

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

E.C., claiming as widow of W.C., Appellant)

and)

TENNESSEE VALLEY AUTHORITY,)
BROWNS FERRY NUCLEAR PLANT,)
Decatur, AL, Employer)

**Docket No. 10-1554
Issued: April 1, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 25, 2010 appellant filed a timely appeal of the April 26, 2010 merit 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 to review the merits of this case.

ISSUE

The issue is whether appellant established that the employee's death on November 4, 2009 was causally related to his accepted employment injuries.

FACTUAL HISTORY

The Office accepted that on May 25, 1976 the employee, then a 43-year-old painter, sustained a back strain when he stooped over scaffolding while carrying a five-gallon bucket of

paint.¹ It also accepted that on August 5, 1981 he sustained an abrasion of the right flank, a lumbar contusion and strain and aggravation of spondylolisthesis when he slipped and fell on water on the floor as he reached for a scaffold.²

The employee died on November 4, 2009 and on November 18, 2009 appellant filed a claim for compensation (Form CA-5) due to the death of her husband. The form was signed by Dr. Don E. Beach, an attending Board-certified family practitioner, who indicated that the employee's death was caused by endstage cerebrovascular accident (CVA). Dr. Beach also advised that unstable angina leading to a myocardial infarction, chronic obstructive pulmonary disease (COPD) and alcoholic dementia contributed to the employee's death. Appellant submitted a marriage certificate and an itemized list of funeral expenses.

By letter dated December 2, 2009, the Office advised appellant about the type of medical evidence needed to establish her claim.

In a December 8, 2009 medical report, Dr. Beach advised that the employee was hospitalized one month earlier due to pneumonia which was due to his employment-related back injury. His condition became so bad that he could no longer move secretions which resulted in his pneumonia. The employee also had COPD with his asbestosis.

A November 12, 2009 death certificate provided that the immediate cause of the employee's death was endstage CVA.

In reports dated April 8 through September 8, 2009, Dr. George W. Evans, Board-certified in nuclear medicine, reviewed the medical and social background. He listed his findings on physical, neurological and psychological examination. Dr. Evans advised that the employee had chronic airway obstruction, benign essential hypertension, pain in the pelvis/hip joint, unspecified cerebrovascular disease, cough, uncomplicated senile dementia, lumbago and other functional stomach disorders. He also had long-term use of drugs.

On March 4, 2010 Dr. Eric Puestow, an Office medical adviser, reviewed the medical record. He advised that the employee's death was not caused by his employment-related back conditions. Dr. Puestow noted the death certificate finding that the cause of death was endstage stroke. He also noted the employee's history of COPD and dementia. Dr. Puestow stated that none of these conditions were related to the employment-related conditions. He concluded that it was more likely that the employee's pneumonia was exacerbated by his COPD than by the accepted back conditions.

In a December 8, 2009 report, Dr. Beach reiterated his opinion that the employee's pneumonia was caused by his employment-related back injury. Following the accepted injury, he had no mobility and was bed bound until his death.

¹ The employee filed a traumatic injury claim (Form CA-1) for the May 25, 1976 accepted injury which was assigned File No. xxxxxx834.

² The employee filed a Form CA-1 for the August 5, 1982 accepted injuries which was assigned File No. xxxxxx648. The Office combined this claim with File No. xxxxxx834 into a master claim assigned File No. xxxxxx648.

In an April 26, 2010 decision, the Office denied appellant's claim for death benefits, finding that the weight of the medical evidence rested with Dr. Puestow's March 4, 2010 opinion.

LEGAL PRECEDENT

The 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.³

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.⁴ However, an award of compensation in a survivors' 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.⁵

ANALYSIS

Appellant claimed that the employee's death on November 4, 2009 from endstage CVA was causally related to his accepted employment-related May 25, 1976 back strain and August 5, 1981 abrasion of the right flank, lumbar contusion and strain and aggravation of spondylolisthesis. This cause of death was verified by the November 12, 2009 death certificate. The Board finds that appellant has not established that the employee's death was caused by his accepted employment injuries.

In a brief report dated December 8, 2009, Dr. Beach opined that the employee's pneumonia which required hospitalization in November 2009 was caused by his employment-related back injury. He advised that following the accepted injury, the employee could no longer move secretions and was immobile and bed bound until his death. Dr. Beach did not, however, explain how the employee's pneumonia was caused by the May 25, 1976 and August 5, 1982 employment injuries. Further, he did not specifically describe the mechanism by which pneumonia resulting from the accepted injuries 33 years prior, respectively, caused or contributed to death. 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.⁶ The Board finds that Dr. Beach's reports are insufficient to establish appellant's claim.

³ 5 U.S.C. § 8133.

⁴ *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁵ *Jimmy Zenny (Ingrid Hall Zenny)*, 54 ECAB 577 (2003).

⁶ *See T.M.*, Docket No. 08-975 (issued February 6, 2009).

Dr. Evans' reports dated April 8 through September 8, 2009 advised that the employee had chronic airway obstruction, benign essential hypertension, pain in the pelvis/hip joint, unspecified cerebrovascular disease, cough, uncomplicated senile dementia, lumbago and other functional stomach disorders. He stated that the employee had long-term use of drugs. The Board notes that the Office has not accepted any of the diagnosed conditions. For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship.⁷ Dr. Evans did not attribute the employee's medical problems prior to his death to the accepted employment conditions. Moreover, he did not provide an opinion addressing how the diagnosed conditions caused the employee's death.⁸ The Board finds, therefore, that Dr. Evans' reports fail to establish that the employee's accepted back conditions caused or contributed to his demise.

Dr. Puestow, an Office medical adviser, reviewed the medical record and opined that the employee's death was not caused by his employment-related back conditions. He advised that the employee's COPD and dementia were not causally related to the accepted conditions. Dr. Puestow stated that it was more likely that his pneumonia was exacerbated by COPD than by the accepted conditions. Dr. Puestow did not attribute the employee's death to the accepted back conditions, but instead to his pneumonia.

In the absence of a well-reasoned medical opinion soundly explaining how the employee's death resulted from his May 25, 1976 and August 5, 1982 employment-related back conditions, the Board finds that appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant did not establish that the employee's death on November 4, 2009 was causally related to his accepted employment injuries.

⁷ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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