

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

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| C.M., claiming as widow of J.M., Appellant |) | |
| |) | |
| and |) | Docket No. 09-1944 |
| |) | Issued: June 24, 2010 |
| DEPARTMENT OF THE NAVY, MARE |) | |
| ISLAND NAVAL SHIPYARD, Vallejo, CA, |) | |
| 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2009 appellant filed a timely appeal from a September 8, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim for death benefits and a March 13, 2009 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 February 9, 2008 was causally related to his accepted employment injury; and (2) whether the Office properly denied appellant's request for further review of the merits of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

The Office accepted that on March 16, 1984 the employee, then a 52-year-old equipment cleaner, sustained a fractured right femur, a dislocated left thumb, right shoulder strain and a low back strain in the performance of duty. It paid him compensation for total disability.

The employee died on February 9, 2008. The death certificate lists the cause of death as end-stage renal disease, congestive heart failure and dementia.

On March 12 and April 22, 2008 the Office informed appellant, the employee's widow, that, if she believed the employee's death was caused by his work injury or factors of his federal employment, she should submit supporting factual and medical documentation.

In a report dated June 3, 2008, Dr. Malrubio Cabrera, a Board-certified internist, related that the employee died on February 9, 2008 due to "hospital acquired pneumonia, delirium, uremia (from end[-]stage renal disease) and dementia." He noted that the employee had multiple health problems, including high blood pressure, diabetes, low back pain and leg pain. Dr. Cabrera asserted that his conditions arose following a March 1984 work injury. He stated:

"As a result of [the employee's] accident he was deemed 75 percent disabled and subsequently placed on permanent disability. While I cannot confirm a direct association between [his] death and his accident in 1984, I strongly feel that had he not suffered the disabling accident of 1984 his ability to remain active and his quality of life would have been significantly improved."

On June 18, 2008 the Office requested that appellant complete a claim for death benefits and submit additional medical information, including a comprehensive medical report from the employee's attending physician discussing whether his death was due to his work injury or factors of his federal employment.

In a form dated July 8, 2008, appellant filed a claim for compensation requesting death benefits.¹

By decision dated September 8, 2008, the Office denied appellant's claim for survivor's benefits. It determined that the medical evidence was insufficient to meet her burden of establishing that the employee's death was due to his employment injury.

On December 23, 2008 appellant requested reconsideration. She described the employee's condition subsequent to his work injury. Appellant related that in January 2008 the employee was hospitalized after he fell due to right leg and lumbar pain. She stated:

"On January 21, 2008 the employee once again fell due to severe pain in his right leg and lumbar region and, once again, his lack of mobility and his overall lack of physical strength rendered him unable to get up onto his feet and back into his apartment without assistance. Then on January 23, 2008 the employee was taken to the hospital when he could no longer withstand the severe pain in his right leg, shoulder and lumbar region. He was subsequently hospitalized and was given painkillers. He was confined to his hospital bed, unable to get up and move around. It was during this period from January 23, 2008 through the date of his death, February 9, 2008, that the employee contracted pneumonia which was then determined as the 'cause' of his death."

¹ In a form dated July 7, 2008, Dr. Cabrera's office indicated that he had no further information to provide other than what was included in his June 3, 2008 letter. His office noted that another physician had reviewed the letter and agreed with Dr. Cabrera's findings.

Appellant attributed the employee's deterioration and hospitalization in 2007 to his employment injury. She asserted that he would not have been hospitalized except for his work-related injuries and that due to his hospitalization he could not use his lungs fully and developed pneumonia. Appellant discussed a state court case that found a widow entitled to death benefits when an employee committed suicide after being terminated from employment. She concluded that the employee's "deterioration was the direct result of his work-related injuries and it was these complications from his injuries which were the predominate contributing factors which led to his hospitalization and subsequent death."

By decision dated March 13, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant reopening the case for merit review.

On appeal appellant argues that the employee's employment-related leg and low back pain caused him to collapse and require hospitalization. While in the hospital the employee developed uremia, delirium and pneumonia. Appellant related that the medical evidence supported that the employee was disabled at the time of death. She cited state workers' compensation law for the proposition that a surviving dependent was entitled to receive benefits upon the death of a permanently and totally disabled employee.

