United States Department of Labor
Employees' Compensation Appeals Board

K.A., claiming as widow of S.A., Appellant	)	
and	)	
DEPARTMENT OF DEFENSE, DEFENSE EDUCATION ACTIVITY, Arlington, VA, Employer	)	**Docket No. 11-186** **Issued: November 1, 2011**

Appearances:
Brett E. Blumstein, Esq., for the appellant
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 November 3, 2010 appellant filed a timely appeal from the September 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying appellant's survivor's benefits claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she is entitled to receive survivor's benefits.

FACTUAL HISTORY

On September 9, 1980 the employee, then a 56-year-old teacher, filed an occupational disease claim alleging that he developed vocal fatigue and laryngitis as a result of classroom

[1] 20 C.F.R. § 8101 *et seq.*

conditions, including disciplinary problems, unmotivated students, racial unease, undiversified assignments and inadequate classroom facilities.[2] OWCP accepted that the employee sustained aggravation of chronic anxiety leading to vocal fatigue and aggravation of chronic mild laryngitis. The employee's claim was later expanded to include acceptance of post-traumatic stress disorder.[3]

In an April 8, 1984 report, Dr. Ronald L. Harmon, a Board-certified psychiatrist serving as an OWCP referral physician, stated that the employee reported that he had been satisfied with his teaching career prior to 1970 in that he had taught upper-level math to motivated students in high schools in Germany and France. He began to experience stress in 1970 when he started teaching low-level math to unmotivated and undisciplined junior high school students in the UK. Dr. Harmon reported his findings upon examination and testing and stated that the employee was an extremely bright individual who presented with a somewhat narcissistic personality. Dr. Harmon indicated that the employee considered his "misassignment" to the UK position as an insult to his abilities and stated that he believed that the employee had a psychiatric condition causally related to the circumstances of his federal employment. He diagnosed post-traumatic stress disorder with persistent and recurring depression mixed with anxiety and manifest by recurrent somatic symptoms resembling conversion type disorder when stressed; narcissistic personality style; and high blood pressure. Dr. Harmon recommended that the employee be considered for medical retirement on full disability as any attempts to place him under the same conditions that brought about his conversion symptoms would cause further impairment and probably more complication of physical problems such as high blood pressure.[4]

In a March 23, 1988 report, Dr. John Shneerson, an attending physician certified in respiratory and sleep medicine in the UK, indicated that he examined the employee on March 1, 1988 due to reported chest pain, breathlessness and voice difficulties. He noted that lung function tests were within normal limits, but that an exercise test confirmed that the employee had ischemic heart disease. Dr. Shneerson stated that the employee's ischemic heart disease was severe enough to prevent him from returning to full-time employment as a teacher. On March 13, 1990 Dr. Shneerson stated that the employee had anxiety-related vocal cord dysfunction and ischemic heart disease causing angina pectoris. He indicated that the employee

[2] Between 1959 and 1975, the employee taught mathematics for grades 7 through 12 at various institutions, including the U.S. Air Force Dependents School in Lakenheath, United Kingdom (UK). He was terminated from the employing establishment in 1975.

[3] After mid 1975, the employee worked for private and government bodies in various education-related positions including lecturer, tutor and curriculum advisor. Appellant was reinstated to federal employment and, beginning in February 1983, he was employed as a math teacher for the Department of Defense Dependents School in Zweibruecken, Germany. OWCP accepted that the employee suffered a recurrence of total disability on September 20, 1983. The employee was separated from the agency effective January 30, 1984 for failure to return to duty after the expiration of approved advance sick leave.

[4] In a February 6, 1984 report, Dr. Walter Fanburg, an attending Board-certified psychiatrist, stated that the employee's preexisting condition of anxiety resulting in voice fatigue was aggravated by classroom stress. Dr. Fanburg recommended that the employee be removed from his classroom duties.

had a low tolerance for stress and that his vocal cord dysfunction worsened when he was under stress. Dr. Shneerson posited that the employee was totally disabled.[5]

In an April 5, 1995 report, Dr. Shneerson indicated that the employee's vocal cord dysfunction was originally caused by classroom stress which was diagnosed in 1971 as vocal fatigue due to chronic anxiety. The employee had recurrent obsessional thoughts about the stress of having to teach again. Dr. Shneerson stated that there was a considerable risk that, if the employee were to teach again, his stress-related symptoms would worsen and in particular his vocal cord dysfunction would prevent him from speaking adequately. A return to teaching would also likely worsen the employee's angina through the stress that it would cause.

