United States Department of Labor
Employees' Compensation Appeals Board

L.B., widow of G.B., Appellant	)	
and	)	
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Los Angeles, CA, Employer	)	**Docket No. 12-699** **Issued: August 1, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 8, 2012 appellant timely appealed the January 10, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for survivors' benefits. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 injury and his August 24, 2008 death.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case was previously before the Board.[2] The employee, a former revenue officer, had an accepted claim for depressive disorder and prolonged depressive reaction, which arose on or about December 23, 1996. He last worked for the employing establishment in February 2000. The employee died on August 24, 2008. He was 56 years old when he died. According to the death certificate, the immediate cause of death was hypertension. Asthma was listed as a significant condition contributing to death.[3]

When the case was last on appeal, OWCP had denied appellant's claim for survivors' benefits (Form CA-5). By decision dated September 19, 2011, the Board set aside OWCP's March 11, 2010 decision because of an unresolved conflict in medical opinion. Dr. George D. Karalis, a psychiatrist, opined that, but for the accepted illness of depression, the employee would not have died.[4] In contrast, Dr. Ana M. Andia, a Board-certified psychiatrist and OWCP referral physician, found there was insufficient evidence in the record to conclude that the employee's depression contributed to his death from hypertension.[5] In light of the conflict between Dr. Andia and Dr. Karalis, the Board remanded the case to OWCP for referral to an impartial medical examiner (IME). The Board's September 19, 2011 decision is incorporated herein by reference.

On remand, OWCP referred the case to Dr. Angela M. Callender, a Board-certified psychiatrist. In a report dated December 16, 2011, Dr. Callender indicated that she reviewed numerous records, but focused much of her attention on the clinical records provided by the employee's former psychologist, Dr. Daniel R. Lott.[6] Based on her review of the employee's medical records, she found documentation to support the psychiatric diagnoses of depression, anxiety disorder and alcohol dependence. Dr. Callender also indicated that it was reasonable to state that the employee's work conditions caused both depression and anxiety. As to whether there was a causal relationship between the employee's accepted conditions and his death from hypertension, she expressed agreement with Dr. Andia that there was insufficient evidence to conclude that the employee's depression caused his death by aggravating his hypertension. Dr. Callender noted that, apart from his depression, the employee had several risk factors that must be taken into consideration with regards to his hypertension. These included cigarette smoking, alcohol dependence and obesity. Dr. Callender also questioned Dr. Karalis' stated

[2] Docket No. 10-1374 (issued September 19, 2011).

[3] An autopsy was not performed.

[4] Dr. Karalis reviewed certain medical evidence at appellant's request. He indicated that depression can worsen asthma and/or hypertension. Dr. Karalis described a "vicious cycle" of depression then asthma/hypertension, followed by more depression and asthma/hypertension and an ultimately fatal incident of asthma/hypertension precipitated by depression.

[5] Dr. Andia also noted the employee had a history of alcohol abuse. She explained that elevations in blood pressure can be caused by either excessive alcohol consumption or withdrawal from alcohol.

[6] Dr. Lott treated the employee for more than eight years prior to his death. He diagnosed employment-related post-traumatic stress disorder (PTSD), which reportedly exacerbated the identified primary cause of death, hypertension.

opinion that depression can worsen asthma and/or hypertension. She noted that a correlation between stress and long-term hypertension had not been made and there were conflicting reports in the hypertension literature about the correlation between depression and hypertension. Dr. Callender also indicated that the literature did not support Dr. Karalis' interpretation of bi-directional risk or a so-called recurring "vicious cycle" between asthma, depression and hypertension. Lastly, she noted that the referenced data Dr. Karalis relied upon assessed risk, but not cause and effect.

In a January 10, 2012 decision, OWCP denied appellant's survivors' claim based on the IME's December 16, 2011 report.

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.[7] 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.[8] This burden includes the necessity of furnishing rationalized medical opinion evidence demonstrating a causal relationship.[9] 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.[10]

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.[11] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[12]

ANALYSIS

The Board previously declared a conflict in medical opinion based on the differing views of Dr. Andia and Dr. Karalis. Because of this conflict in medical opinion, OWCP referred the case to Dr. Callender to resolve the question of whether the employee's accepted emotional condition either caused or contributed to his August 24, 2008 death. In her December 16, 2011 report, Dr. Callender sided with Dr. Andia in finding there was insufficient evidence to conclude that the employee's depression caused his death by aggravating his hypertension.

[7] 5 U.S.C. §§ 8102(a) and 8133.

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

[9] *Id.*

[10] *Id.*

[11] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

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

Where OWCP has referred the case to an IME to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[13]

Dr. Callender, the IME, provided a well-reasoned report based on a proper factual and medical history. She accurately summarized the relevant medical evidence, and relied on the latest statement of accepted facts, which included various employment incidents considered compensable and noncompensable, as well as those alleged to have occurred but unsubstantiated. Dr. Callender provided an exhaustive and comprehensive review of the employee's medical records. Her report included detailed findings and medical rationale supporting her opinion. As the IME, Dr. Callender's opinion was entitled to determinative weight.[14] The Board finds that OWCP properly denied appellant's survivors' claim on the basis of the weight of the evidence, as represented by the IME's December 16, 2011 report.

CONCLUSION

Appellant failed to establish that the employee's accepted emotional condition -- depressive disorder and prolonged depressive reaction -- either caused or contributed to his August 24, 2008 death.

[13] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board