim, finding that the medical evidence did not show that the employee's death was due to the accepted conditions. On February 8, 2005 appellant requested an oral hearing, which was held on October 26, 2005. In a decision dated January 27, 2006, an Office hearing representative vacated the January 25, 2005 decision. He found that Dr. Schimmel's opinion was unclear regarding whether the accepted conditions caused or contributed to the employee's death. The hearing representative instructed the Office to seek clarification from Dr. Schimmel and to advise him that causation was established if the accepted condition contributed in any way to the death.

On February 15, 2006 the Office requested that Dr. Schimmel further address whether alcoholism caused or contributed to the employee's death. In a report dated April 12, 2006, Dr. Schimmel opined that it was most likely that the employee died due to ventricular tachycardia due to undiagnosed heart disease. He indicated that it "remains possible, although not probable, that he developed a cardiomyopathy, heart muscle disease, due to his alcoholism." Dr. Schimmel noted that the employee had no diagnostic cardiovascular studies after 1994. He stated, "If [the employee] did, in fact, discontinue alcohol consumption it would be very unlikely that he developed a cardiomyopathy due to alcoholism subsequent to his normal echocardiogram in 1994. If he continued drinking it is conceivable that this may have been the case. It is impossible to diagnose a cardiomyopathy retroactively." Dr. Schimmel found that it was unlikely that the accepted conditions were directly or indirectly responsible for the employee's death.

By decision dated May 10, 2006, the Office denied appellant's claim for death benefits. Appellant requested an oral hearing, which was held by telephone on October 11, 2006. She asserted that the employee had not stopped drinking alcohol prior to his death, as clearly shown by the medical records.

In a February 12, 2007 decision, the hearing representative set aside the May 10, 2006 decision. He found that the evidence showed that the employee continued to consume alcohol from 1998 through 2000. The hearing representative instructed the Office to request a supplemental report from Dr. Schimmel based on a history of the employee consuming alcohol through 2000.

On February 8, 2007 the Office notified Dr. Schimmel that the employee continued to drink alcohol and asked whether this changed his opinion on whether his death was due to his accepted conditions. In a supplemental report dated February 10, 2007, Dr. Schimmel found that as of January 1999 he did not have cardiomyopathy due to alcoholism as a chest x-ray showed a normal heart size. The employee also showed evidence of congestive heart failure on physical examination. Dr. Schimmel noted that acute consumption of alcohol immediately before the time of death could cause "acute alcohol[-]related arrhythmia, although these are usually atrial and not ventricular. However this would be impossible to establish one way or another." Dr. Schimmel concluded:

> "It remains my feeling that [the employee's] cardiac death was a cardiac death from undiagnosed ischemia or a primary arrhythmia. It is virtually impossible to directly relate his death to his alcoholism unless there is evidence that he acutely consumed alcohol immediately prior to his sudden death. It is doubtful that the

> work[-]related diagnoses or mental illness, depression, schizophrenia, alcoholism, seizure disorder, and alcoholic[-]related dementia were directly responsible or indirectly responsible for [his] ultimate death in November of 2000, which was most probably due to a cardiac arrhythmia or ischemia."

In a decision dated May 14, 2007, the Office denied appellant's claim on the grounds that the evidence was insufficient to show that the employee's death resulted from the accepted employment injury.

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.[2] An appellant 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 federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.[3] The mere showing that an employee was receiving compensation for total disability at the time of death does not establish that the employee's death was causally related to his or her federal employment.[4]

Section 8123(a) of the Federal Employees' Compensation Act[5] 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.[6] The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[7]

When 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.[8]

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[2] 5 U.S.C. § 8102(a).

[3] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

[4] *Susanne W. Underwood* (*Randall L. Underwood*), 53 ECAB 139 (2001).

[5] 5 U.S.C. §§ 8101-8193.

[6] 5 U.S.C. § 8123(a).

[7] 20 C.F.R. § 10.321.