In a November 7, 2002 report, Dr. Shneerson stated that the employee was unable to teach due to vocal dysfunction and he recently had more frequent obsessional thoughts about the stress of having to teach again. He noted that the employee showed signs of becoming depressed and withdrawn due to this situation. The employee had chest pain on exertion at a frequency that was unchanged over the last seven years and had undergone insertion of coronary artery stents. Dr. Shneerson stated, "[The employee's] chronic anxiety and vocal cord dysfunction are unlikely to improve in the future and, in my opinion, because of this and quite separately from his heart condition, he will not be able to resume his employment as a teacher."

The employee died on September 11, 2007 and his death certificate listed the causes of death as myocardial infarction and ischemic heart disease. The medical portion of the certificate was completed by Dr. N. Hemmingway on September 12, 2007.

On November 2, 2007 appellant, the employee's widow, filed a claim for survivor's benefits due to the employee's death. On October 30, 2007 Dr. Shneerson completed a portion of the claim form. He indicated that the classroom stress that caused the employee's vocal cord dysfunction also led to aggravation of his nervous tension and anxiety. He noted that the employee had a recurrence of his reaction to stress that was documented by Dr. Fanburg in February 2004. The employee had recurrent obsessional thoughts and depression and his mental tension caused physical reactions. Dr. Shneerson stated that it was recognized that stress is an important contributing factor to ischemic heart disease and posited that the employee's ischemic heart disease (which had developed by 1995) caused his fatal myocardial infarction in September 2007.

In January 2008 OWCP asked Dr. Shneerson to clarify the relationship between the employee's accepted work conditions and his ischemic heart disease and September 2007 myocardial infarction. In his March 19, 2008 response, Dr. Shneerson indicated that, as he had mentioned on October 30, 2007, it was generally recognized that stress is an important contributing factor to ischemic heart disease. He indicated that he was attaching medical evidence showing that the employee had developed hypertension as early as August 1983 and angina pectoris as early as November 1985. The employee returned to teaching work in Germany in 1983 and experienced a recurrence of his reaction to stress similar to his classroom stress in 1971 for which he was compensated. Dr. Shneerson stated, "These observations show a

[5] In 1990 the employee underwent a coronary artery angioplasty following a long history of angina pectoris. In 1999 he had a coronary artery bypass operation for increasing angina.

relationship between classroom stress and the appearance of hypertension and ischemic heart disease from which he has subsequently died."

In a May 5, 2008 decision, OWCP denied appellant's claim for survivor's benefits on the grounds that she did not submit sufficient medical evidence to establish that the employee's death on September 11, 2007 was work related. OWCP found that the reports of Dr. Shneerson were not sufficiently rationalized to show that the accepted employment conditions contributed to the employee's death.

In an undated statement received on May 4, 2009, appellant requested reconsideration. She asserted that the medical evidence of record, particularly the reports of Dr. Shneerson, showed that the employee's stress-related work conditions contributed to the cardiac conditions which caused his death on September 11, 2007. Appellant submitted numerous administrative documents concerning the employee's teaching career, including a number from the early 1970s which dealt with disciplinary actions taken against him.

In an April 21, 2009 report, Dr. Shneerson indicated that he previously provided a medical opinion on March 19, 2008 but noted that since that time he had an opportunity to review an April 5, 1984 report of Dr. Harmon which gave details of the stress that the employee was exposed to while working as a teacher and the variety of problems that developed from this stress. He indicated that the employee had somatic symptoms at that time and also became hypertensive. The employee's angina pectoris was present by November 1985 and, on the balance of probabilities, was related to his hypertension. Dr. Shneerson stated, "There would therefore appear to be a causal link between his classroom stress, somatic manifestation of this such as hypertension and his ischemic heart disease from which he subsequently died." He indicated that it was clear from Dr. Harmon's report that the employee's stress was more severe than had been apparent from other medical records and noted that he fulfilled the criteria for post-traumatic stress disorder. The employee continued for many years to have recurrent obsessional thoughts about the stress of having to teach again and showed signs of becoming depressed and withdrawn as a result of these thoughts.

