

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

---

C.H., widow of L.H., Appellant )

and )

DEPARTMENT OF THE NAVY, NAVAL )  
SHIPYARD, Long Beach, CA, Employer )

---

**Docket No. 15-240  
Issued: March 26, 2015**

*Appearances:*

*Sally F. LaMacchia, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 12, 2014 appellant, through counsel, filed a timely appeal from a September 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met her burden of proof to establish that the employee's death was causally related to his accepted employment injuries.

**FACTUAL HISTORY**

On November 25, 1981 the employee, then a 51-year-old boilermaker, injured his back when pulling down on a rope to close a door which had jammed. OWCP accepted the claim for

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

thoracic strain and lumbar muscle spasm with right leg radiculitis. The employee stopped work in 1982.

The employee died on June 9, 2009. On June 15, 2010 appellant filed a (Form CA-5) claim for death benefits, alleging that her husband's death was causally related to employment factors.

This is the third appeal before the Board regarding appellant's claim for death benefits. The relevant facts are as follows.

In a May 22, 2009 hospital report/discharge summary, received by OWCP on August 17, 2010, Dr. Kenneth Shapiro, Board-certified in internal medicine, stated that the employee was admitted on May 16, 2009, with an admission diagnosis of congestive heart failure. The discharge diagnosis was congestive heart failure, with severe ischemic cardiomyopathy, anasarca, chronic, and acute renal failure, diabetes, lower extremity ulcers in fact with methicillin resistant staphylococcus aureus, and status post coronary artery bypass grafting.

Appellant submitted the employee's death certificate which listed his causes of death on June 9, 2009 as cardiopulmonary arrest, coronary artery disease, and with diabetes mellitus a contributing factor.

In a June 2, 2010 report, Dr. Kesho N. Hurria, the employee's attending physician, stated that the effects of chronic hypertension were one of the leading risk factors for heart attack, stroke, heart failure, and aneurysm. He stated that the employee was a chronic pain sufferer with high blood pressure, which caused increased sensitivity to pain and frequently resulted in even higher blood pressure. Dr. Hurria stated that the employee's 1981 work injury led to a chronic pain syndrome, which caused a chronic cardiac hypertension, which led to chronic edema to the lower extremities, causing decreased circulation to the heart muscle. This caused hypertrophy to the heart that eventually led to the employee's coronary heart attack and coronary bypass surgery in 2009. Dr. Hurria stated that the 1981 back injury resulted in chronic hypertension, leading to coronary artery disease that led to the employee's fatal cardiopulmonary arrest on May 23, 2009.

In a January 6, 2011 report, Dr. Ellen Pichey, an OWCP medical adviser, expressed her disagreement with Dr. Hurria's opinion. She opined that because the employee was 81 years of age, had a triple bypass and pacemaker, diabetes, hypertension, and a family history of cardiac disease, it was not reasonable to conclude that his death was a consequence of thoracic and lumbar sprains and radiculitis from 30 years prior.

In a decision dated March 29, 2011, OWCP denied appellant's claim, finding that the evidence failed to establish that the employee's death was due to factors of his federal employment. By decision dated November 14, 2011, an OWCP hearing representative affirmed the March 29, 2011 decision. In a September 20, 2012 decision,<sup>2</sup> the Board set aside OWCP's decisions. The Board found that there was an unresolved conflict in the medical evidence between Dr. Hurria and Dr. Pichey regarding whether the employee's death was causally related to employment factors. The Board remanded the case to OWCP for referral of appellant to an

---

<sup>2</sup> Docket No. 12-861 (issued September 20, 2012).

appropriate impartial medical specialist to resolve the outstanding conflict in the medical evidence.

