

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

Y.M., claiming as widow of J.M., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, San Diego, CA, Employer**

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**Docket No. 13-1766
Issued: January 14, 2014**

Appearances:
Steven E. Brown, 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 July 22, 2013 appellant, through her representative, filed a timely appeal from the June 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for compensation. 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 accepted employment injuries contributed to his death.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 27, 2012 appellant filed a claim for compensation by widow.² The employee worked for the employing establishment in various capacities from 1977 to 1992 and during that time sustained several accepted employment injuries, including aggravations of diabetes, hypertension and obesity resulting from cumulative factors.³ On March 20, 2010 the employee suffered a stroke. On June 26, 2011 he passed away.

Dr. James A. Novak, a family physician, advised that he had treated the employee for his work-related aggravations from 2006 until the time of his death. The employee experienced progressive deterioration of his diabetes and hypertension, resulting in diabetic neuropathy, diabetic retinopathy, diabetic angiopathy, and diabetic nephropathy, along with chronic renal failure, stroke and the eventual cardiac arrest resulting in his death. Dr. Novak explained that the progressive nature of the diabetes and hypertension caused increasing microvascular blockage throughout the employee's vital organs -- the heart, brain, kidneys and eyes -- which deprived them of adequate blood circulation and eventually led to their inability to maintain necessary vital functions, directly causing his demise. "It is thus my opinion as his treating physician that his death was the direct result of the progression of the same conditions which were responsible for his industrial disability, *i.e.*, the aggravation of diabetes and hypertension."

Dr. Raye L. Bellinger, a Board-certified internist specializing in cardiovascular disease and an OWCP medical adviser, noted that the employee had preexisting diabetes mellitus and hypertension. "Although he was found to have aggravation of these conditions during his work experience in the '90s, there is no evidence that work injury contributed, caused or aggravated these preexisting conditions." It was Dr. Bellinger's opinion that the employee died based on the natural history of his disease process and not as a result of any work injury. He noted that the development of atherosclerosis in the heart, kidneys and brain was, for the most part, genetically predetermined. Dr. Bellinger reasoned that, although certain factors, such as diabetes, hypertension, obesity, could aggravate or accelerate atherosclerosis, there was no evidence that these aggravations or accelerations were directly related to the employee's original work injury.

OWCP found a conflict in medical opinion and referred the case to Dr. David J. Anderson, a Board-certified internist specializing in cardiovascular disease. In a May 20, 2012 report, Dr. Anderson noted the statement of accepted facts. It was his opinion that the employee's death was not a result of his work-related injuries. Dr. Anderson discussed how vascular disease develops and interacts with a genetic predisposition to susceptibility to such causal factors as smoking, hypertension, high cholesterol and high levels of insulin (diabetes and obesity). Caregivers found that the employee suffered from metabolic syndrome, a condition

² The case was on appeal previously. By a February 25, 1997 decision, the Board affirmed March 18 and April 18, 1994 OWCP decisions, as modified, finding that the employee had not established that his small airways disease or multiple chemical sensitivity were causally related to exposure to chemicals at work, or that air filters were warranted. The Board remanded the case for further development as to whether the claimed peripheral neuropathy was employment related. *See* Docket No. 94-1923 (issued February 25, 1997).

³ The employee began smoking by the mid-1960s. Prior to his employment in 1977, he was overweight and borderline high hypertensive. In 1979 borderline diabetes was first detected. In 1984 it was diagnosed. The employee was initially placed on oral medication and in 1990 he was started on insulin.

quite prevalent in the Hispanic community and characterized by hypertension, diabetes and obesity. Amplifying the vasculopathic effect of this condition was his life-long cigarette smoking. At the time of his employment in 1977, he had already been smoking for 17 years, and in 2 years would manifest glucose intolerance or diabetes.

Dr. Anderson noted that during the employee's 15 years of employment, it was accepted that work factors aggravated his hypertension, diabetes and obesity. After the employee stopped work in 1992, he was found to have an improved psychological state. The employee contemplated going back to school and was asking for authorization for a treadmill to start an exercise program. Nonetheless, he continued to smoke, and he gained weight up to 300 pounds in 2000. "These factors of course would lead to a continued state of ongoing progressive vascular disease over the 19 years between stopping work and his death."

Although the precise cause of death was not determined by the autopsy, Dr. Anderson observed that the findings were most suggestive of complications due to myocardial infarction from a coronary thrombosis. "Such an event would be related to the vasculopathic factors present around the time of his death and not those of years before." He found no evidence that work-related factors led to the employee's death.

