

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

)	
T.D., claiming as widow of D.D., Appellant)	
)	
and)	Docket No. 14-262
)	Issued: April 28, 2014
)	
DEPARTMENT OF THE ARMY, RED RIVER)	
ARMY DEPOT, Texarkana, TX, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 6, 2013 appellant, through her attorney, filed a timely appeal of a September 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for death benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether the employee's accepted employment injuries contributed to his death.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 23, 2012 appellant, filed a claim for compensation by widow,² alleging that the employee's death on December 31, 2011 at 37 years old was caused or contributed to by his accepted lumbar sprain, lumbago, sciatica displacement of a cervical disc at C4-5 and a lumbar disc at L5-S1. The employee's injuries occurred on February 18, 2009 while he was employed as a heavy mobile equipment mechanic in Iraq. He was engaged in the manual lift of CFK when it caught on something and he was twisted with the machine. The employee underwent transpedicular nerve root decompression at L5-S1 and bilateral/lateral fusion L5-S1 on June 26, 2009. Following surgery, he was essentially bedridden, walking with a walker up to 100 feet. On December 3, 2009 the employee underwent an anterior cervical discectomy and fusion C4-5. On May 25, 2011 he was transported by air to Covenant Medical Center with diagnoses of septicemia as the result of an unspecified organism, sepsis and pneumonia organism, unspecified. The employee had a spinal stimulator implanted in July 2011. His death certificate listed the cause of death as sepsis.

In a report dated January 6, 2012, Dr. Michael W. Beasley, an internist, stated that the employee had chronic medical problems since his 2009 injury that were related to his injuries. He stated that the employee died of overwhelming sepsis with shock related to complications of his injuries. Dr. Beasley stated that if the employee had not been injured his sepsis would not have developed and he would not have died. On February 2, 2012 he stated that the employee experienced a significant severe crush injury in Iraq in February 2009. Dr. Beasley stated, "[The employee] died of sepsis which would not have occurred if he had not suffered these injuries in February of 2009." He stated that the employee was mostly bedridden and in severe chronic pain because of the injuries he sustained in Iraq resulting in an immunocompromised state and prone to infection from respiratory, genitourinary gastrointestinal and skin causes.

OWCP referred the medical records for a second opinion evaluation on February 14, 2012 to Dr. Candace L. Walkley, a Board-certified internist. In a report dated February 21, 2012, Dr. Walkley noted the employee's history of injury and stated that he required surgical treatment of lumbar and cervical disc disease with significant disability and chronic pain managed by a surgically-implanted stimulator and multiple narcotics. She stated that the employee experienced hypertension, acute myocardial infarction and post-traumatic stress disorder treated with cognition-impairing drugs. Dr. Walkley stated that the medical record was incomplete as the records surrounding December 31, 2011 were absent as well as the records from the employee's acute myocardial infarction in 2010. She provided the criteria for a diagnosis of sepsis and noted that the diagnosis was frequently made without adequate evidence. Dr. Walkley noted that if the diagnosis of sepsis was accurate then the infectious source should be reviewed to determine if it were related to the employee's accepted injuries rather than to a spontaneous source of infection such as pneumonia. She opined that the employee's death could not be conclusively judged as caused by his employment injuries. Dr. Walkley disagreed with Dr. Beasley and stated that being bedridden and in chronic pain did not cause immunodeficiency. She stated that the employee had intact skin without ulceration and no evidence of recurrent

² Although appellant filed a claim for benefit for a widow, she did not submit a copy of her marriage certificate instead providing her court appointment as the personal representative of the employee's estate.

infection which would be suggestive of immunodeficiency. Dr. Walkley noted that the narcotics used to treat the employee's injury-related pain could slow gut processes leading to constipation and occasionally be the cause of significant intestinal pathology that could result in sepsis. She stated, "I am unable to determine, however, if the death event was even related to the bowel issues, because records of the event are not included for my review." Dr. Walkley hypothesized that the employee's death could alternatively have been caused by a spontaneous cause of sepsis.

In a letter dated March 9, 2012, OWCP requested that appellant provide additional medical evidence from the time of the employee's heart attack and final hospitalization. Appellant submitted additional home health nursing and physical therapy records from October 3 through 31, 2011.

On April 17, 2012 Dr. Beasley stated that he first examined the employee in his office on January 21, 2011. The employee was transported by ambulance and would not allow any significant examination because of the pain. Dr. Beasley stated that a large truck frame fell on the employee in Iraq. It pinned him causing injuries to his pelvis and low back. The employee returned for an examination on July 11, 2011 and again refused an examination due to pain. Dr. Beasley stated, "When I was contacted by the funeral home to sign [the employee's] death certificate, I spoke to a nurse in the [e]mergency [d]epartment to find out what happened. She stated that he'd had some fever, chills, shakes and sweats prior to being found with decreased loss of consciousness and being sent to the emergency room where he died. She stated the case was discussed with the medical examiner who felt the likely cause of death was sepsis. I would agree based upon his history."