In an April 21, 2009 report, Dr. W.L. White, a certified surgeon in the UK, indicated that he had retired from medical practice in 1997 and noted that he had reviewed the employee's health records from the National Health Service at appellant's request. Dr. White provided a summary of the employee's medical records and his occupational and medical history. He noted the employee's frustration with having to teach math to unmotivated students and detailed the chronology of his stress-related symptoms and cardiac conditions.[6] Dr. White indicated that he would like to postulate that the employee, known to be very fit physically, suffered myocardial degeneration (confirmed by testing) as a result of very protracted adverse conditions in his school work between 1970 and 1983. He stated that he knew of a number of cases of myocardial insufficiency and degeneration that did not result in severe pain or collapse and that were said to be silent. In discussing the cause of the employee's heart disease, Dr. White stated that one must not overlook the sense of failure and lack of self-worth in a man whose attempts to return to

[6] Dr. White indicated that hypertension was observed as early as March 1983 and that angina pectoris was observed as early as November 1985.

work were thwarted by the return of conversion-type symptoms of vocal dysfunction and anxiety/depression. Dr. White stated:

> "Again we ask the question -- was the patient's heart condition work related? In 1985 we note that the U.S. Department of Labor ruled that the patient's anxiety was stress related and work related and awarded worker's compensation backdated to 1975…. His vocal symptoms were relieved in 1984 by no further contact with the classroom but his heart condition did not go away and slowly progressed over the subsequent years. In the absence of any obvious organic or medical factors we are left with the diagnosis of work-related, post-traumatic stress disorder…. So this did not go away with lack of classroom contact but permanently affected his personality. He lost drive and sat around without direction for long periods, suffered from short-lived rage attacks and was subject to anxiety/depression…. Finally as the family doctor, I postulate that in the absence of any organic or medical cause the patient's heart condition arose in the teaching environment as part of the chronic post-traumatic stress disorder and progressed slowly in an otherwise very fit man until the need for cardiac surgery in 1990."

In an undated report received on May 4, 2009, Dr. Richard O'Flynn, a certified psychiatrist in the UK, indicated that his report was a result of an interview with appellant during which he reviewed the employee's personal and psychological history. Dr. O'Flynn noted that Dr. Harmon diagnosed the employee with post-traumatic stress disorder in 1984, but posited that contemporary American and European practice would not use this diagnosis for his condition. He indicated that there was clear evidence that the employee would now be described as suffering in 1984 from a depressive disorder of moderate severity with prominent anxiety symptoms (or major depressive disorder, recurrent). Dr. O'Flynn stated that, after 1984, the employee did not receive any form of psychiatric or psychological treatment and, according to appellant, his depressive and anxiety symptoms remained prominent and frequently disabling. He indicated that it was well recognized that there was "a strong correlation between untreated or chronic depression and the development of hypertension [and] a number of other physical disorders." Dr. O'Flynn stated that there was no evidence that the employee had other risk factors for hypertension (such as general medical conditions or strong family history) and noted, "It is therefore a reasonable hypothesis to advance that [the employee's] hypertension was associated with his chronic and untreated depressive illness."

In an August 4, 2009 decision, OWCP affirmed its May 5, 2008 decision indicating that the opinions of Dr. Shneerson, Dr. White and Dr. O'Flynn were not sufficiently well rationalized to show that the employee's death was work related.

In a June 16, 2010 statement, appellant, through counsel, requested reconsideration of her claim. She argued that a new report of Dr. Shneerson contained medical rationale explaining why the employee's death was related to his accepted employment injuries.

In a June 2, 2010 report, Dr. Shneerson indicated that the employee was under his care from March 1, 1988 until the time of his death and noted that he treated him for his ischemic heart disease and hypertension during this period in conjunction with other specialists.

