

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

M.A., claiming as widow of H.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Bridgewater, NJ, Employer)

**Docket No. 13-1380
Issued: November 8, 2013**

Appearances:
Appellant, pro se
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 May 20, 2013 appellant filed a timely appeal from a January 14, 2013 decision of the Office of Workers' Compensation Programs (OWCP). 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 appellant established a causal relationship between the employee's accepted disc herniation at L5-S1 and right lumbar radiculopathy and his death on April 2, 2012.

On appeal, appellant asserts that the back pain caused by the employee's injuries, contributed to his death.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

By decision dated April 5, 2002, OWCP accepted that on September 12, 2001 the employee, then a 39-year-old mailhandler, sustained employment-related right lumbar radiculopathy due to pushing tubs of mail. The employee continued working modified duty.

In reports dated January 15, 2002 to April 29, 2003, Dr. Jeffrey Miller, an osteopath, noted the employee's complaint of severe low back pain that radiated down the right leg. He stated that the employee was morbidly obese, provided findings on physical examination and diagnosed chronic lumbar strain and sprain, bulging disc at L5-S1 and symptom magnification.

In reports dated December 6, 2006 through February 18, 2008, Dr. F. Kennedy Gordon, Board-certified in internal and sports medicine, reported the history of injury, described physical examination findings and diagnosed disc bulge at L4-5, disc herniation at L5-S1, obesity, asthma and hypertension.

On April 27, 2010 the employee filed a recurrence of disability claim, alleging that he injured his back emptying mail tubs on April 24, 2010. In an April 28, 2010 report, Dr. Gordon noted that he last saw the employee on February 18, 2008. He noted that the employee had continued discomfort in low back that became worse lifting a tab of mail on April 24, 2010. Dr. Gordon diagnosed an exacerbation of the employee's lumbar spine disc abnormality and advised that the employee could not work. A May 26, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated diffuse disc bulging at L3-4 and L4-5 and a posterior protruded disc herniation at L5-S1. The recurrence of disability claim was accepted on July 27, 2010 and the employee was placed on the periodic compensation rolls. The employee did not return to work.

In a July 22, 2010 report, Dr. Robert A. Smith, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed the history of injury, medical treatment and noted the employee's complaint of low back pain. Based on physical examination findings he diagnosed an L5-S1 disc abnormality with left-sided radiculopathy but found that the employee could work at a sedentary position. An October 23, 2010 electrodiagnostic study of the lower extremities confirmed the presence of lumbosacral nerve root dysfunction. On October 26, 2010 Dr. Jeffrey North, a Board-certified physiatrist, described the history of injury, the employee's low back complaints and conducted a physical examination. He diagnosed low back pain, left lumbar radiculitis, L5-S1 disc herniation, L4-5 disc bulge and morbid obesity. Dr. North performed four epidural steroid injections at L5-S1 between October 26 to December 21, 2010. A February 4, 2011 MRI scan study of the lumbar spine demonstrated multilevel lumbar spondyloarthropathy, probable disc herniation at L4-5 and multilevel lower lumbar neuroforaminal stenosis.

Dr. Smith again saw the employee on February 11, 2011. He described complaints of low back pain and diagnosed left-sided radiculopathy due to herniated L5-S1 disc. Dr. Smith advised that the employee would be a candidate for surgical decompression and could not work. Dr. John R. Cifelli, a neurosurgeon, saw the employee in consultation on March 1, 2011. He advised that the employee would benefit from L5-S1 microdiscectomy. On April 28, 2011 Dr. John A. Handel, a Board-certified orthopedic surgeon, stated that he would not recommend surgery.

On May 12, 2011 OWCP accepted the additional condition of lumbosacral radiculitis and displacement of a lumbar disc without myelopathy at L5-S1. In a supplementary report dated May 24, 2011, Dr. Smith agreed with Dr. Cifelli that the employee was a candidate for surgery. Dr. Gordon continued to submit monthly reports describing the employee's condition and advising that he could not work.

The employee was seen in an emergency room on July 30, 2011 for a complaint of worsening low back pain after a fall that day. He was noted to be morbidly obese. An acute and chronic back pain and lumbar strain were diagnosed and he was discharged.

The employee died on April 2, 2012. On April 6 and July 23 and 30, 2012 OWCP informed appellant of the evidence needed to support a claim for survivor benefits. Appellant was asked to submit a death certificate and medical treatment records.

In a May 29, 2012 report, Dr. Joel Glassman, a Board-certified internist, advised that the employee had been under his care since February 22, 2010. The employee had a history of severe low back pain from an employment injury. He died of respiratory issues, which would not have occurred if not complicated by his inability to move or position himself. Dr. Glassman stated that the employee was not able to breathe due to severe back pain, which prevented him from seeking help in a timely fashion and led to an emergency situation and his subsequent death. He concluded that the employee would not have died but for his work-related back issues.

On October 2, 2012 appellant filed a Form CA-5, claim for compensation by widow. Dr. Glassman completed an attached attending physician's report on October 3, 2012. He noted that the employee was provided treatments for chronic pain and asthma on March 16, 2011 and February 6 and March 20, 2012. Dr. Glassman stated that the direct cause of death was respiratory failure and a contributory cause of death as severe back pain. He indicated that the employee had an acute asthma exacerbation due to an upper respiratory infection and his severe back pain prevented him from leaving home to seek medical care in a timely fashion. The employee was unable to position himself to breathe easier such that, by the time he had emergency help, it was too late and he expired. Dr. Glassman concluded that, but for his work-related back issues, there would have been no delay in treating this reversible condition.

