United States Department of Labor
Employees' Compensation Appeals Board

L.B., claiming as widow of G.B., Appellant	)	
and	)	**Docket No. 10-1374**
	)	**Issued: September 19, 2011**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Los Angeles, CA, Employer	)	

Appearances:
Linda L. Harper, for the appellant
No appearance, for the Director

Oral Argument June 21, 2011

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 22, 2010 appellant timely appealed the March 11, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for survivor's benefits. Pursuant to the Federal Employees' Compensation Act[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 established a causal relationship between the employee's accepted December 23, 1996 employment injury and his death on August 24, 2008.

FACTUAL HISTORY

The employee, a former revenue officer, last worked for the employing establishment in February 2000. Prior to his death, OWCP accepted the employee's claim for depressive disorder

[1] 5 U.S.C. §§ 8101-8193.

and prolonged depressive reaction. The accepted conditions arose on or about December 23, 1996.[2] The employee died on August 24, 2008, at the age of 56.[3] His death certificate identified hypertension as the immediate cause of death and asthma as a significant condition contributing to death. An autopsy was not performed.

Appellant, the employee's widow, filed a claim (Form CA-5) on October 26, 2008. The employee's former psychologist, Dr. Daniel R. Lott, diagnosed employment-related post-traumatic stress disorder (PTSD), which reportedly exacerbated the identified primary cause of death, hypertension.[4] In a report dated January 24, 2009, Dr. George D. Karalis, a psychiatrist, explained that PTSD was an umbrella diagnosis that subsumed the accepted conditions of depressive disorder and prolonged depressive reaction. As such, he did not disagree with Dr. Lott's diagnosis of PTSD. According to Dr. Karalis, the difference between Dr. Lott's diagnosis and the conditions formally accepted by OWCP was merely semantic, not substantive. He indicated that depression can worsen asthma and or hypertension. Dr. Karalis described a vicious cycle of depression then asthma on hypertension, followed by more depression and asthma/hypertension, and an ultimately fatal incident of asthma/hypertension precipitated by depression. He stated that, but for the accepted illness of depression (PTSD), the employee would not have died.

In a decision dated February 2, 2009, OWCP denied the survivor's claim. However, the Branch of Hearings & Review set aside OWCP's decision on September 15, 2009. The hearing representative found that the case warranted further development.[5] OWCP was directed to refer the case to an appropriate Board-certified specialist on hypertension to determine if the employee's depression contributed to his death.

In a report dated February 9, 2010, Dr. Ana M. Andia, a Board-certified psychiatrist and OWCP referral physician, reviewed the record and found that the employee had depressive disorder and anxiety disorder, but not PTSD. She noted the employee also had a history of alcohol abuse, and that elevations in blood pressure can be caused by either excessive alcohol

[2] OWCP accepted, *inter alia*, that the employee was required to work in high-crime areas. The employee also had been subjected to racial epithets and other derogatory remarks, and was threatened with physical violence, including a number of bomb threats and one explosion. He had also been threatened with a taxpayer civil suit and had numerous employee grievances filed against him while working as a supervisory revenue officer. OWCP found that a number of other alleged employment incidents were either unrelated to the employee's particular employment duties or unsubstantiated.

[3] The employee had received periodic rolls payments for temporary total disability from 2002 until his death in August 2008.

[4] Dr. Lott treated the employee for more than eight years prior to his death. In a November 17, 2008 report, he acknowledged that he was not a medical doctor, and thus, could not comment on the direct cause of death -- hypertension. As to the effects of the employee's PTSD, Dr. Lott stated that it seemed obvious that any condition that chronically generated fear, stress, depression, anxiety, emotional lability and withdrawal would serve to worsen hypertension. In a December 22, 2008 report, Dr. Lott reiterated that the employee's employment-related PTSD, with depression and anxiety, exacerbated his hypertension.

[5] Dr. Lott and Dr. Karalis both testified before the Branch of Hearings & Review on June 30, 2009.

consumption or withdrawal from alcohol. Dr. Andia found there was insufficient evidence in the record to conclude that the employee's depression contributed to his death from hypertension.

In a decision dated March 11, 2010, OWCP denied appellant's claim for survivor's benefits.

LEGAL PRECEDENT

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.[6] 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 demonstrating a causal relationship.[8] The physician's opinion must be based on a complete factual and medical background, must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the relationship between the employee's death and his previous employment.[9]

FECA provides that, if there is disagreement between the physician making the examination for OWCP and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[10]

ANALYSIS

The Board finds that this case is not in posture for decision due to an unresolved conflict in medical opinion. Dr. Andia, a referral physician, found there was insufficient evidence to related the employee's accepted depression to his death due to hypertension. In contrast, Dr. Karalis reviewed certain medical evidence at appellant's request and opined that, but for the accepted illness of depression, the employee would not have died. Both physicians provided rationale for their respective findings. For a conflict to arise under FECA the opposing opinions must be of virtually equal weight and rationale.[11] The Board finds there is an unresolved conflict in medical opinion between Dr. Andia and Dr. Karalis. The case will be remanded to OWCP for

[6] 5 U.S.C. §§ 8102(a) and 8133.

[7] *L.R.*, 58 ECAB 369, 375 (2007).

[8] *Id.*

[9] *Id.*

[10] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[11] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

referral to an impartial medical examiner.[12] After such further development of the case record as OWCP deems necessary, a *de novo* decision shall by issued.

CONCLUSION

The case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: September 19, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[12] At oral argument, appellant's representative indicated that OWCP improperly referred the case to a psychiatrist, Dr. Andia, rather than a "specialist on hypertension" as directed by the hearing representative. While OWCP did not precisely follow the hearing representative's September 15, 2009 instructions, the Board does not believe Dr. Andia's opinion should be dismissed based solely on a technicality. Because of the confluence of psychiatric and physiologic conditions, on remand OWCP may choose to refer the case to both a psychiatrist and a Board-certified internist with a subspecialty in cardiovascular disease. Given the primary cause of death was hypertension, input from an internist might prove particularly helpful in resolving the current issue.