

unscrewing a frozen lug nut on a wheel while changing a flat tire. Surgical repair was performed on August 23, 2006 which was authorized by the Office. The Office paid the employee total disability compensation beginning October 29, 2006.

The employee received periodic treatment for his work injuries and maximum medical improvement was attained on December 21, 2006. On August 31, 2007 Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon serving as an Office referral physician, stated that at the time of his examination on August 31, 2007 there were continuing mild residuals of the work injuries as well as nonwork-related conditions such as the normal aging process.

On February 17, 2009 the Office received notification of the employee's death on February 16, 2009 and it terminated wage-loss compensation on March 4, 2009. On June 4, 2009 it received a claim for compensation by widow, widower and/or children which was signed on May 22, 2009 by the employee's son, on behalf of his mother the surviving spouse. The record reveals that there were no Department of Veterans Affairs benefits and no federal retirement benefits.

On February 16, 2009 Dr. James F. Bush, an attending Board-certified internist, wrote on the certificate of death that the immediate causes of the employee's death were failure to thrive and peripheral vascular disease and that other significant conditions were neuropathy and renal insufficiency. On May 27, 2009 Dr. Bush stated that the employee's accepted left hand injury with neuropathy pain contributed to a diagnosis of depression resulting in a "failure to thrive" and death on February 16, 2009. Other contributory causes were identified as peripheral vascular disease, neuropathy and renal insufficiency.

In a January 20, 2009 report, Dr. Jill A. Kuhn Ph.D, a clinical psychologist, described her initial evaluation of the employee on September 26, 2008 for symptoms of depression. She described mild cognitive impairment, loss of 60 pounds in six to eight months time, loss of appetite and psychosocial issues at home. The employee had difficulty adjusting to a long-term care facility with multiple symptoms and was provided with anti-depressant medication until his hospitalization from November 26 to December 5, 2008. Dr. Kuhn mentioned the June 7, 2006 work injury and indicated that it was plausible that the hand injury and concomitant pain might have been related to the diagnosed depression. She indicated that previous documentation did not indicate a prior psychiatric condition.

On June 9, 2009 the Office requested that appellant submit additional factual and medical evidence in support of the claim for survivor's benefits. By telephone conference with the Office, appellant stated that the employee's general health prior to the work injury was very good and that he was strong, active and maintained a vibrant outlook on life. After the work injury, his entire demeanor rapidly declined with significant depression in 2007 and weight loss in 2008.

In a November 9, 2007 report, Dr. Julia Carlson, an attending Board-certified internist, described examining the employee for difficulty with numbness and pain in his left hand with a long history of neuropathy to both hands. She opined that the pain disrupted sleep and the sleep disruption resulted in depression. Dr. Carlson recommended medication and a follow-up appointment.

Emergency room records from November 2, 2007 show an admitting diagnosis of feeling weak since receiving the flu shot. In a December 4, 2007 report, Dr. William F. Miller, an attending Board-certified cardiologist, provided diagnoses for atrial fibrillation, dyspnea of uncertain etiology and possible left atrial thrombosis. Hospital treatment notes show admission on August 26, 2008 for mild anemia, severe malnutrition, significant weight loss, chronic abdominal pain and severe peripheral vascular disease. On September 2, 2008 the employee was released to a full care nursing home.

In a July 27, 2009 decision, the Office denied appellant's claim finding that she did not submit sufficient medical evidence to establish that the employee's death on February 16, 2009 was related to his accepted employment injuries. It noted that the evidence did not establish that the employee's depression was a consequence of the pain from the accepted work injuries. Even if it were established that the depression was work related, it was not shown that the employee's death was a consequence of depression.

LEGAL PRECEDENT

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.² This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ An award of compensation may not be based on surmise, conjecture or speculation.⁴ The mere showing that an employee was receiving compensation at the time of his death does not establish that his death was causally related to conditions resulting from the employment.⁵

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.⁶ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence.⁷

² *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

³ *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

⁴ *Myrl Nix (Earl Nix)*, 15 ECAB 125, 126 (1963).

⁵ *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

⁶ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

⁷ *Charles W. Downey*, 54 ECAB 421 (2003).

ANALYSIS

The Office accepted that on June 7, 2006 the employee sustained left median nerve entrapment and left ulnar nerve entrapment due to unscrewing a frozen lug nut on a wheel while changing a flat tire. Appellant claimed that the employee's death on February 16, 2009 was related to his accepted employment injuries, but she did not submit sufficiently rationalized medical evidence to establish that the accepted conditions contributed to the employee's death.

On February 16, 2009 Dr. Bush, an attending Board-certified internist, advised that the immediate causes of the employee's death were failure to thrive and peripheral vascular disease. Other significant conditions were neuropathy and renal insufficiency. On May 27, 2009 he stated that the employee's accepted left hand injury with neuropathy pain contributed to a diagnosis of depression resulting in a "failure to thrive" and death on February 16, 2009. Dr. Bush did not provide sufficient medical rationale to support his opinion that the employee had depression as a consequence of his left-sided neuropathy. His opinion is not based on a complete factual and medical history because he did not provide any notable discussion of the employee's work-related left arm and hand conditions or explain why they were sufficient to contribute to depression. Dr. Bush did not provide any review of the employee's psychiatric history and he did not adequately explain how the employee's psychiatric condition was not due to factors other than his left arm and hand pain. Even if it were accepted that the employee's depression was work related, Dr. Bush did not explain how the depression contributed to the employee's death, particularly in light of the other medical conditions identified at the time of death.

In a January 20, 2009 report, Dr. Kuhn, a clinical psychologist, described her initial evaluation of the employee on September 26, 2008 for symptoms of depression. She noted that the employee had difficulty adjusting to a long-term care facility with multiple symptoms. Dr. Kuhn mentioned the June 7, 2006 work injury and stated that it was plausible that the hand injury and concomitant pain might have been related to the diagnosed depression. However, this opinion on causal relationship is of limited probative value because it is speculative in nature. Dr. Kuhn did not provide a complete history of the employee's work-related left arm and hand condition or his psychiatric condition. She did not adequately explain what factors contributed to the diagnosis or whether his placement in a long-term care facility related to the subsequently diagnosed depression. In a November 9, 2007 report, Dr. Carlson, an attending Board-certified internist, noted that the employee had left hand pain. She opined that the pain disrupted sleep and the sleep disruption resulted in depression. Dr. Carlson also did not provide adequate medical rationale in support of her conclusion on causal relationship. She did not describe any findings on examination or diagnostic testing that addressed the severity of the employee's left arm and hand conditions or explain how other doctors related to the employee's depression.⁸

For these reasons, appellant did not show that the employee's death on February 16, 2009 was a consequence of his accepted employment injuries and the Office properly denied the claim for survivor's benefits.

⁸ On appeal, appellant argued that a consequential chain between the employee's depression and work factors was shown by the fact that his mood worsened after he sustained his work injury. However, appellant's opinion on medical matters would be of no probative value.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the employee's death on February 16, 2009 was related to his accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2009 is affirmed.

Issued: October 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