[8] *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

ANALYSIS

The Office accepted that the employee sustained an aggravation of alcohol dependence, paranoid personality disorder and paranoid delusional disorder due to work factors. He received compensation for total disability from the mid-1990s until his death on November 15, 2000. On May 22, 2002 appellant filed a claim for death benefits on behalf of herself and daughter. She noted that she had divorced the employee on February 25, 1999 but became his common-law wife on January 1, 2000. Appellant submitted an order from the Circuit Court of Lauderdale County, Alabama finding that she was the employee's legal wife at the time of his death. The Board applies the marriage laws of the state to determine the status of a wife or husband as a dependent under the Act or as a widow or widower entitled to compensation benefits.[9] As appellant qualified as a lawful spouse under Alabama law, she qualifies as a widow eligible to compensation benefits under the Act if she establishes that the employee's death was due to his accepted employment injury.

The Office determined that a conflict existed between Dr. Mitchell, the employee's physician, and the Office medical adviser regarding whether the employee's death was causally related to his accepted employment injury. The Office referred the case to Dr. Heaton for an impartial medical opinion. In a report dated January 17, 2003, Dr. Heaton attributed appellant's seizure disorder to failing to take his medicine as a result of his alcoholism and mental illness. He also asserted that acute withdrawal from alcohol and hypoglycemia could cause seizure disorder. Dr. Heaton further found that regardless of the mechanism of death, the cause would be related to the employee's alcoholism and emotional condition.

An Office medical adviser reviewed Dr. Heaton's report and determined that it was insufficiently rationalized to establish that the employee's death was due to his accepted employment injury. On November 8, 2004 the Office requested that Dr. Heaton provide a rationalized explanation regarding how the employee's alcoholism caused his death.[10] Dr. Heaton responded on November 23, 2004 that his report was consistent with the known facts about alcoholism and indicated that the Office "may wish to seek a medical opinion from another source." As Dr. Heaton declined to clarify his medical opinion, the Office properly referred the case record to Dr. Schimmel for a second impartial evaluation.[11]

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

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[9] *See C.W.*, 58 ECAB ___ (Docket No. 06-1371, issued April 5, 2007); *Fred A. Cooper, Jr.*, 44 ECAB 498 (1993).

[10] The Office further developed the medical evidence after receiving Dr. Heaton's opinion. In an October 10, 2004 decision, a hearing representative noted that the Office should have requested clarification from Dr. Heaton as he was a referee physician.

[11] In situations where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion. If the specialist is unwilling or unable to clarify and elaborate on his or her opinion, the case should be referred to another appropriate impartial medical specialist. *See Guiseppe Aversa*, 55 ECAB 164 (2003).

opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[12] The Board finds that the opinion of Dr. Schimmel, a Board-certified internist selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history. Dr. Schimmel reviewed the case record in detail and concluded that the employee died of either ischemia or primary arrthythmia. He noted that the employee could have developed cardiomyopathy as a result of his alcoholism. Dr. Schimmel determined, however, that this was unlikely as the evidence prior to the employee's death did not reveal evidence of cardiomyopathy. He found that a January 1999 chest x-ray showed a normal heart size and a physical examination revealed no evidence of congestive heart failure. While Dr. Schimmel noted that alcohol consumption immediately prior to death might have caused arrhythmia, he indicated that this would be impossible to determine. He concluded that the accepted conditions did not directly or indirectly cause or contribute to the employee's death. As Dr. Schimmel's report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.[13] Appellant, consequently, has not met her burden to establish that the employee's death was due to the accepted work injury.

On appeal, appellant contends that Dr. Schimmel failed to satisfactorily address the employee's alcohol dependence and seizures from withdrawal. The Board finds, however, that Dr. Schimmel considered an accurate history of injury in his February 10, 2007 report and concluded that the employee died of an arrhythmia or ischemia unrelated to his accepted employment injury. As the impartial medical examiner, his report is entitled to special weight.[14]

CONCLUSION

The Board finds that appellant has not established that the employee's death on November 15, 2000 was causally related to his accepted employment injury.

[12] *Richard R. LeMay*, 56 ECAB 341 (2005).

[13] *Phillip H. Conte*, 56 ECAB 213 (2004).

[14] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2007 is affirmed.

Issued: April 9, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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