United States Department of Labor
Employees' Compensation Appeals Board

D.L., claiming as widow of R.L., Appellant	)	
and	)	**Docket No. 11-1993**
	)	**Issued: July 13, 2012**
DEPARTMENT OF THE NAVY, NAVAL INTELLIGENCE COMMAND, Washington, DC, Employer	)	

Appearances:
John L. Whitehouse, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 7, 2011 appellant, through her attorney, filed a timely appeal from an August 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 October 18, 1983 lumbosacral strain and his death on April 1, 2010.

On appeal, appellant's attorney contends that issues raised in a July 17, 2011 letter to an OWCP hearing representative were not addressed in the August 16, 2011 decision.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 8, 1983 the employee, then a 40-year-old warehouseman, sustained an employment-related lumbosacral strain when he fell 10 feet off the side of a truck. He missed intermittent periods of work until April 6, 1984, and did not work after that date. In a November 7, 1983 report, Dr. Anne Spitzer, an attending physician, diagnosed acute low back pain, obesity and hypertension by history. The employee was placed on the periodic compensation rolls. He retired on disability, effective April 8, 1984, and elected FECA benefits. A herniated disc at L5-S1 was also accepted.

In reports dated August 17, 1988, December 12, 1989 and April 15, 1992, Dr. Francis M. Howard, a Board-certified orthopedic surgeon, diagnosed L5-S1 lumbar radiculopathy and generalized arteriosclerosis with angina. He recommended that the employee lose weight and advised that he was totally disabled due to both diagnosed conditions. By report dated March 7, 2005, Dr. James D. Shortt, Board-certified in orthopedic surgery, noted the history of injury and stated that the employee had not been asked to see a physician for 10 years. He reported that the employee used a motorized cart due to back pain and was further immobilized by a heart problem, noting that he had a nonwork-related heart problem that included a significant myocardial infarct two years prior. Dr. Shortt provided physical examination findings and diagnosed a lumbar sprain and a likely herniated disc, indicating that these conditions were caused by the employment injury. He advised that the employee was not employable, especially when considering his cardiac and renal problems. In reports dated February 28, 2007 and February 28, 2008, Dr. Shortt advised that the employee's condition had not changed and that he would be totally disabled for the rest of his life. On February 19, 2009 he reported that the employee had had at least one heart attack in the last year and was presently using oxygen. Dr. Shortt advised that there was no change in the employee's low back injury, and that he was unemployable for that reason alone and his cardiac condition only added to his disability. On February 24, 2010 he advised that the employee reported a total of five myocardial infarcts and a very significant stroke in March 2009 with aphasia. Dr. Shortt indicated that the employee had lost 50 pounds, to his benefit and provided physical examination findings. He diagnosed chronic low back pain with an L5-S1 disc protrusion and bilateral lower extremity radiculopathy that was totally disabling and due to the October 18, 1983 employment injury.

The employee died on April 1, 2010.[2] On May 15, 2010 appellant filed a Form CA-5, claim for compensation by widow. She submitted medical evidence regarding the employee's medical conditions dated February 22, 1984 to September 30, 2009. These included: an August 22, 2001 cardiac catheterization that demonstrated two vessel coronary artery disease; severe left ventricular systolic dysfunction, nonischemic and mild pulmonary hypertension. An August 9, 2005 echocardiogram was technically limited and demonstrated left ventricular dysfunction, left ventricular hypertrophy, trivial mitral regurgitation and trivial tricuspid regurgitation. A January 14, 2008 echocardiogram additionally demonstrated Stage 1a diastolic dysfunction, mild to moderately dilated left atrium and aortic sclerosis. A September 30, 2009 echocardiogram demonstrated severely reduced overall left ventricular systolic function, trace mitral regurgitation and trace tricuspid regurgitation.

[2] The medical certificate does not list a cause of death.

In an April 28, 2010 report, Dr. Shortt advised that the employee had been seen on a yearly basis since March 7, 2005. He described the employment injury, indicating that the employee had sciatic symptoms down both legs and that his activities became very limited to the point that he had an almost totally sedentary existence and used a motorized scooter for mobility. Dr. Shortt advised that, as a result of the effect of the employment injury on the employee's lifestyle, he put on a great deal of weight, and that this led to a 2003 myocardial infarct with congestive heart failure and renal failure and subsequent myocardial infarcts. He concluded that the injury to the employee's back and subsequent lack of mobility and sedentary lifestyle played a major role in his weight gain and increased risk for cardiovascular disease. In a May 14, 2010 attending physician's report, Dr. Shortt advised that the direct cause of the employee's death was cardiopulmonary arrest secondary to coronary artery and peripheral vascular arteriosclerosis and that contributing causes were obesity and poor aerobic condition secondary to his chronic low back pain and sciatica. He indicated that the employee's death was due to the employment injury, stating that it caused an exacerbation of his underlying cardiovascular condition.

In a June 15, 2010 report, OWCP's medical adviser, Dr. Eric Puestow, Board-certified in internal medicine and endocrinology, found that there was no support that immobility leading to obesity was a significant contributory factor in the employee's death.