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 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.³ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Office accepted that the employee sustained a fractured right femur, a dislocated left thumb, right shoulder strain and low back strain due to March 16, 1984 employment injury. The employee stopped work on March 16, 1984 and received compensation for total disability. He died on February 9, 2008 and appellant, his widow, requested death benefits. The death certificate provided the cause of death as end-stage renal disease, congestive heart failure and dementia.

² 5 U.S.C. § 8102(a).

³ *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005).

⁴ *L.R. (E.R.)*, 58 ECAB 369 (2007); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁵ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

In a report dated June 3, 2008, Dr. Cabrera attributed the employee's February 9, 2008 death to pneumonia acquired at the hospital, delirium, dementia and uremia from end-stage renal disease. He opined that the employee had numerous health problems including diabetes, high blood pressure and chronic low back and leg pain, which began chronologically after his March 1984 work injury. Dr. Cabrera noted that the employee was permanently disabled due to his employment injury. He concluded, "While I cannot confirm a direct association between [his] death and his accident in 1984, I strongly feel that had he not suffered the disabling accident of 1984 his ability to remain active and his quality of life would have been significantly improved." Dr. Cabrera found that the employee's work injury caused total disability, reduced his quality of life and decreased his activity. He did not, however, attribute the employee's death in any way to his work injury and thus his opinion is insufficient to meet appellant's burden of proof.

Appellant has the burden of proof to submit rationalized medical evidence showing that the employee's death was causally related to his accepted employment injury.⁶ She has not submitted a medical report from a physician who provides an accurate history of the employee's work injury, addresses the cause of death on February 9, 2008 and explains with sound medical reasoning how the injury contributed to the death. Consequently, appellant has not met her burden of proof.

On appeal appellant contends that the employee collapsed and was hospitalized due to his work-related leg and low back condition and that the hospitalization caused his pneumonia and subsequent death. Her lay opinion on the cause of the employee's hospitalization and death is of little probative value, however, as the Board has held that lay individuals are not competent to render a medical opinion.⁷

Appellant also argues that the medical evidence supported that the employee was disabled until the time of death. As noted, however, 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 federal employment.⁸

Appellant further cited state workers' compensation law for the proposition that a dependent of a deceased employee is entitled to receive benefits when the employee was totally and permanently disabled. It is well established, however, that decisions made by other federal agencies or government bodies are not dispositive to issues raised under the Act. Decisions made by such tribunals are pursuant to different statutes which have varying standards for establishing disability and eligibility for benefits.⁹

⁶ *Jacqueline Brasch (Ronald Brasch)*, *supra* note 4.

⁷ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁸ *See Susan W. Underwood (Randall L. Underwood)*, *supra* note 5.

⁹ *Andrew Fullman*, 57 ECAB 574 (2006); *Dianna L. Smith*, 56 ECAB 524 (2005).

ANALYSIS -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁰ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹¹ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹² When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹³

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁴ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁵ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁶

ANALYSIS -- ISSUE 2

The Office denied appellant's claim as it found that the medical evidence was insufficient to establish that the employee's death was causally related to his accepted work injury. With her request for reconsideration, she discussed her belief that the medical evidence showed that the employee was hospitalized as a result of his work injury and that the work-related hospitalization resulted in his death. Appellant's lay opinion, however, is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.¹⁷

Appellant also argued that in a state court case a judge found that simple causation was enough to establish entitlement to death benefits in a case where an employee committed suicide after he was terminated from work. As discussed, decisions made by other federal agencies or government bodies do not govern issues raised under the Act as they are made pursuant to different statutes with varying standards.¹⁸ Consequently, appellant's argument is not relevant to

¹⁰ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² *Id.* at § 10.607(a).

¹³ *Id.* at § 10.608(b).

¹⁴ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

¹⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

¹⁶ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹⁷ *See Gloria J. McPherson*, *supra* note 7.

¹⁸ *See supra* note 9.

the pertinent issue of whether the medical evidence establishes that the employee's death was causally related to his accepted work injury.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or submitted new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

CONCLUSION

The Board finds that appellant has not established that the employee's death on February 9, 2008 was causally related to his accepted employment injury. The Board further finds that the Office properly denied her request for further review of the merits of her claim under section 8128.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 13, 2009 and September 8, 2008 are affirmed.

Issued: June 24, 2010
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