

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

L.F., claiming as widow of H.F., Appellant)
and)
DEPARTMENT OF THE AIR FORCE,) Docket No. 09-1058
McCONNELL AIR FORCE BASE, Wichita, KS,) Issued: December 17, 2009
Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 13, 2009 appellant filed a timely appeal of an April 7, 2008 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 appellant met her burden of proof to establish that the employee's death on October 27, 2007 was causally related to his accepted back condition.

FACTUAL HISTORY

On June 5, 1956 the employee, then a 29-year-old woodworker, injured his back while unloading wood. The Office accepted his claim for aggravated unstable spine, unstable low back and fibrositis of the upper back. It authorized surgery for spinal fusion on July 3, 1958 and decompression and lumbar laminectomy on June 19, 1987. The employee received appropriate

compensation benefits. On October 16, 1986 he had a recurrence of total disability for which he received wage-loss benefits until his death on October 27, 2007.¹

The record contains an April 4, 1958 special cardiovascular examination from Dr. Gary Wood, an internist, who diagnosed hypertensive vascular disease. Statements from the employee dated July 21 and November 9, 1987 indicated that he had a badly defibrillating heart that required treatment before he could undergo back surgery on June 19, 1987. The employee also noted that he required continued cardiac care thereafter. On June 19, 1987 Dr. Dale Darnell, a Board-certified orthopedic surgeon, noted that the employee required a cardiac workup before he could proceed with back surgery. He advised that the employee's cardiac catheterization was normal and that examination revealed a regular heart rate and rhythm with no murmurs. On October 5, 1999 Dr. Darnell noted that the employee's condition had not changed since 1995 as he still could not walk or lift much. The employee informed the physician that he had a recent episode of congestive heart failure. Dr. Darnell found that the employee was unable to return to work because of continued musculoskeletal and cardiac problems.

Dr. Robert Drisko, a Board-certified orthopedic surgeon, submitted reports dated September 9 and 17, 2004 diagnosing low back pain and an unimproved spinal condition. He noted that the employee's medical history included congestive heart failure and heart attack. Dr. Drisko found significant degenerative changes in the employee's back but that no follow up diagnostic tests were necessary. He had multiple medical problems for which he should follow up as needed.

Following the employee's death on October 27, 2007, appellant filed a claim for death benefits, Form CA-5, on January 20, 2008. She indicated that the nature of injury causing the employee's death was a spinal injury from unloading wood. In a November 30, 2007 attending physician's report attached to Form CA-5, Dr. Robert Frank, an osteopath and internist, noted that the direct cause of death was cardiomyopathy. He stated that chronic back pain and stress were contributory causes of death. Dr. Frank checked a box "no" indicating that the employee's death was not due to his accepted back injury and back surgery.

In a January 20, 2008 statement, appellant claimed survivor benefits because the employee did not have any heart problems when he sustained his work injury. She also asserted that the employee's heart problems were brought on by his inability to properly exercise due to pain from his spinal surgeries.

On February 4, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. It requested a physician's report discussing how the employee's lumbar spine condition, as opposed to his cardiomyopathy, contributed to his death.

Appellant submitted a January 25, 2008 statement reiterating that the employee did not have a heart problem when he was injured in 1956. She noted that his heart problems began in the 1970s and he was unable to keep a healthy heart due to pain from his surgeries. Appellant

¹ In a September 17, 1987 letter, the Office advised the employee that the recurrence of disability only applied to his accepted back condition as his cardiac condition was not accepted as job related.

also submitted a copy of the employee's death certificate. Dr. Frank certified that the cause of death was an ischemic cardiomyopathy with diabetes mellitus as a contributing condition.

In an April 7, 2008 decision, the Office denied appellant's claim finding that she did not establish that the employee's death was causally related to his federal employment.

LEGAL PRECEDENT

The Federal Employees' Compensation Act 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.²

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 employment. This burden includes the necessity of furnishing rationalized medical opinion evidence of a cause and effect relationship, based on a complete factual and medical background, showing causal relationship. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.³ However, an award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation or on appellant's belief that the employee's death was caused, precipitated or aggravated by his employment.⁴

The mere showing that an employee was receiving compensation for total disability at the time of his death does not establish that the employee's death was causally related to his or her federal employment.⁵

ANALYSIS

The Board finds that appellant has not established that the employee's death was caused by his June 5, 1956 employment injury.

The employee sustained a work-related back injury consisting of an aggravated unstable spine, unstable low back and fibrositis of the upper back, which required two subsequent back surgeries. Appellant claimed that the employee's death on October 27, 2007 was causally related to his accepted back injuries; however, the death certificate stated that appellant died due to ischemic cardiomyopathy of which diabetes mellitus was a contributing factor. Moreover, Dr. Frank's November 30, 2007 report, attached to Form CA-5, identified cardiomyopathy as the direct cause of death. He checked a box "no" indicating that the employee's death was not due to his back injury. Although Dr. Frank noted that contributing causes of death consisted of chronic back pain and stress, he did not provide any medical rationale addressing how back pain contributed to the employee's cardiomyopathy in light of his opinion in the same report that the

² 5 U.S.C. § 8133.

³ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007).

⁴ *Jimmy Zenny (Ingrid Hall Zenny)*, 54 ECAB 577 (2003).

⁵ *Elinor Bacorn, (David Bacorn)*, 46 ECAB 857 (1995).

employee's death was not due to his work injuries. Without such rationale, Dr. Frank's opinion is insufficient to establish causal relationship in this case.⁶ None of the other medical evidence of record establishes appellant's employment as the cause of his death.

On February 4, 2008 the Office advised appellant of the medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. Appellant asserted that the employee had no cardiac condition when he was injured at work asserted that the cardiac condition was caused by the work injury. However, appellant did not submit any medical evidence to support that the employee's cardiac condition or his death was caused or contributed to by his accepted back conditions. The record does not contain any medical report from a physician explaining how the employee's accepted back condition caused or contributed to the cardiomyopathy that led to his death. As noted, part of appellant's burden of proof includes the submission of rationalized medical evidence addressing whether there is a causal relationship between the employee's death and his employment. Consequently, she did not meet her burden of proof to establish that the employee's death was caused by his federal employment.

On appeal, appellant asserts that the employee's work injury prevented him from exercising to maintain a healthy heart and this caused his death. However, this is a medical question. Her burden of proof includes providing rationalized medical opinion evidence establishing causal relationship between the employee's death and his employment. In the absence of supporting medical evidence, appellant's belief regarding causal relationship is insufficient to establish the claim.⁷ Appellant has not submitted any medical evidence in support of her claim that the employee's work injury caused or contributed to his cardiac condition that caused his death.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the employee's death on October 27, 2007 was causally related to his accepted back condition.

⁶ See T.M., 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁷ See A.C., 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008) (neither the fact that a condition became apparent during a period of employment nor the belief of the claimant that the condition was caused or aggravated by employment factors is sufficient to establish causal relation).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated April 7, 2008 is affirmed.

Issued: December 17, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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