

of duty.² OWCP accepted aggravations of bronchial asthma, chronic obstructive pulmonary disease (COPD), arrhythmia, ventricular tachycardia and aphasia, as well as a consequential stroke on October 19, 1994. The Board found a conflict in medical opinion existed under 5 U.S.C. § 8123(a) of FECA with respect to whether the employee's death on December 8, 2009 was causally related to her federal employment. The case was remanded for referral to a referee physician. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

On return of the case record OWCP selected Dr. Ofelia Alvarez-Willis, a Board-certified internist, as a referee physician. In an undated report received on May 3, 2012, Dr. Alvarez-Willis provided a summary of the medical evidence.³ She opined that the employee died as a result of heart disease and complications from heart surgery on September 10, 2009.⁴ Dr. Alvarez-Willis concluded:

"I did not find any evidence to suggest that her single exposure and inhalation of mold and spores in 1993 permanently worsened her chronic pulmonary disease. Since there is clear evidence that her COPD remained stable on two inhalers and multiple CXR [chest x-ray], PFT's [pulmonary function tests] and pulmonary examinations demonstrated her lungs to be clear.

"I do not find that her exposure to spores and the 'accepted' industrial conditions and facts precipitated, accelerated or caused [the employee's] death 16 years later.

"It is my opinion that her heart disease with Hypertrophic Obstructive Cardiomyopathy (HOCM) and her aortic stenosis with coronary disease requiring surgery were the main causes of her pulmonary HTN [hypertension] and ultimately caused her death due to [postop] complications of decreased perfusion to kidneys (dialysis), skin (multiple ulcers) and osteomyelitis, tracheostomy and ventilator[-]assisted respiration with fluid overload and pulmonary congestion and finally sepsis and shock.

"Even that I believe that her COPD did not help the patient after her surgery there were other factors to consider as aggravating or accelerating her death. Her obesity, sleep apnea on CPAP [continuous positive airways pressure], diabetes, and hypertension.

"It is my opinion that the single exposure from May 1993 is in no way responsible for worsening a chronic condition or caused, precipitated, aggravated or accelerated her demise."

² Docket No. 11-1479 (issued January 26, 2012).

³ The record also contains a detailed summary of notes made by Dr. Alvarez-Willis on review of the evidence.

⁴ The employee underwent a triple coronary bypass surgery on September 10, 2009.

By decision dated May 31, 2012, OWCP denied appellant's claim for compensation. It found that the medical evidence did not establish a causal relationship between the employee's death and her federal employment.

Appellant requested a hearing before an OWCP hearing representative, which was held on October 15, 2012. At the hearing, appellant's representative stated that the statement of accepted facts (SOAF) appeared to have omitted that the claim was accepted for the consequential stroke in 1994. Appellant submitted an October 4, 2012 report from Dr. Meghan Jhaver, a Board-certified internist, who stated that it should be considered possible that the employee's mold exposure aggravated her underlying pulmonary and cardiac conditions that led to her death.⁵

By decision dated December 20, 2012, the hearing representative affirmed the May 31, 2012 decision. She found that the medical evidence did not establish that the employee's death was causally related to her federal employment.

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 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.⁶ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.⁷ The mere showing that an employee was receiving compensation for total disability at the time of his or her death does not establish that his or her death was causally related to his or her employment.⁸

It is well established that when a case is referred to a referee specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁹

ANALYSIS

OWCP selected Dr. Alvarez-Willis as a referee physician to resolve the conflict in the medical evidence. The Board notes that at the October 15, 2012 hearing before an OWCP hearing representative, appellant argued that the SOAF did not properly reflect that the stroke suffered in October 1994 was an accepted consequential injury. The Board notes that the February 25, 2010 SOAF of record includes all of the accepted conditions, including the stroke.

⁵ Dr. Jhaver had submitted previous reports and was on one side of the conflict in the medical evidence.

⁶ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

⁷ *Kathy Marshall (Dennis Marshal)*, 45 ECAB 827 (1994).

⁸ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

⁹ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

Moreover, Dr. Alvarez-Willis provided detailed notes of her review of the evidence in the case. She specifically noted the “accepted” conditions included an October 19, 1994 cerebrovascular accident (CVA). The Board finds no evidence that the opinion of Dr. Alvarez-Willis was based on an incomplete or inaccurate background.

The Board finds that Dr. Alvarez-Willis provided a well-rationalized medical opinion on the issue presented. Dr. Alvarez-Willis explained that the employee’s death was related to heart disease and a triple bypass surgery in September 2009 and not related to the employee’s employment injuries. She noted that the medical evidence indicated that the respiratory conditions were stable. The report from Dr. Alvarez-Willis was detailed and provided an unequivocal opinion that the employee’s federal employment did not cause or accelerate her death. As noted above, a rationalized medical opinion from a referee physician is entitled to special weight.

The Board accordingly finds that the weight of the medical evidence is represented by the referee physician, Dr. Alvarez-Willis who provided a rationalized medical opinion based on a complete background. Appellant submitted an October 4, 2012 report from Dr. Jhaver, who was on one side of the conflict prior to the referral to Dr. Alvarez-Willis. Dr. Jhaver provided an equivocal opinion that it was possible that the employment exposure contributed to the employee’s death. Additional reports from a physician on one side of the conflict that is properly resolved by a referee specialist are generally insufficient to overcome the weight accorded the referee specialist’s report or create a new conflict.¹⁰

Based on the weight of the medical evidence, the Board finds OWCP properly denied the claim for compensation. 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 appellant has not established that the employee’s death on December 8, 2009 was causally related to her federal employment.

¹⁰ See *id.*; *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 20, 2012 is affirmed.

Issued: June 19, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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