In a June 17, 2013 decision, OWCP denied appellant's claim for compensation by widow. It found that the weight of the medical opinion evidence rested with Dr. Anderson, the impartial medical specialist, and established that the employee's death was not causally related to the accepted work injuries.

On appeal, appellant's representative contends that the physicians agreed that the employee's death was contributed to by his diabetes, hypertension and obesity and that it was not appellant's burden to prove on an ongoing basis that the employee continued to suffer from the accepted conditions. He argued that the opinion of Dr. Bellinger and Dr. Anderson were not based on the accepted facts, as they effectively found that the employee's hypertension, diabetes and obesity had ceased to be work related by the time of his death. Counsel contends that Dr. Novak's opinion is the only well-rationalized opinion concerning causal relationship.

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.⁴ 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.⁵

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the employee's death was causally related to an employment injury. As part of this burden, she must submit a rationalized medical opinion, based upon a

⁴ 5 U.S.C. § 8102(a).

⁵ *See id.* at § 8133(a) (compensation in case of death).

complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury.⁶

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the employee's conduct. More specifically, the progressive worsening or complication of a work-connected injury remains compensable so long as the worsening is not shown to have been produced by an intervening nonindustrial cause.⁷

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence, and the opinion from the specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.¹⁰

ANALYSIS

A conflict in medical opinion arose between Dr. Novak, the employee's family physician, and Dr. Bellinger, a medical adviser Board-certified in cardiovascular disease. Dr. Novak found that the employee's death was the direct result of the progression of the same conditions that were responsible for his work injury.¹¹ Dr. Bellinger found that the employee died as a result of the natural history of his disease process and not the result of any work injury.¹² Given the disagreement between the physician of the employee and the physician for the United States, OWCP properly referred the case to an impartial medical specialist for resolution under section 8123(a) of FECA.

⁶ See *Leonora A. Bucco (Guido Buco)*, 36 ECAB 588 (1985); *Lorraine E. Lamber (Arthur R. Lambert)*, 33 ECAB 1111 (1982).

⁷ 1 Arthur & Lex Larson, *Larson's Workers' Compensation Law*, Chapter 10 (2006).

⁸ 5 U.S.C. § 8123(a).

⁹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁰ See *Nathan L. Harrell*, 41 ECAB 402 (1990).

¹¹ The question is not whether the employee's death was the result of the progressive deterioration of his diabetes and hypertension, but whether his death was the result of the aggravations caused by his federal employment.

¹² Although he saw no evidence that the work injury contributed, caused or aggravated the employee's preexisting diabetes and hypertension, OWCP accepted, as he noted, that federal employment aggravated these conditions.

OWCP provided Dr. Anderson, a Board-certified internist specializing in cardiovascular disease, with records and a statement of accepted facts so he could base his opinion on a proper factual and medical history. Dr. Anderson returned a one-page report stating that the employee's death was not a result of his work-related injuries. He discussed the nature of vascular disease in general and its susceptibility to such causal factors as smoking, which amplifies the vasculopathic effect. Dr. Anderson acknowledged that 15 years of employment had aggravated the employee's hypertension, diabetes and obesity. He observed that, after federal employment, the employee continued to smoke and gain weight, which led to a continued state of ongoing progressive vascular disease over 19 years until his death.

Dr. Anderson added that autopsy findings were most suggestive of death caused by complications due to myocardial infarction from a coronary thrombosis. Such an event would be related to the vasculopathic factors present around the time of the employee's death, Dr. Anderson believed, and not those of years before.

The Board finds that Dr. Anderson's opinion requires clarification. Dr. Anderson did not set out a review of the medical opinion evidence upon which OWCP based its acceptance of the work-related aggravations. He should further explain the basis for his conclusion that the accepted aggravations resolved or whether the employee ever returned to his preemployment vasculopathic status. Dr. Anderson's opinion requires elaboration on whether the employee's death was a natural consequence of the accepted aggravations, or whether the accepted aggravations contributed to the employee's death.

Dr. Anderson should further explain whether the employee's death was the result of a nonindustrial intervening cause attributable to the employee's conduct. In other words, he should explain whether the progressive worsening of the employee's vascular disease following federal employment was a result of the accepted aggravations, or whether the operative factor was his smoking history and weight gain over 19 years.

Following such further development of the evidence as may be necessary, OWCP shall issue a *de novo* decision on appellant's claim for compensation by widow. The Board will set aside OWCP's June 17, 2013 decision and will remand the case for further development.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: January 14, 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