Appellant was referred to Dr. Ram K. Setty, a Board-certified cardiologist, who submitted an impartial medical report dated November 9, 2012. Dr. Setty stated that the risk factors for coronary artery disease or hypertension were a family history of coronary artery disease, diabetes mellitus, hypertension, cigarette smoking, and dyslipidemia. He asserted that the available medical data indicated that acute pain from any reason, including anxiety, could raise blood pressure. Dr. Setty advised that because the employee was treated for both back pain and hypertension and did not have hypertension before experiencing back pain, it was possible that his hypertension might have been caused by his back pain. He also indicated that hypertension might have contributed in small part to the employee's developing coronary artery disease. Dr. Setty stated, however, that it was not the sole cause, as he had two major risk factors, diabetes, and a family history of coronary artery disease. He expressed doubt as to whether the employee's back pain could cause hypertension, given that he was being treated for back pain as well as mild hypertension, and given that his coronary artery disease was associated with major, "heavyweight" risk factors like his family history of coronary artery disease and diabetes. Dr. Setty stated that mild hypertension was hard to accept as the sole cause of coronary artery disease, though it may have played a minor role.

By decision dated January 9, 2013, OWCP denied the claim for death benefits. It found that Dr. Setty's impartial medical opinion represented the weight of the medical evidence.

On May 16, 2013 an OWCP hearing representative affirmed the January 9, 2013 decision. In a November 6, 2013 decision,<sup>3</sup> the Board set aside the hearing representative's May 16, 2013 decision. The Board, noting that it was not necessary under its case law to provide a significant contribution of employment factors for the purpose of establishing causal relationship, found that Dr. Setty's opinion was insufficient to resolve the conflict in medical evidence because he opined that hypertension caused by chronic pain might have played at least a minor role in the development of coronary artery disease, resulting in the employee's death. The Board therefore found that his opinion required clarification as to whether the employee's death was due, in any part, to his accepted back condition. The Board set aside the May 16, 2013 decision of the hearing representative and directed OWCP on remand to ask Dr. Setty to submit a report clarifying his opinion as to whether the employee's death was causally related to his 1981 work injury. The complete facts of this case are set forth in the Board's September 20, 2012 and November 6, 2013 decisions and are herein incorporated by reference.

In an August 25, 2014 report, Dr. Setty opined that the employee's death due to coronary artery disease and diabetes was not causally related to the 1981 back injury. He stated:

"The issue, as I understand it is [c]hronic [p]ain -- producing hypertension producing [c]oronary [a]rtery [d]isease. If this is true, much of our population will have coronary artery disease, as back pain is very common.

---

<sup>3</sup> Docket No. 13-1467 (issued November 6, 2013).

“The blood pressure does go up when there is pain -- a very common combination we see always, especially in emergency rooms.... Even during acute heart attack, in [emergency rooms] we see blood pressures going sky high and coming down to base levels with a shot of morphine. What I am getting [at] here is [that] the blood pressures do go up and down in many patients. We call this group as labile hypertension or fluctuating blood pressure. [The employee] falls into this group. In September 28, 1985, his blood pressure was reported as 130/82. In December 6, 1995 it was 160/98. Now we can see a large difference even in patients being treated. Obviously, the blood pressure in this patient is not a persistent one to produce changes in the body to develop coronary artery disease.

“The other thing I brought up in my last letter is that [the employee] is under constant medical care. We know [patients] treated [for] hypertension do a lot better (twice as well) than untreated hypertension. Also [the employee] was on many types of painkillers for his back all through. So when somebody has both hypertension and back pain and is being treated by continuous medical attention it is anybody’s guess that chronic pain has nothing to do in the development of hypertension. [The employee] had his back injury in 1981 and open heart surgery in 2007. Also, looking at his records, he goes to the hospital with chest pain in August 2007 and during the same admission he had open heart surgery, meaning he did not have significant coronary artery disease before. If back pain is to produce coronary artery disease, [the employee] should have had symptoms of coronary artery disease earlier.”

Dr. Setty further noted that the employee had a family history of diabetes, which, when combined with hypertension and the subsequent development of coronary artery disease, provided more than enough factors to produce a heart attack. He therefore concluded that there was no chance for patients who have controlled pain stemming from a physical injury, like the employee, to develop hypertension and coronary artery disease from the injury-related pain.

By decision dated September 4, 2014, OWCP denied the claim for death benefits. It found that Dr. Setty’s impartial medical opinion represented the weight of the medical evidence.

