

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

N.C., claiming as widow of E.C., Appellant)

and)

TENNESSEE VALLEY AUTHORITY,)
Spring City, TN, Employer)

**Docket No. 12-1560
Issued: January 9, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 23, 2012 appellant filed a timely appeal from the March 27, 2012 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ (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 the employee's death was causally related to his accepted left arm biceps tendon rupture on June 25, 1977.

On appeal, appellant alleges that, because her husband, the employee, never received timely medical care for his arm, he could not continue to work. She alleged that she is no longer getting compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 9, 1978 employee, then a 52-year-old iron worker, filed a traumatic injury claim alleging that, on June 25, 1977, while he was taking a choker off a beam, the choker flew loose and struck his left upper arm. OWCP accepted appellant's claim for left arm biceps tendon rupture. Subsequently, the employee received compensation for a schedule award, medical benefits and compensation for wage loss commencing November 22, 1985.

The employee died on July 19, 2011. The immediate cause of death, as indicated on the death certificate, was vascular dementia. Underlying causes of death were listed as prostate cancer and coronary artery disease (CAD).

On March 8, 2012 appellant filed a claim for compensation by widow (Form CA-5). In support of her claim, she submitted a copy of an October 9, 1986 report by Dr. Vincent J. Haren, a physician specializing in family practice, wherein he indicated that the employee suffered a traumatic tear of the bicep muscle. Dr. Haren opined that at that time there was no way to repair the damage because it had been torn for several years and it should have been fixed at the time of his injury. He noted that it was not possible for appellant to participate in the lifting activities of an iron worker. Appellant wrote a note on the report contending that the employee would have been able to continue to work if it had not been for the neglect of the employing establishment. She also submitted a form sent to the employee on December 1, 2010 and completed by Dr. Joseph L. Bowers, a Board-certified family practitioner, on December 15, 2010, who indicated that the employee was totally disabled and unable to return to work.²

By decision dated March 27, 2012, 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.³ 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.⁴ This burden includes the necessity of furnishing rationalized medical opinion evidence demonstrating a causal relationship.⁵ 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

² The Board notes that the form submitted by appellant in support of her claim for survivor's benefits was not signed or dated nor did it indicate who completed the form. However, the same form was already in appellant's record and this form was signed by Dr. Bowers and dated December 15, 2010.

³ 5 U.S.C. §§ 8102(a) and 8133.

⁴ *L.R.*, 58 ECAB 369, 375 (2007); *see also L.B.*, Docket No. 12-699 (issued August 1, 2012).

⁵ *Id.*

supported by medical rationale explaining the relationship between the employee's death and his previous employment.⁶

An award of compensation may not be based on surmise, conjecture or speculation.⁷ 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 the federal employment.⁸

ANALYSIS

The Board finds that appellant has not established that the employee's 1977 accepted injury for left arms biceps tendon rupture was a contributing cause to his July 19, 2011 death. Appellant did not submit a rationalized medical narrative addressing how the accepted employment injury contributed to the employee's death. The death certificate does not constitute a rationalized medical opinion and furthermore, it does not indicate that the employee's 1977 left arm biceps tendon rupture contributed to his death. The reports by Dr. Haren and Dr. Bowers do not address the employee's cause of death; in fact, these reports were completed prior to the employee's death and address his disability at that time. Accordingly, appellant failed to provide a rationalized medical opinion that the employee's accepted employment injury contributed to his death on July 19, 2011. 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 has not established that the employee's death was causally related to his accepted left arm biceps tendon rupture on June 25, 1977.

⁶ *Id.*

⁷ *L.T.*, Docket No. 12-406 (issued June 21, 2012).

⁸ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991); *see also D.L.*, Docket No. 11-1993 (issued July 13, 2012).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 27, 2012 is affirmed.

Issued: January 9, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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