Dr. Laurence Levenberg, Board-certified in family medicine, provided a June 30, 2010 attending physician's report. He noted that the employee had chronic back pain due to an employment injury, and advised that he treated him for ischemic cardiomyopathy with severe left ventricular dysfunction and diabetes. Dr. Levenberg advised that the direct cause of the employee's death was secondary atherosclerotic cardiovascular disease, and sudden death with contributing causes of obesity, sleep apnea and diabetes. He indicated that the underlying cardiovascular disease was affected by the employee's limited mobility and sedentary lifestyle. In a July 2, 2010 attending physician's report, Dr. David Yamada, Board-certified in internal medicine and cardiovascular disease, noted the history of injury. He indicated that he provided the employee medical management for chronic conditions of coronary artery disease, atrial fibrillation, ischemic cardiomyopathy and hypertension. Dr. Yamada advised that the direct cause of death was cardiopulmonary arrest secondary to coronary artery disease and ischemic cardiomyopathy and that contributing causes were obesity, deconditioning, inability to exercise due to chronic back pain which was related to the employment injury. He opined that the employee's death was partly due to the employment injury. Appellant also submitted a May 10, 2010 report from Michael Blanchette, a nurse practitioner and copies of publications regarding dangers of lack of mobility.

On August 24, 2010 OWCP forwarded the medical record including a statement of accepted facts and a set of questions, to Dr. Charles Hollen, a Board-certified internist, for an opinion as to whether the employee's death was causally related to the employment injury. In a September 8, 2010 report, Dr. Hollen reviewed the medical record and reported that the employee died from a cardiopulmonary arrest due to ischemic cardiomyopathy, coronary artery disease and peripheral vascular disease. He noted further diagnoses of sleep apnea, atrial fibrillation and ventricular dysfunction and history of renal failure, stroke and five myocardial infarctions. Dr. Hollen opined that it was not probable that the employee died due to his work injuries as evidenced by his severe and diffuse vascular disease and that any diminished ability to exercise was not a substantial cause of his obesity, as it had been diagnosed as early as 1983. He

concluded that the employee's death was due to cardiovascular disease and that it was in no significant way related to or caused by the 1983 back injury, stating "there is no reasonable medical evidence to show such a connection."

By decision dated January 13, 2011, OWCP denied appellant's claim for survivor benefits, finding that the weight of the medical evidence rested with the opinion of Dr. Hollen.

On February 7, 2011 appellant requested a hearing that was held by telephone on June 1, 2011. At the hearing counsel argued that the employee's work injury caused a sedentary lifestyle that led to the development of obesity, hypertension, diabetes and cardiovascular disease and resulted in his death. He asserted that the opinions of Drs. Shortt, Levenberg and Yamada constituted the weight of the medical evidence. In a June 17, 2011 letter, counsel asserted that Dr. Hollen's report was insufficient to carry the weight of the medical opinion.

In an August 16, 2011 decision, OWCP's hearing representative affirmed the January 13, 2011 decision.

LEGAL PRECEDENT

An 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 or her employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a complete factual and medical background. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.[3] The mere showing that an employee was receiving compensation for total disability at the time of death does not establish that the death was causally related to federal employment.[4]

ANALYSIS

The Board finds that appellant has not established that the employee's 1983 employment injury was a contributing cause of his April 1, 2010 death. The weight of the medical evidence rests with the opinion of Dr. Hollen, who rendered a second opinion evaluation for OWCP. In a September 8, 2010 report, Dr. Hollen advised that the employee died from a cardiopulmonary arrest due to ischemic cardiomyopathy, coronary artery disease and peripheral vascular disease. He noted further diagnoses of sleep apnea, atrial fibrillation and ventricular dysfunction and a history of renal failure, stroke and five myocardial infarctions. Dr. Hollen opined that it was not probable that the employee died due to his work injuries. He explained that the employee had severe and diffuse vascular disease and that any diminished ability to exercise was not a substantial cause of his obesity, as it had been diagnosed as early as 1983. Dr. Hollen concluded that the employee's death was due to cardiovascular disease and that it was in no significant way related to or caused by the 1983 back injury, stating "there is no reasonable medical evidence to show such a connection."

[3] *L.R. (E.R.)*, 58 ECAB 369 (2007).

[4] *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

While appellant submitted a number of reports from attending physicians that were supportive of causal relationship, these were insufficient to meet appellant's burden. Dr. Shortt, an attending orthopedist, Dr. Yamada, an attending cardiologist and Dr. Levenberg, an attending family physician, all indicated that the employee's sedentary lifestyle was caused by the 1983 employment injury to his lower back and that this sedentary lifestyle contributed in some way to his development of obesity and cardiovascular disease, which led to his death. The Board, however, finds their opinions lack sufficient rationale to explain how the fall in 1983 was a contributing cause in the employee's April 1, 2010 death. The lack of rationale is important as Dr. Shortt's most recent reports conclude that appellant's heart condition was exacerbated by his work injury while Dr. Shortt's March 7, 2005 report advised that the employee's heart problem was not work related. As noted by Dr. Hollen, obesity was presented in 1983, and the employee had severe coronary artery and peripheral artery disease, as evidence by five myocardial infarctions.[5] The attending physicians' reports are therefore insufficient to establish that the 1983 work injury contributed to the employee's death.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the employee's death was due to a 1983 employment injury.

[5] The Board notes that the report of Mr. Blanchette is of no probative value as reports from a nurse practitioner are not considered medical evidence as these persons are not considered physicians under FECA. *Sean O'Connell*, 56 ECAB 195 (2004); *see* 5 U.S.C. § 8101(2). Likewise, excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case. *Roger G. Payne*, 55 ECAB 535 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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