United States Department of Labor
Employees' Compensation Appeals Board

B.J., claiming as widow of P.J., Appellant	)	
and	)	**Docket No. 10-36**
	)	**Issued: August 4, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Memphis, TN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 5, 2009 appellant, through her attorney, filed a timely appeal of a September 1, 2009 Office of Workers' Compensation Programs' merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the claim.

ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee's death was due to his accepted employment injuries.

FACTUAL HISTORY

The Office accepted that on October 17, 1988 the employee, then a 53-year-old letter carrier, sustained an aggravation of major depression due to factors of his federal employment. It entered the employee on the periodic rolls on July 20 1989.

The employee married appellant on August 16, 2003. On March 7, 2005 Dr. Dolores M. DiGaetano, a Board-certified psychiatrist, diagnosed depressive disorder and panic disorder related to the employee's federal employment. She also diagnosed dementia and behavioral

disturbance, which were not considered work related. Dr. DiGaetano stated that the employee was totally disabled. Dr. Darel A. Butler, a Board-certified neurologist, examined the employee on May 25 and June 16, 2005 and diagnosed major depression and anoxic brain damage, altered mental status and Alzheimer's disease. He noted that the employee had a heart attack in November 2003. Dr. Butler stated that the employee's preexisting depression was likely contributing to his current condition. On July 22, 2005 Dr. DiGaetano again diagnosed employment-related major depression and panic disorder. She stated that the employee required the services of an attendant when his wife was not available. Dr. DiGaetano stated that the employee had no motivation to care for himself and required assistance with eating, dressing and grooming. She again noted the more recent diagnosis of dementia.

In a letter dated August 8, 2005, the Office stated that as dementia and limited mobility were not accepted conditions, the request for an attendant was not approved.[1]

On December 22, 2005 Dr. DiGaetano stated that the employee's workplace anxiety was the catalyst for his depression and that the depression resulted in impairment to his physical, social and psychological functioning including sustained depressive responses to chronic physical illness. She noted that he experienced insomnia, loss of appetite and mood swings as a result of sustained depressive responses. Dr. DiGaetano stated, "[The employee's] depressive state contributed to his life threatening illness, coronary heart failure. Since this event, [the employee's] physical and emotional condition has been on a steady decline, experiencing cognitive change, increased insomnia and decrease in social functioning." She concluded, "It is my professional opinion that [the employee's] depression has produced significant physical and emotional decline impairing his [activities of daily living] function to the extent that he can no longer look after himself."

The district medical adviser reviewed the medical record on January 31, 2006 and stated that the employee required an attendant due to anoxic brain disease, dementia and Alzheimer's disease not due to the accepted aggravation of major depression.

In a decision dated October 12, 2006, the Office denied appellant's request for a medical attendant.

Dr. DiGaetano examined the employee on April 24, 2007 and diagnosed panic disorder, depressive disorder and dementia. She stated that the employee had significant decline in his cognitive function and required assistance with all of his affairs. Dr. DiGaetano found that the employee was mentally incompetent to handle his financial or other affairs.

Appellant notified the Office on January 7, 2008 that the employee died on January 5, 2008. She filed a claim for compensation by widow on January 29, 2008. Dr. DiGaetano completed the form and advised that the cause of death was Alzheimer's disease. She stated, "Depression contributed to his cognitive decline associated with Alzheimer's

[1] The record indicates that the employee's left leg was amputated in November 1999 due to his severe cardiovascular problem.

dementia." Dr. DiGaetano indicated with a checkmark "yes" that the employee's death was due to his accepted depression and panic disorder, which were caused by workplace anxiety. She stated:

> "The workplace injury caused the depression. Depression contributed to the dementia as evidenced by social isolation, low motivation, decreased energy and interest levels. [The employee's] depression prevented him from experiencing his environment in a meaningful, pleasurable way. Therefore, he gradually withdrew from the environment, which included food, family and friends. His memory was impaired. He was unable to care for himself. He lost the ability to communicate effectively."

Dr. Butler signed the death certificate and listed the cause of death as Alzheimer's disease. He did not list any other contributing causes of death.

The Office referred the claim to the district medical adviser on February 22, 2008. On February 26, 2008 he opined that the employee was diagnosed with dementia years after the employment injuries and that dementia and Alzheimer's disease were not accepted conditions. The district medical adviser stated that Alzheimer's disease was not a consequence of the accepted condition.

In a letter dated March 25, 2008, the Office informed appellant that the district medical adviser did not support her claim.

