

cylinder on ground level at forward end of 606 submarine; staging pipes slipped out of a crane operating overhead. One pipe struck me on the head, knocking me down.” The Office accepted the employee’s claim for lumbosacral strain and contusions to the right shoulder, right upper thigh and right lower leg. The employee received compensation for wage loss on the periodic rolls.

The employee died on December 26, 2005. The certified abstract of the certificate of death listed the causes of death as (a) respiratory arrest and (b) pleural effusion, 6 to 12 months. Other significant conditions included chronic obstructive pulmonary disease.

On May 26, 2006 appellant filed a claim for compensation by widow. She stated that the employee’s death was indirectly caused by medication for back pain from his November 7, 1961 work injury. On June 22, 2006 the Office asked appellant to make sure that the physician’s report on the back of the claim was completed by the attending physician. It added: “Arrange for the submission of a comprehensive narrative medical report from the treating physician that gives the doctor’s opinion, with medical reasons, on the direct cause of death. This opinion should include the contribution of both job-related and nonemployment factors.”

In a decision dated August 3, 2006, the Office denied appellant’s claim for compensation. It found that the medical evidence failed to establish that the employee’s death was caused by his November 7, 1961 employment injury.

Following a telephonic hearing on March 11, 2008, an Office hearing representative affirmed the denial of compensation. In a decision dated May 29, 2008, the hearing representative found no narrative report or any other statement from a physician relating the employee’s death to residuals or medication from the work injury.

On June 7, 2008 appellant requested reconsideration. She noted, among other things, that all available evidence had not been submitted. Appellant stated that she had plenty more evidence, too much, in fact, to mail or communicate about by telephone.

In a decision dated July 21, 2008, the Office denied appellant’s request. It found that appellant’s request did not meet at least one of the three standards for obtaining a merit review of her case.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees’ Compensation Act provides compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.¹ If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule: (1) To the widow or widower, if there is no child, 50 percent.² If death results from an injury sustained in the performance of duty, the

¹ 5 U.S.C. § 8102(a).

² *Id.* at § 8133(a)(1).

United States shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$800.00, in the discretion of the Secretary of Labor.³

An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to an employment injury or to factors of his employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based upon a proper factual and medical background. The mere showing that an employee was receiving compensation for total disability at the time of death does not establish that his death was causally related to conditions resulting from the employment injury.⁴

ANALYSIS -- ISSUE 1

Appellant filed a claim for compensation benefits on May 26, 2006 and therefore bears the burden of proof to establish her entitlement. She has the burden to prove that the employee's death on December 26, 2005 was causally related to his November 7, 1961 employment injury. It is not enough for appellant to express her belief that the employee's death was indirectly caused by medication for back pain from his accepted work injury. Causal relationship is a medical issue and must be addressed by a qualified physician. Appellant must submit to the Office a medical report from a physician who provides an accurate history of the employee's November 7, 1961 employment injury, that correctly addresses the cause of death on December 26, 2005, and that explains, with sound medical reasoning, how one led to the other. The physician's medical explanation is critical and must show that his or her conclusion is sound and logical. Such rationalized medical opinion evidence is absolutely necessary for appellant to establish the element of causal relationship. Without it, she has not established a *prima facie* case.

Appellant has submitted no medical evidence in support of her claim. The Board has reviewed her case record carefully and can find no medical report relating the employee's death on December 26, 2005 to the work injury he sustained on November 7, 1961. The death certificate does not, on its face, support appellant's claim that the employee died from his 1961 work injury. The Board fully appreciates appellant's argument about the causes of death listed on the death certificate. However, appellant must submit a physician's opinion to explain how the employee's death was a result of the 1961 employment injury. The attending physician's report on the back of her claim form remains blank.

In the absence of a well-reasoned medical opinion soundly explaining how the employee's death resulted from his 1961 employment injury, the Board must find that appellant

³ *Id.* at § 8134(a).

⁴ *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111 (1982). The employee in *Lambert*, a 48-year-old component cleaner at the Portsmouth Naval Shipyard, was struck in the head by a broken steam line on November 3, 1970. He died on June 5, 1977. The death certificate listed the immediate cause of death as a "bilateral pulmonary congestion moderate severe" due to "arteriosclerotic heart disease with old healed myocardial infarction of anterior left ventricular." The approximate interval between the onset of the pulmonary congestion and death was "weeks." Other significant conditions were "old cardiovascular accident and liver congestion."

has not met her burden of proof. The Board will therefore affirm the Office hearing representative's May 29, 2008 decision denying appellant's claim for compensation benefits.⁵

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁶ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁷

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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.⁸

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence 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. 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.¹⁰

ANALYSIS -- ISSUE 2

Appellant made her June 7, 2008 request for reconsideration within one year of the Office hearing representative's May 29, 2008 decision. Her request is therefore timely. The question is whether her request meets at least one of the three standards for obtaining further merit review of her case.

⁵ As the Board explained at the oral argument held on January 15, 2009, should appellant get a doctor to draw a causal connection between the 1961 employment injury and the employee's 2005 death, she may submit this medical opinion to the Office and request that the Office reconsider its May 29, 2008 decision. Appellant has one year from the date of this Board's decision to submit the required medical opinion to the Office with a written request for reconsideration.

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.605 (1999).

⁸ *Id.* at § 10.606.

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608.

Appellant's request does not show that the Office erroneously applied or interpreted a specific point of law; nor does it advance a relevant legal argument not previously considered by the Office. She submitted evidence, but none of it is relevant and pertinent to her claim for compensation benefits. As noted, she must submit medical evidence to discharge her burden of proof. The only evidence that is relevant and pertinent to her claim for compensation benefits is a physician's opinion connecting the employee's death to his 1961 employment injury. Appellant submitted no such evidence with her request for reconsideration.

Because appellant's request for reconsideration does not meet at least one of the three standards for obtaining a merit review of her case, the Board finds that the Office properly denied that request. The Board will therefore affirm the Office's July 21, 2008 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employee's death on December 26, 2005 was causally related to his November 7, 1961 employment injury. The Board also finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the July 21 and May 29, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 18, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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