By letter dated November 7, 2012, OWCP requested additional documentation regarding the employee's death, including a detailed narrative medical report from the physician who attended the employee prior to his death and copies of hospitalizations prior to his death.

In a December 14, 2012 report, Dr. Glassman stated that he saw the employee on March 20, 2012 for a persistent cough and shortness of breath, felt to be an upper respiratory infection, which exacerbated his asthma. The employee's medication was adjusted. Dr. Glassman's next contact was on April 2, 2012 when he was called by the hospital emergency room and was notified of the employee's admission for respiratory distress and subsequent death due to asthma. He stated that the employee had a history of a work-related herniated lumbar disc that caused severe pain and disability. After discussions with appellant, Dr. Glassman determined that the employee's pain immobilized him to the point where he was unable to leave the house to seek additional medical care as his asthma worsened. Only when it was too late, 911 was called. Dr. Glassman had no medical records, other than the death certificate.

Appellant submitted reports from Albert Einstein Medical Center dated April 2, 2012. The records reflect that the employee was admitted to the emergency room that day at 4:15 p.m. in cardiac arrest. The history noted that the employee, who had asthma and was obese, was at home with his wife, complaining of shortness of breath. After a nebulizer treatment, he lost consciousness. When paramedics arrived, the employee was pulseless, with no electrical activity. The employee was intubated in the field and transported. Dr. Dean Moore, Board-certified in emergency medicine, was the supervising physician. The report described the emergency resuscitation efforts and the time of death was 4:34 p.m. Discharge diagnosis was cardiac arrest.

By decision dated January 14, 2013, OWCP denied appellant's claim, finding that the medical evidence insufficient to establish that the employee's death due to cardiac arrest was causally related to his accepted back condition.

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.² 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.³

ANALYSIS

The Board finds that appellant has not established that the employee's accepted back conditions contributed to his April 2, 2012 death. The accepted conditions in this case are lumbar radiculitis and displacement of lumbar disc (herniated disc) without myelopathy at L5-S1. The record indicates that the employee had additional medical conditions, including morbid obesity and asthma.

Appellant submitted several reports from Dr. Glassman, an attending internist, who stated that the employee had a history of work-related herniated lumbar disc that caused severe pain and disability. Dr. Glassman advised that he last treated the employee on March 20, 2012 for a persistent cough and shortness of breath. On that day he diagnosed an upper respiratory infection and exacerbation of asthma. Dr. Glassman indicated that his next contact was on April 2, 2012 when he was notified of the employee's admission for respiratory distress and his subsequent death due to asthma by the hospital emergency room. He opined that the direct cause of the employee's death was respiratory failure and a contributory cause of death was severe back pain. Dr. Glassman indicated that the employee had an acute asthma exacerbation due to an upper respiratory infection and his severe back pain prevented him from leaving home to seek medical care in a timely fashion and he was unable to position himself to breathe easier. He stated that, by the time emergency help arrived, it was too late and the employee expired.

²L.R. (E.R.), 58 ECAB 369 (2007).

³Edna M. Davis (Kenneth L. Davis), 42 ECAB 728 (1991).

Dr. Glassman concluded that, if not for his work-related back issues, there would have been no delay in treating this reversible condition and that, after discussions with the employee's wife, he opined that the employee's pain immobilized him to the point where he was unable to leave the house to seek additional medical care as his asthma worsened and that only when it was too late, was 911 called. He indicated that he had no other records, other than the death certificate.

The hospital records on the day of the employee's death, April 2, 2012, provide a history that he was admitted to the emergency room at 4:15 p.m. that day in cardiac arrest. The employee was at home with his wife, complaining of shortness of breath. Following a nebulizer treatment, he lost consciousness. When the paramedics arrived, the employee was pulseless, with no electrical activity and was intubated in the field and transported to a local emergency room. Dr. Moore, Board-certified in emergency medicine, was the supervising physician during the employee's hospital treatment. The April 2, 2012 hospital report described resuscitation efforts performed in the emergency room until death was called at 4:34 p.m. Discharge diagnosis was cardiac arrest.

The Board finds that the opinion of Dr. Glassman lacks sufficient rationale to explain how the 2001 back injury was a contributing cause in the employee's April 2, 2012 death. Dr. Glassman advised that, when he last saw the employee, he had an exacerbation of asthma caused by an upper respiratory infection. He did not provide a clear explanation of why the employee's back pain immobilized him to the degree that he could not timely seek medical care or how it contributed to the cardiac arrest that caused his death. The Board therefore finds that Dr. Glassman's reports are insufficient to establish that the 2001 work injury contributed to the employee's death.

There is no other evidence addressing how the employee's accepted back conditions contributed to his death. The hospital records from the day of death provided a diagnosis of cardiac arrest. As noted in the January 14, 2013 OWCP decision, appellant did not provide a death certificate.⁴ She did not establish that the employee's 2001 employment injury was a contributing cause of his April 2, 2012 death.⁵

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 that appellant did not meet her burden of proof to establish that the employee's death was due to a 2001 employment injury.

⁴ OWCP's procedures provide that in developing a claim for death benefits, the claimant must submit the death certificate. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Death Claims*, Chapter 2.700.5(f)(1) (November 1996).

⁵ See *D.L. (R.L.)*, Docket No. 11-1993 (issued July 13, 2012).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2013
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