

ISSUE

The issue is whether the employee's death on April 4, 2010 was causally related to his accepted employment injury.

FACTUAL HISTORY

On February 3, 1986 the employee, then a 62-year-old training officer, slipped on a deck and broke his right hip while in the performance of duty. OWCP accepted the claim for femoral neck fracture. The employee received compensation for wage loss from July 6, 1986 until his death on April 4, 2010.

The record before the Board contains medical records documenting the employee's hip treatment dating back to February 3, 1986. The employee underwent a total of three hip surgeries including a right total hip arthroplasty in 1992 and a right total hip revision on January 10, 2002 which were authorized by OWCP.

In a July 19, 2008 medical report, Dr. Thomas W. Arnold, a Board-certified neurologist, noted that the employee had a history of chronic renal failure since 1986. He also noted that the employee had related a past of kidney problems and that he was taken off several medications including Lyrica and Nortoptiline.

The employee died on April 4, 2010. The death certificate completed on April 27, 2010 by Dr. Yasmin Alishah, Board-certified in internal medicine, listed the immediate cause of death as pneumonia (health care associated) and the underlying cause of death as chronic kidney disease and cirrhosis with ascites.

On May 14, 2010 appellant filed a claim for compensation by widower (Form CA-5) alleging that the employee's death was causally related to the accepted 1986 employment injury.

By letter dated May 24, 2010, OWCP informed appellant that additional evidence was needed to support her claim.

In letters dated August 9 and November 28, 2010, appellant contended that the employee's death was caused by kidney failure due to the numerous medications he had to take for the many surgeries resulting from his original February 3, 1986 injury. She stated that the employee reinjured his right hip on October 12, 2009 as a result of his original February 3, 1986 work injury.

In support of her claim, appellant referenced a July 12, 1990 letter from Dr. Richard L. Ennis, a Board-certified orthopedic surgeon, who stated that the employee had been treated for a number of orthopedic problems after he fell at the employing establishment and fractured his right hip. The employee had avascular necrosis and degenerative arthritis of the hip as a direct result of his injuries, requiring him to take arthritis medication over a prolonged period of time. Dr. Ennis noted that, when using arthritis medication over a prolonged period of time, lab work must be completed to ensure that the medication does not have an adverse effect on the kidney or liver function. As a result, he ordered out-patient lab work as a result of the employee's hip injury to ensure that he was not developing any serious side effects from the medication.

Appellant also submitted an October 12, 2009 emergency room report from Dr. Mark P. Clemons, a Board-certified otolaryngologist, who reported that the employee sustained a closed head injury, nasal bone fracture and abrasion of multiple sites when he fell from an upright position while walking. Dr. Clemons noted that the employee had a past medical history of gout, gastroesophageal reflux disease, arthritis, hypertension and neuropathy of the feet. He further noted that the employee had undergone right hip replacement three times.

By letter dated April 22, 2011, OWCP informed appellant that the medical evidence from Dr. Ennis was more than 20 years old and insufficient to support her claim. It requested additional medical evidence and provided her 30 days to submit the information.

In a May 9, 2011 attending physician's report (Form CA-5), Dr. Syed Shumile Zaidi, Board-certified in internal medicine, reported that the employee was treated for pneumonia from March 23 to April 4, 2010 which was the direct cause of his death. He noted that contributory causes of death included cirrhosis and chronic kidney disease. An employment-related history of lower extremity sprain or strain of joint and ulcer was given. Dr. Zaidi checked the box marked "no" which asked for his opinion as to whether the employee's death was due to his prior history of injury.

By decision dated August 5, 2011, OWCP denied the claim for compensation finding that the medical evidence did not establish that the employee's death was due to the February 3, 1986 right hip injury.

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.³ This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴

An award of compensation may not be based on surmise, conjecture or speculation.⁵ 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.⁶ The Board has held that the fact that a condition manifests itself or worsens during a period of employment⁷ does not raise an inference of causal relationship between a claimed condition and employment factors.

³ *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).

