United States Department of Labor
Employees' Compensation Appeals Board

D.D., claiming as widow of T.D., Appellant **and** **TENNESSEE VALLEY AUTHORITY, HARTSVILLE NUCLEAR PLANT, Hartsville, TN, Employer**	)	**Docket No. 13-1828** **Issued: March 19, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2013 appellant timely appealed the March 27, 2013 merit decision and the June 18, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the survivor's claim.[2]

ISSUES

The issues are: (1) whether appellant established that the employee's death was causally related to his September 23, 1980 accepted lumbar injury; and (2) whether OWCP properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

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[1] 5 U.S.C. §§ 8101-8193 (2006).

[2] OWCP also granted posthumous schedule awards on March 12, 2012 and June 19, 2013, totaling 11 percent right lower extremity impairment. *See* 5 U.S.C. § 8109. Appellant has not appealed OWCP's June 19, 2013 schedule award decision. *See* 20 C.F.R. § 501.3(c) (2012).

FACTUAL HISTORY

The decedent-employee, a former ironworker, injured his lower back in the performance of duty on September 23, 1980.[3] OWCP accepted his claim for lumbosacral sprain, aggravation of spondylolisthesis and aggravation of displaced lumbar intervertebral disc. The employee underwent lumbar laminectomies with fusion in 1991 and 1999. He last worked in December 2003 as a correctional officer with the Tennessee Department of Corrections. In February 2004, the employee underwent an OWCP-approved surgical procedure to address complications that arose as a result of his prior lumbar surgery.[4]

OWCP paid wage-loss compensation for temporary total disability (TTD) beginning December 11, 2003 and placed the employee on the periodic compensation rolls effective March 21, 2004. He filed a claim (Form CA-7) for a schedule award in October 2011. However, OWCP did not process the schedule award at that time because the employee was already receiving FECA wage-loss compensation.

The employee passed away on December 14, 2011, at the age 58.[5] The death certificate identified the immediate cause of death as acute coronary syndrome due to coronary artery disease. Morbid obesity and chronic pain syndrome -- backache were listed as other significant conditions contributing to death, but were not the underlying cause. An autopsy was not performed.

Just two days prior to his death, the employee was treated by Curry L. Dudley, a nurse practitioner with Tennessee Physical Medicine and Pain management. His chief complaint at the time was back pain. The December 12, 2011 pain management progress notes are specific to appellant's lumbar complaints and do not mention a history of coronary artery disease or any other nonorthopedic conditions.

On March 14, 2012 appellant, the decedent-employee's widow, filed a survivor's claim (Form CA-5). She attributed her husband's death to his back injury and the multiple surgeries he had undergone as a result. Appellant also indicated that her husband participated in pain management and had been prescribed strong medications for a lengthy period.

In a report dated March 14, 2012, Dr. Hanna C. Ilia, a Board-certified family practitioner, noted a history of back injury which caused chronic back pain.[6] He also noted that the employee had been treated with narcotic pain medication. Dr. Ilia listed acute coronary syndrome secondary to coronary artery disease as the direct cause of death. He further noted that the

[3] The employee slipped climbing steps, but avoided falling.

[4] Appellant developed a pseudomeningocele at L5, which OWCP accepted as disorder of meninges (ICD-9 No. 349.2).

[5] The employee received compensation for TTD through December 14, 2011. Afterwards, OWCP paid appellant compensation based on a posthumous schedule award, which covered the period December 18, 2011 to July 27, 2012 (31.68 weeks).

[6] Dr. Ilia, who also signed the December 21, 2011 death certificate, is Board-certified in family medicine.

employee's chronic back pain prohibited him from certain activities. This resulted in significant weight gain, which put extra strain on his heart. Dr. Ilia explained that while the employee's death was not directly caused by his back injury, chronic back pain contributed to his morbid obesity. Also, the employee's use of large amounts of narcotics compromised his cardiopulmonary function.

On July 11, 2012 the district medical adviser (DMA) reviewed the record and advised that the employee's death was unrelated to his accepted orthopedic conditions. He noted that the employee died at home on December 14, 2011 due to acute coronary syndrome as a consequence of coronary artery disease, which was exacerbated by morbid obesity. The DMA stated that chronic pain syndrome/back pain was not causally related to acute coronary syndrome or coronary artery disease.

OWCP referred the case for a second opinion evaluation. In a September 10, 2012 report, Dr. Raye L. Bellinger, Board-certified in internal medicine with a subspecialty in cardiovascular disease, reviewed the employee's medical records and found no causal relationship between his death and his accepted employment injury. He noted that the employee was last seen on December 12, 2011 for complaints of back pain. The employee's pain was noted to be adequately controlled and his condition was unchanged. At the time, he was being treated with opioid therapy and his physical examination was unremarkable. Dr. Bellinger noted that there was no mention of chest discomfort or other cardiovascular-related symptoms during the December 12, 2011 examination. The employee had been advised to return in one month, but he expired two days later. Dr. Bellinger noted that the December 14, 2011 cause of death was identified as acute coronary syndrome/coronary artery disease.

On the issue of causal relationship, Dr. Bellinger indicated that there was no evidence that the employee had recurrent chest discomfort or had been diagnosed with coronary artery disease. He also noted that the medical records revealed no evidence of any concomitant high-risk clinical features such as diabetes mellitus or hyperlipidemia. There was also no evidence that the employee had excessive weight gain, development of hypertension or worsening of underlying hyperlipidemia on the basis of his back pain. Moreover, medical records did not document any other significant risk factors for coronary artery disease. Dr. Bellinger indicated that the most likely etiology for the employee's development of coronary disease was genetic predisposition. He stated that there was no evidence that the employee's accepted injury caused, aggravated or contributed to the development of coronary artery disease given the lack of comorbid medical conditions.