By decision dated April 18, 2008, it denied appellant's claim finding that the evidence was not sufficient to establish that the employee's death was caused by his accepted employment-related conditions.

Appellant, through her attorney, requested a telephonic hearing. On August 26, 2008 she stated that the employee was diagnosed with dementia not Alzheimer's disease. Appellant stated that the employee frequently mentioned to her that the employing establishment messed up his life, the last time six weeks before he died. Following the oral hearing, she submitted a report dated September 22, 2008 from Dr. Rebecca Caperton Rutledge, a clinical psychologist, who stated that the employee's depressive symptoms were linked to Alzheimer's as the depression started the symptoms and Alzheimer's exacerbated them, including insomnia, anxiety, social isolation, mood swings.

By decision dated November 3, 2008, an Office hearing representative remanded appellant's claim for additional development of the medical evidence including referral for a second opinion evaluation.

The Office referred the employee's records to Dr. Alain De La Chapelle, a Board-certified psychiatrist, for a second opinion evaluation. In a December 6, 2008 report, he stated that depression was not a primary cause of the employee's death as Alzheimer's was considered the direct cause of death; however, depression could speed up the disease process and progression. Dr. Chapelle concluded that major depressive disorder may have served as an accelerant in the progression of the employee's Alzheimer's disease. On January 7, 2009 the Office requested clarification of this report. In a January 13, 2009 supplement report,

Dr. Chapelle stated that, while the depressive disorder may have served as an accelerant in the progression of the employee's Alzheimer's symptoms, the depression did not accelerate the underlying disease process. He noted that one theory of the cause of Alzheimer's disease was the excessive production of beta amyloid protein, that this process was not caused by the employee's depression.

By decision dated February 10, 2009, the Office denied appellant's claim, finding that the weight of medical opinion was Dr. Chapelle's report.

Appellant, through her attorney, requested an oral hearing on February 18, 2009. She contended that the medical evidence established that the employee's death was related to his accepted employment condition of depression. In a September 1, 2009 decision, the Office hearing representative found that the medical evidence was not sufficient to establish a causal relationship between the employee's accepted depression and his death by Alzheimer's disease.

LEGAL PRECEDENT

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 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.[2]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[3] Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of the Federal Employees' Compensation Act which 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 and resolve the conflict of medical

[2] *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989).

[3] *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

evidence.[7] 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.[8]

ANALYSIS

The Board finds that this case is not in posture for a decision due to an unresolved conflict of medical opinion evidence. Appellant must establish that the accepted employment-related condition of aggravation of major depression caused or contributed to the employee's death. The listed cause of death is Alzheimer's disease.

Appellant submitted a report from Dr. DiGaetano, a Board-certified psychiatrist, who found that the accepted condition of depression contributed to the employee's decline associated with Alzheimer's dementia. Dr. DiGaetano noted that aggravation of major depression was accepted as related to the employee's work and asserted that depression contributed to the employee's dementia as it prevented him from experiencing his surroundings in a meaningful way. The employee gradually withdrew from food, family and friends as a result of his depression. Appellant also submitted a report from Dr. Rutledge, a clinical psychologist, who stated that the employee's depressive symptoms were linked to Alzheimer's as the depression started the symptoms and Alzheimer's exacerbated his symptoms of insomnia, anxiety, social isolation and mood swings. This medical evidence supports a causal relationship between the employee's accepted employment injury and his death.

The Office referred the medical records to Dr. Chapelle, a Board-certified psychiatrist, who suggested that there was an acceleration of the employee's Alzheimer's disease due to the underlying employment-related depression, but, in a supplemental report, Dr. Chapelle negated causal relation. He advised that the depression did not accelerate the formation of the excessive beta amyloid protein, a potential cause of Alzheimer's disease. There is disagreement between Dr. DiGaetano and Dr. Rutledge for appellant and Dr. Chapelle for the Office on the issue of whether the accepted aggravation of major depression caused or contributed to the employee's death. The Board finds that additional development of the medical evidence is necessary and will remand the case to the Office for referral to an impartial medical examiner.

CONCLUSION

The Board finds that there is an unresolved conflict of medical opinion evidence as to whether the employee's accepted aggravation of major depression caused or contributed to his death.

[7] 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

[8] *R.C.*, 58 ECAB 238 (2006).

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2009 decision of the Office of Workers' Compensation Programs be set aside and remanded for further development consistent with this decision of the Board.

Issued: August 4, 2010
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