Dr. Shneerson stated that he was aware of the stress that led to the employee's vocal cord dysfunction in that, starting in 1988, the employee told him details of the stress caused by his teaching job. He indicated that he later saw Dr. Harmon's April 5, 1984 report and found that his description of the employee's stress was in keeping with the description the employee provided to him. Dr. Shneerson noted that the opinion he provided in his April 21, 2009 report was based upon his own consultations and reports as well as on the reports of Dr. Harmon and other specialists. He stated:

> "It is well recognized that stress may lead to hypertension and cardiovascular disease, including ischemic heart disease. [The employee] was recognized to have hypertension as long ago as 1983 and developed angina in November 1985, which was around the time that he had a recurrence of his reaction to stress similar to the classroom episode in 1971 which was recognized by the Department of Labor. There is therefore both the general link between stress and cardiovascular disease which is well recognized and the specific temporal link in [the employee's] case between classroom stress and his hypertension and angina."

In a September 20, 2010 decision, OWCP affirmed its August 4, 2009 decision noting that the record continued to lack a rationalized medical report linking the employee's death to a work-related condition.

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.[7] This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[8] An award of compensation may not be based on surmise, conjecture or speculation.[9] 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.[10] The Board has held that the fact that a condition manifests itself or worsens during a period of employment[11] or that work activities produce symptoms revelatory of an underlying condition[12] does not raise an inference of causal relationship between a claimed condition and employment factors.

[7] *Gertrude T. Zakrajsek (Frank S. Zakrajsek)*, 47 ECAB 770 (1996); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

[8] *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

[9] *Myrl Nix (Earl Nix)*, 15 ECAB 125, 126 (1963).

[10] *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

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

[12] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

ANALYSIS

OWCP accepted that the employee sustained aggravation of chronic anxiety leading to vocal fatigue, aggravation of chronic mild laryngitis and post-traumatic stress disorder. The employee last worked for the employing establishment in the mid 1980s and, after his death on September 11, 2007, appellant, the employee's widow, filed a claim for survivor's benefits. Appellant alleged that the employee's accepted emotional conditions contributed to the causes of death listed on his death certificate, myocardial infarction and ischemic heart disease.

The Board finds that appellant did not submit sufficient medical evidence to establish her claim for survivor's benefits. She did not submit rationalized medical evidence showing that the accepted employment conditions contributed to the employee's death.

In an October 30, 2007 report, Dr. Shneerson, an attending physician certified in respiratory and sleep medicine in the UK, indicated that the classroom stress that caused the employee's vocal cord dysfunction also led him to develop recurrent obsessional thoughts and depression which in turn caused physical reactions. Dr. Shneerson stated that it was recognized that stress is an important contributing factor to ischemic heart disease and posited that the employee's ischemic heart disease caused his fatal myocardial infarction in September 2007. In a March 19, 2008 report, he noted that the employee returned to teaching work in Germany in 1983 and experienced a recurrence of his reaction to stress similar to his classroom stress in 1971. Dr. Shneerson stated that these observations show a relationship between classroom stress and the appearance of hypertension and ischemic heart disease from which the employee died.

In an April 21, 2009 report, Dr. Shneerson stated that he had reviewed an April 5, 1984 report of Dr. Harmon, a Board-certified psychiatrist who served as an OWCP referral physician, and found that this report showed that the employee's work-related stress was more severe than had been apparent from other medical records. Dr. Shneerson indicated that the employee's angina pectoris was present by November 1985 and was related to his hypertension which was first reported in 1983. He stated that, therefore, there would appear to be a causal link between the employee's classroom stress and the hypertension and ischemic heart disease from which he died. On June 2, 2010 Dr. Shneerson clarified that his knowledge of the employee's work-related stress was not only based on Dr. Harmon's April 5, 1984 report but also was based on his own discussions with the employee since 1988 and the other medical evidence of record. He noted that the employee had a recurrence of his accepted emotional conditions in 1983 around the time that his cardiac conditions were developing and stated that, therefore, there was general link between stress and cardiovascular disease as well as the specific temporal link in the employee's case between classroom stress and his hypertension and angina.