### **LEGAL PRECEDENT**

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 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.<sup>4</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>5</sup> Rationalized medical opinion evidence is medical evidence which

---

<sup>4</sup> *Kathy Marshall (James Marshall)*, 45 ECAB 827, 832 (1994); *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990).

<sup>5</sup> *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

It is not necessary to provide a significant contribution of employment factors for the purpose of establishing causal relationship.<sup>9</sup>

Section 8123(a) provides that, if there is a 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.<sup>10</sup> It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>11</sup>

### ANALYSIS

The Board finds that appellant failed to establish that the employee's death was causally related to his work-related injuries. In his August 25, 2014 report, Dr. Setty stated that the employee's chronic pain resulting from his 1981 back injury did not produce hypertension, which resulted in coronary artery disease and caused his fatal heart attack. He advised that back pain was common in the general population and resulted in elevated blood pressure in many patients; this, however, did not typically result in the patient developing coronary artery disease. Dr. Setty advised that blood pressure will fluctuate in patients such as the employee but was not sufficiently persistent to produce changes in the body which would develop coronary artery disease. He stated that, if back pain had produced the employee's coronary artery disease, he should have manifested symptoms of coronary artery disease earlier. Dr. Setty asserted that there was no chance for patients with pain stemming from a physical injury, like the employee, to develop hypertension and coronary artery disease from the injury-related pain. He advised that the employee's family history of diabetes, combined with hypertension and the subsequent development of coronary artery disease, were sufficient factors to result in his heart attack. Based on these reasons, Dr. Setty concluded that the employee's death due to coronary artery disease and diabetes was not causally related to the 1981 back injury.

---

<sup>6</sup> *William Nimitz, Jr.* 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> *See Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>10</sup> *Regina T. Pellecchia*, 53 ECAB 155 (2001).

<sup>11</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

OWCP relied on Dr. Setty's opinion in its September 4, 2014 decision, finding that his amended report was a sufficient basis to conclude that the employee's 2009 death due to coronary artery disease and diabetes was not causally related to his accepted 1981 back injury, and represented the weight of the medical evidence. The Board finds that Dr. Setty's impartial opinion negates a causal relationship between the employee's death due to coronary artery disease and diabetes was not causally related to the 1981 back injury. Dr. Setty's opinion is sufficiently probative, rationalized, and based upon a proper factual background. Therefore, OWCP properly accorded his opinion the special weight of an impartial medical examiner.<sup>12</sup>

On appeal, appellant's counsel reiterates his argument, stated below, that Dr. Pichey's January 6, 2011 report was not sufficient to produce a conflict in the medical evidence. The Board has previously addressed this contention and has found that a conflict in the medical evidence did exist between the opinions of Dr. Pichey and Dr. Hurria as to whether the employee's death due to coronary artery disease was causally related to his work-related 1981 back injury. Counsel further argues that Dr. Setty's August 25, 2014 report was not sufficiently rationalized and did not provide a sufficient basis to deny death benefits to appellant; in fact, his reports supported a finding of causal relationship. She states that he did not address the reports and opinions of Dr. Hurria, who was the employee's longtime attending physician, treated him for years and therefore provided a more credible opinion of whether hypertension, produced by chronic back pain, contributed to the development of the employee's coronary artery disease. The Board does not agree. For the reasons stated above, Dr. Setty's supplemental opinion is sufficient to resolve the conflict in medical evidence, as his opinion clarifies that the employee's death was not due, in any part, to his accepted 1981 back injury. OWCP properly found that appellant failed to meet her burden of proof to establish that her husband's death was caused by factors of his federal employment.<sup>13</sup> The Board therefore affirms the September 4, 2014 decision denying compensation for death benefits.

### CONCLUSION

The Board finds that appellant failed to establish that the employee's death on May 23, 2009 was causally related to factors of his federal employment.

---

<sup>12</sup> *Gary R. Seiber*, 46 ECAB 215 (1994).

<sup>13</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 4, 2014 is affirmed.

Issued: March 26, 2015  
Washington, DC

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

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

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