

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

B.J., claiming as widow of P.J., Appellant)	
)	
and)	Docket No. 11-1822
)	Issued: April 9, 2012
U.S. POSTAL SERVICE, POST OFFICE,)	
Memphis, TN, Employer)	

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 2, 2011 appellant, through her attorney, filed a timely appeal of a June 28, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying her claim for widow's benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that the employee's death was due to his accepted employment-related conditions.

FACTUAL HISTORY

This case has previously been before the Board. OWCP accepted that the employee, a 53-year-old letter carrier sustained aggravation of major depression due to factors of his federal employment by decision dated October 17, 1988. The employee died on January 5, 2008. His

¹ 5 U.S.C. § 8101 *et seq.*

attending physician, Dr. Dolores M. BiGaetano, a Board-certified psychiatrist, listed the cause of death as Alzheimer's disease. She opined that depression contributed to his cognitive decline and indicated with a checkmark "yes" that the employee's death was due to his accepted depression and panic disorder. Dr. Darel A. Butler, a Board-certified neurologist, signed the employee's death certificate and listed the cause of death as Alzheimer's disease. OWCP referred the claim to a second opinion physician, Dr. Alain De La Chapelle, a Board-certified psychiatrist. On December 6, 2008 he opined that depression was a primary cause of the employee's death. In a supplemental report dated January 13, 2009, Dr. De La Chapelle stated that, while depressive disorder may have served as an accelerant in the progression of the employee's Alzheimer's symptoms, the depression did not accelerate the underlying disease process. By decision dated February 10, 2009, OWCP denied appellant's claim finding that Dr. De La Chapelle's report represented the weight of the medical evidence. In the August 4, 2010 decision, the Board found that there was an unresolved conflict of medical opinion evidence and remanded the case for additional development.² The facts and the circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.

On August 24, 2010 OWCP referred the case to Dr. Robert Granacher, a Board-certified psychiatrist with subspecialties in forensic psychiatry and geriatric psychiatry, for an impartial medical examination to determine if the accepted employment injury caused or contributed to the employee's death. In a report dated September 27, 2010, Dr. Granacher reviewed the statement of accepted facts and the medical evidence of record. He opined that the employee's death was not caused, aggravated, precipitated or accelerated by his accepted conditions of panic disorder, generalized anxiety or major depression. Dr. Granacher noted that the cause of death was Alzheimer's disease. He stated that the cause of Alzheimer's disease was amyloid precursor protein which caused the development of extracellular deposits of amyloid cascade hypothesis in the brain. Amyloid deposition in the brain produces neurofibrillary tangles leading to the degeneration of brain tissue and characteristic signs and symptoms of Alzheimer's disease. Dr. Granacher stated that there was no evidence that panic disorder, generalized anxiety or major depression produced an amyloid cascade. He opined that the employee had comorbid mental illnesses or mental illnesses that coexisted with each other without causal relationship and there was no scientific basis to conclude that depression could speed up the disease process or progression of Alzheimer's disease.

By decision dated October 8, 2010, OWCP denied appellant's claim finding that the weight of the medical evidence did not support a causal relationship between the employee's accepted conditions and his cause of death. Counsel requested a telephonic hearing on October 13, 2010 before an OWCP hearing representative.

Appellant testified at the hearing on March 21, 2011. She attributed the employee's death to his activities as shop steward at the employing establishment which she believed led to his chronic depression. Appellant stated that the employee died of depression. She also attributed the employee's death to his medication for panic disorders, Risperdal. Appellant alleged that the depression probably caused his dementia, but that Alzheimer's disease was not discussed during the employee's life. She stated that the employee had panic attacks and chronic

² Docket No. 10-36 (issued August 4, 2010).

depression for which he received compensation for 20 years. Appellant stated that she did not know that Alzheimer's disease was the correct diagnosis.

By decision dated June 28, 2011, OWCP's hearing representative found that appellant had not met her burden of proof in establishing that the employee's death was causally related to his federal employment. He noted that Dr. Granacher, as the impartial medical examiner, found that the employee's death was not work related, and that his work-related injury did not affect the cause of death which was Alzheimer's disease. The hearing representative noted that appellant attributed the employee's death to depression or medication for the treatment of this condition, but did not provide supportive medical evidence.

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 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 medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

³ *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989).

⁴ *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

ANALYSIS

On prior appeal the Board found that there was a conflict of medical evidence regarding the cause of the employee's death and remanded the case for OWCP to refer the appropriate documents to an impartial medical examiner to resolve the conflict. OWCP referred the case to Dr. Granacher to act as the impartial medical examiner. Dr. Granacher completed a report on September 27, 2010 and reviewed the medical evidence and the statement of accepted facts. He opined that the employee's death was not related to his accepted employment conditions. Dr. Granacher noted that the cause of death was Alzheimer's disease and explained the protein process which led to the degeneration of brain tissue which was characteristic of Alzheimer's disease. Dr. Granacher stated that there was no scientific basis to attribute appellant's Alzheimer's disease and subsequent death to his conditions of depression, panic disorder or generalized anxiety and added that the psychiatric conditions coexisted without any causal relationship.

The Board finds that the weight of the medical evidence rests with Dr. Granacher's well-reasoned report. Dr. Granacher based his report on a proper factual background, the statement of accepted facts, reviewed the medical evidence of record and offered a clear opinion that the employee's death was not caused or contributed to by his accepted emotional conditions. He offered medical reasoning in the form of an explanation of the development and progression of Alzheimer's disease and further noted that there was no scientific evidence supporting any relationship between depression, anxiety or panic disorders and the accepted cause of death, Alzheimer's disease. Dr. Granacher further explained that he believed that the employee had concurrent psychiatric illnesses with no causal relationship. Based on this report, the Board finds that appellant has not met her burden of proof in establishing a causal relationship between the employee's death and his accepted employment-related conditions.

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 has not met her burden of proof to establish that the employee's death was causally related to his accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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