The Board finds that these reports of Dr. Shneerson are not sufficiently well-rationalized to show that the employee's accepted work injuries contributed to his death on September 11, 2007. The main thrust of Dr. Shneerson's argument is that an employment connection between the employee's accepted conditions and his death is shown by the fact that the employee starting developing cardiac conditions (hypertension in 1983 and angina pectoris in 1985) during a period when he was experiencing stress from his teaching job with the employing establishment. However, the Board has held that the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between

a claimed condition and employment factors.[13] Such a causal connection can only be made by the submission of rationalized medical evidence, but Dr. Shneerson did not provide such rationale in his reports. His opinion on causal relationship is only general in nature and does not adequately address the specific circumstances of the employee's case. The Board notes that it has not been accepted that the employee sustained a cardiac condition due to work factors and the medical evidence of record does not establish the existence of such a work-related condition.

Dr. Shneerson asserted that the accepted condition of post-traumatic stress disorder contributed to the employee's cardiac condition, but he did not provide any notable discussion of the nature and course of this condition or of the employee's other accepted conditions. Moreover, he did not provide any significant discussion of the employee's cardiac condition or explain the medical process through which the accepted employment conditions could have contributed to his cardiac condition.[14] It is further noted that more than 20 years passed between the time that the employee last worked for the employing establishment (in the mid 1980s) and when he died on September 11, 2007. Dr. Shneerson did not adequately explain how the employee's cardiac condition continued to be influenced by work factors for such an extended period after he had been removed from the stress in the workplace.[15]

In an April 21, 2009 report, Dr. White, a certified surgeon in the UK, indicated that he had retired from medical practice in 1997 and noted that he had reviewed the employee's health records from the National Health Service at appellant's request. Dr. White found a relationship between the employee's employment conditions and his death on September 11, 2007 by providing an argument similar to Dr. Shneerson's, *i.e.*, by pointing out that the employee first developed cardiac conditions during a period that he was exposed to stress in the workplace. Dr. White discussed the employee's reported stress from teaching and stated, "I postulate that in the absence of any organic or medical cause the patient's heart condition arose in the teaching environment as part of the chronic post-traumatic stress disorder and progressed slowly in an otherwise very fit man until the need for cardiac surgery in 1990." Dr. White's opinion on causal relationship has the same flaws as Dr. Shneerson's opinion because he also did not provide a rationalized opinion explaining the link between the employee's accepted employment conditions and his death. It is not sufficient for Dr. White to merely point out a temporal relationship between the time when the employee developed cardiac conditions and a period when he sustained stress in the workplace. Moreover, the provision of medical rationale is especially necessary in Dr. White's case as he had not examined the employee in at least 12 years given the fact that he retired in 1997.

In an undated report received on May 4, 2009, Dr. O'Flynn, a certified psychiatrist in the UK, indicated that his report was a result of an interview with appellant during which he reviewed the employee's personal and psychological history. He asserted that the employee

[13] *See supra* note 11.

[14] In fact, the record does not contain any medical records directly describing the employee's myocardial infarction in September 2007.

[15] Even if it were accepted that the employee's hypertension and angina pectoris were work related, Dr. Shneerson did not adequately explain how these conditions led to the fatal myocardial infarction the employee suffered in September 2007.

actually had a major recurrent depressive disorder rather than the accepted condition of post-traumatic stress disorder. Dr. Flynn also noted the general relationship between stress and cardiac conditions, but like Dr. Shneerson and Dr. White he failed to provide a rationalized medical opinion explaining how the accepted employment conditions contributed to specific medical conditions which in turn contributed to the employee's death.[16]

On appeal, counsel argues that the employee's death was work related because the cardiac conditions which caused his death were a natural consequence of his accepted emotional conditions, including post-traumatic stress disorder.[17] While counsel has accurately stated the appropriate law, the record does not contain, for the reasons described above, a well-rationalized medical opinion establishing that the employee's accepted conditions contributed to his death.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she is entitled to receive survivor's benefits.

[16] Such medical rationale is also especially necessary in Dr. O'Flynn's case as it is unclear whether he ever examined the employee.

[17] For this proposition, counsel cited *Karen C. Schaffer*, 39 ECAB 1219 (1988).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 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