

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

J.C., claiming as widower of D.C., Appellant
and
DEPARTMENT OF COMMERCE,
DECENNIAL CENSUS, Dallas, TX, Employer

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Docket No. 14-866
Issued: September 19, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 7, 2014 appellant, through counsel, filed a timely appeal from a January 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his 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 over the merits of this case.

ISSUE

The issue is whether the employee's death on December 23, 2012 was causally related to her accepted employment injury.

FACTUAL HISTORY

This case has previously been on appeal before the Board.² In a December 20, 2010 decision, the Board found that the constructed position of receptionist reflected the employee's

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 10-582 (issued December 20, 2010) and Docket No. 12-831 (issued September 11, 2012).

wage-earning capacity effective June 9, 2009. In a September 11, 2012 decision, the Board found that OWCP properly determined that the employee was no longer totally disabled for work and could perform the duties of a constructed position as a receptionist effective August 5, 2011. The Board also noted that the original wage-earning capacity determination remained in place following a closed and limited period of disability. The Board noted that the employee underwent a scheduled surgery and postoperative recovery due to an accepted recurrence due to a May 25, 2010 right knee surgery. The facts and history contained in the prior appeals are incorporated by reference.³

On November 8, 2012 the employee filed a claim for a schedule award. In a November 20, 2012 report, Dr. Jessica Volsky, an osteopath, diagnosed headaches, brachial neuritis or radiculitis, right total knee replacement and opined that the employee had 19 percent right and left upper extremity impairment and 34 percent right lower extremity impairment. In a December 17, 2012 report, Dr. Haranath Policherla, a Board-certified clinical neurophysiologist and neurologist, diagnosed: depression, neck pain, back pain, headaches, cerebrovascular disease, hypersomnolence, balance and memory dysfunction.

In a letter dated January 10, 2013, counsel for appellant, noted that the employee passed away on December 23, 2012 and was survived by her husband, appellant.

On January 19, 2013 appellant, filed a claim for death benefits alleging that the employee's death on December 23, 2012 was related to chronic pain from the work injury, which led to drug use.

In a letter dated January 28, 2013, appellant, through counsel, provided a copy of the employee's death certificate and marriage license and requested that OWCP process the claim. The January 4, 2013 death certificate listed drug abuse as the cause of death.

By letter dated March 8, 2013, OWCP requested that appellant provide additional factual and medical evidence to support that his wife's death was causally related to her federal work injuries. It requested that he submit such evidence within 30 days.

OWCP received an autopsy report dated February 21, 2013, as well as a February 1, 2013 toxicology report. The February 21, 2013 autopsy report, signed by the chief medical examiner, Dr. L.J. Dragovic, a Board-certified anatomic pathologist, forensic pathologist and neuropathologist. The autopsy was performed on December 24, 2012. Dr. Dragovic stated that the employee died on December 23, 2012 at 12:07 p.m. The cause of death was listed as drug abuse. Dr. Dragovic advised that there was no evidence of other trauma or a significant preexisting disease. He indicated that the manner of death was undeterminable.

By decision dated June 25, 2013, OWCP denied appellant's claim for death benefits. It found that the evidence was not sufficient to support a causal relationship between the employee's death and her work-related injuries.

³ OWCP had accepted the employee's claim for cervical radiculopathy, head contusion, headache and right knee anterior cruciate ligament tear and medial meniscal tear.

On June 27, 2013 appellant, through counsel, requested a hearing, which was held on November 25, 2013. During the hearing, appellant explained that the employee took pain medication on a daily basis because of her accepted knee condition.

By decision dated January 13, 2014, the hearing representative affirmed the June 25, 2013 decision which denied appellant's claim for death benefits.

LEGAL PRECEDENT

An award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation or an appellant's belief that the employee's death was caused, precipitated or aggravated by the employment.⁴ 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 or to factors of his employment. As part of this burden, she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his federal employment. Causal relationship is a medical issue and can be established only by medical evidence.⁵

The medical evidence required to establish causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the employee's death and the accepted conditions or employment factors identified by the employee.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the employee's death was causally related to her accepted employment injuries. In support of his claim, counsel for appellant submitted the autopsy report dated February 21, 2013 and death certificate dated January 4, 2013. The employee died on December 23, 2012 at 12:07 p.m. The cause of death was listed as drug abuse. Dr. Dragovic advised that there was no evidence of other trauma or a significant preexisting disease and the manner of death was undeterminable. He did not offer any opinion that the cause of death was related to any of the accepted conditions or employment factors identified by the employee.⁷ Medical evidence which does not offer any

⁴ *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986); *Umberto Guzman*, 25 ECAB 362 (1974).

⁶ *Donna L. Mims*, 53 ECAB 730 (2002).

⁷ As noted, *supra* note 2, OWCP had cervical radiculopathy, head contusion, headache and right knee anterior cruciate ligament tear and medial meniscal tear.

opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸

Appellant did not submit any other medical evidence that attributed the employee's demise to her accepted employment conditions. Although he asserted that drug use attributable to the employee's accepted knee condition led to her death, he did not provide any medical evidence to support this assertion.

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 her death or a comprehensive report following her demise, which explains how her death was attributable to her employment, he has failed to submit the necessary evidence required to meet his 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 the employee's death on December 23, 2012 was not causally related to her accepted employment injury.

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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