⁴ *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

⁵ *Myrl Nix (Earl Nix)*, 15 ECAB 125, 126 (1963).

⁶ *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

ANALYSIS

On February 3, 1986 the employee slipped on a deck and broke his right hip while in the performance of duty. OWCP accepted the claim for femoral neck fracture. After his death on April 4, 2010, the employee's widow, filed a claim for survivor's benefits. She alleged that the employee's February 3, 1986 injury and treatment contributed to the cause of death from kidney disease.

The Board finds that appellant did not submit sufficient medical evidence to establish her claim for survivor's benefits. She did not submit a rationalized narrative medical opinion addressing how the accepted employment injury or treatment related thereto contributed to the employee's death.

The employee died on April 4, 2010 and the death certificate completed on April 27, 2010 by Dr. Alishah listed the immediate cause of death as pneumonia (health care associated) and the underlying cause of death as chronic kidney disease and cirrhosis with ascites. This certificate did not provide any opinion on the issue of causal relation.

In a May 9, 2012 attending physician's form report, Dr. Zaidi reported that the employee was treated for pneumonia from March 23 to April 4, 2010 which was the direct cause of his death. He further noted that contributory causes of death included cirrhosis and chronic kidney disease. Dr. Zaidi listed work-related employment history of lower extremity sprain or strain of joint and ulcer. He checked the box marked "no" as to whether the employee's death was due to his prior history of injury. This report negates causal relationship.

The record does not contain any medical evidence which discusses how the employee's death was caused or contributed to by medical care resulting from the accepted right hip condition. As noted, Dr. Zaidi opined that appellant's death was not a result of the employee's prior work-related injuries.

Appellant has claimed that medical evidence produced prior to the employee's death shows that his death was related to employment factors. She asserted that the numerous medications the employee was required to take as a result of his multiple surgeries contributed to his death due to kidney failure. In support of her claim, appellant submitted a July 12, 1990 letter from Dr. Ennis and an October 12, 2009 emergency room report from Dr. Clemons.

In a July 12, 1990 letter, Dr. Ennis stated that the employee had been treated for a number of orthopedic problems after he fell at the employing establishment and fractured his right hip. The employee had avascular necrosis and degenerative arthritis of the hip as a direct result of his injuries, requiring him to take arthritis medication over a prolonged period of time. Dr. Ennis noted that using arthritis medication over a prolonged period of time required lab work to be completed to ensure that it did not have an adverse effect on kidney or liver function.

Although this letter generally suggested that prolonged use of arthritis medication could have an adverse effect on kidney or liver function, it was dated in 1990, years before the employee's death on April 4, 2010. There is no contemporary opinion by Dr. Ennis addressing

whether the February 3, 1986 employment injury contributed to the employee's death.⁸ Dr. Arnold, a treating physician, noted in a July 19, 2008 report that appellant had a history of chronic renal failure since 1986. While Dr. Ennis reported that appellant was being monitored to ensure that medication was not having an adverse effect on kidney or liver function, there is no report following the employee's death on April 4, 2010 addressing whether such medication caused or aggravated these conditions. The reports submitted by appellant do not provide an opinion that the employee's hip condition or his subsequent surgeries contributed to the employee's kidney failure or any other condition.⁹

The July 19, 2008 medical report from Dr. Arnold noted that appellant reported past kidney problems and that he was taken off several medications including Lyrica and Nortoptiline. In an October 12, 2009 emergency room report, Dr. Clemons reported that the employee underwent right hip replacement three times prior and had a past medical history of gout, gastroesophageal reflux disease, arthritis, hypertension and neuropathy to the feet. These reports were produced prior to the employee's death on April 4, 2010 and fail to address any relationship between his hip medications, surgeries and any subsequent kidney failure.

Appellant failed to submit adequate medical evidence providing a rationalized medical opinion that the employee's accepted right hip condition contributed to his death on April 4, 2010. Therefore, OWCP properly denied her claim for survivor's benefits.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish entitlement to survivor's benefits.

⁸ *F.O. (A.O.)*, Docket No. 10-2315 (issued August 1, 2011).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2012
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