In a September 20, 2012 decision, OWCP denied appellant's claim based on her failure to establish a causal relationship between the employee's December 14, 2011 death due to acute coronary syndrome -- heart attack -- and his September 23, 1980 employment-related lumbar injury.

Appellant requested an oral hearing. She also submitted her deceased husband's medical records from Tennessee Heart & Vascular Institute and Hometown Healthcare, which covered the period March 2009 to December 2011.

A March 2, 2009 cardiac computerized tomography angiogram (CTA) revealed potentially significant coronary disease with an 89 percent likelihood of a flow-limiting lesion. Cardiac catheterization was suggested. The CTA report also noted that the employee had excessive atherosclerosis which reportedly began 7 to 12 years prior. Without proper treatment, the 10-year risk of a serious event would reportedly increase from 22 to 85 percent. The employee's plaque was predominantly soft (lipid laden), therefore, a more aggressive cholesterol lowering therapy was suggested.

In reports dated July 28, 2009 and March 9, 2010, Dr. Jung H. Lee, Board-certified in cardiovascular disease, diagnosed moderate coronary artery disease, lipids and hypertension. Dr. Donald J. Russo, a Board-certified internist with a subspecialty in cardiovascular disease, examined the employee on November 30, 2010 and provided the same diagnoses as his colleague, Dr. Lee. However, he also diagnosed borderline diabetes mellitus.

On February 4, 2011 the employee began a weight management program. At that time, he weighed 300.6 pounds. The treatment records also revealed a family history of coronary artery disease as wells as a cigarette smoking history. When the employee was seen on November 15, 2011, he reported smoking only one cigarette a week. His nonorthopedic diagnoses in the month preceding his death included hypertension, hypogonadisim, Vitamin D deficiency, subclinical hypothyroidism and hyperlipidemia. Also, the employee was 6'1" tall and weighed 303 pounds when examined on November 15, 2011.

By decision dated March 27, 2013, the hearing representative affirmed OWCP's September 20, 2012 decision. She found that Dr. Bellinger's second opinion evaluation represented the weight of the evidence.

On May 28, 2013 appellant requested reconsideration. She submitted medical literature about known side effects associated with her deceased husband's prescribed medications.[7]

On June 18, 2013 OWCP denied appellant's request for reconsideration without revisiting the merits of the survivor's claim.

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.[8] 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.[9] This burden includes the necessity of furnishing rationalized medical opinion evidence demonstrating a causal relationship.[10] The physician's opinion must be based on a complete factual and medical

[7] Appellant obtained the information from WebMD.com and the Mayo Clinic's Web site.

[8] 5 U.S.C. §§ 8102(a) and 8133.

[9] *L.R.*, 58 ECAB 369, 375 (2007).

[10] *Id.*

background, must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the relationship between the employee's death and his previous employment.[11]

ANALYSIS

The Board finds that the case is not in posture for decision.

Dr. Ilia, who signed the December 21, 2011 death certificate, mentioned morbid obesity and chronic pain syndrome -- backache. He indicated that the employee's back pain contributed to his morbid obesity, which in turn placed strain on his heart. Dr. Ilia also indicated that large amounts of narcotic pain medication compromised the employee's cardiopulmonary function. Both factors were part of the employee's medical condition at the time of his death from acute coronary syndrome and coronary artery disease.

Neither the death certificate nor Dr. Ilia's March 14, 2012 report included specific information regarding injury-related weight gain, narcotic usage or even a prior history of coronary artery disease. An autopsy was not performed and Dr. Ilia otherwise failed to provide a basis for his findings. Under the circumstances, OWCP properly referred the case to the DMA and subsequently to Dr. Bellinger.

The DMA and Dr. Bellinger both found that there was no relationship between the employee's December 14, 2011 death from acute coronary syndrome/coronary artery disease and his September 23, 1980 employment-related lumbar condition. Dr. Bellinger's September 10, 2012 opinion noted the absence of medical documentation of coronary artery disease. He could not physically examine the employee and there were no autopsy findings. Dr. Bellinger, a cardiologist, relied on the evidence provided by OWCP on the accepted orthopedic condition.

Since the time Dr. Bellinger reviewed the case record, appellant provided additional medical records regarding her deceased husband's nonorthopedic conditions, which included coronary artery disease, hypertension and hyperlipidemia. Rather than refer the additional evidence to Dr. Bellinger for review, the hearing representative continued to rely on his September 10, 2012 opinion despite the existence of additional relevant evidence.

The burden lies with appellant to establish her entitlement to benefits. Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[12] Because there was additional potentially relevant evidence added to the records, OWCP should seek further information and clarification from Dr. Bellinger.[13] Consequently, the case shall be remanded for further development. After OWCP has developed the record to the extent it deems necessary, a *de novo* decision shall be issued.

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[11] *Id.*

[12] *Richard F. Williams*, 55 ECAB 343, 346 (2004).

[13] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.3f(2)(a) (July 2011).

CONCLUSION

The case is not in posture for decision.[14]

ORDER

IT IS HEREBY ORDERED THAT the June 18 and March 27, 2013 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: March 19, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[14] Given the Board's disposition of the merits of the survivor's claim, the question of the propriety of OWCP's June 18, 2013 nonmerit decision is moot.