By decision dated July 18, 2012, OWCP denied appellant's claim finding that Dr. Walkley's report was entitled to the weight of the medical evidence.

On July 23, 2012 counsel requested an oral hearing before an OWCP hearing representative.

On January 22, 2013 the hearing representative vacated the July 18, 2012 decision and remanded the case for further development of the medical evidence. The hearing representative directed OWCP to provide Dr. Walkley with the entire medical record including the September 14, 2010 air medical transport record and all medical records of December 31, 2011. It was requested that she provide a fully-rationalized report addressing whether the accepted employment-related injuries, treatment or medications caused or contributed to the employee's death.

In a letter dated January 28, 2013, OWCP requested that appellant provide all of the employee's medical records from September 14, 2010 through December 31, 2011. Appellant provided a treatment note from Dr. Beasley dated December 6, 2011 indicating that the employee had constipation of three days' duration.

By decision dated March 8, 2013, OWCP denied appellant's claim finding that there was no new evidence to refer to Dr. Walkley. Further, the medical opinion evidence was not sufficiently detailed to establish that the employee's death was causally related to his accepted employment injuries.

Counsel requested an oral hearing on March 15, 2013.

Appellant testified at the oral hearing on July 15, 2013. She stated that the employee was unresponsive at home on December 31, 2011, but was not pronounced dead until at the hospital. Appellant also submitted additional medical records. The employee's home health records indicate on December 30, 2011 that he was reporting constipation for the past five days with vomiting. The employee also had slurred speech. On December 31, 2011 the employee's cardiopulmonary report at the emergency room indicated a decreased heart rate. The employee was unresponsive on December 31, 2011 and transported by ambulance to a local medical center. He was diagnosed with altered mental status and was acidotic with hyperglycemia and bradycardia before becoming astolic. The employee coded in the emergency room.

By decision dated September 27, 2013, OWCP's hearing representative reviewed the medical evidence and found that appellant did not meet her burden of proof.

LEGAL PRECEDENT

The United States shall pay compensation for the death of an employee resulting from personal injury sustained while in the performance of his duty.³ If death results from an injury sustained in the performance of duty, the United States shall pay monthly compensation equal to a percentage of the monthly pay of the deceased employee.⁴

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 federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof in establishing that the employee's death was causally related to his accepted employment injuries. In support of her claim, appellant submitted a series of reports from Dr. Beasley. He concluded that the employee's death was the result of sepsis which was caused by his depressed immune system as the result of his employment injuries. Dr. Beasley was not present at the time of the employee's death and based on his conclusions on a telephone conversation with an emergency room nurse who reported that the employee experienced fever, chills and shakes as well as altered consciousness at home before he was transported to the emergency room.

Dr. Beasley's report is not based on an accurate history of injury as he reported that the employee initially sustained a crush injury resulting in his back injury rather than the twisting injury the employee reported. He had not treated appellant since on or before December 6, 2011

³ 5 U.S.C. § 8102(a)

⁴ *See id.* at § 8133(a) (compensation in case of death).

⁵ *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989).

and had not performed an extensive examination at any time due to the employee's pain levels. Dr. Beasley did not examine the employee near or at the time of his death on December 31, 2011 and did not offer any specific medical findings in support of his conclusion. He did not provide any specific findings or medical reasoning in support of his conclusion that the employee's death was causally related to his accepted employment injuries. Due to the lack of an accurate factual background the absence of medical findings supporting a diagnosis of sepsis and the lack of medical reasoning explaining how the employee's accepted employment-related conditions lead to the consequential diagnosis of sepsis, Dr. Beasley's reports are not sufficient to meet appellant's burden of proof.

OWCP undertook additional development of the medical evidence and referred the medical documents contained in the record to Dr. Walkley for a second opinion evaluation. In her February 21, 2012 report, Dr. Walkley noted that there were a variety of causes for sepsis, but that the employee's records did not support that his immune system was compromised as suggested by Dr. Beasley. She noted that the medical evidence before her did not establish that the employee's death was due to sepsis and did not establish that if his death was caused by sepsis, that this was causally related to his accepted employment injuries. Dr. Walkley stated that additional medical records at the time of the employee's death were necessary to clearly establish that sepsis was the cause of death and then further medical evidence of the specific organism was needed before the conclusion of a consequential injury resulting in death could be established.

Appellant submitted additional medical records following Dr. Walkley's report, but these records were not detailed and did not provide specific findings regarding a diagnosis of sepsis or septicemia. The documents generally described the employee's altered mental state and his organ systems. As appellant has not submitted any detailed medical evidence based on a proper history of injury and medical treatment regarding the employee's symptoms and treatment immediately prior to his death or a comprehensive report following his demise, she has failed to submitted the evidence required to meet her burden of proof.

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 has failed to meet her burden of proof in establishing entitlement to death benefits.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2014
Washington, DC

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

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

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