United States Department of Labor
Employees' Compensation Appeals Board

L.F., widow of W.F., Appellant	)	
and	)	**Docket No. 14-2022**
	)	**Issued: October 19, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Sacramento, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 22, 2014 appellant, through counsel, filed a timely appeal from an August 15, 2014 merit 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 this case.

ISSUE

The issue is whether the employee's suicide on July 17, 2012 was causally related to factors of his federal employment.

FACTUAL HISTORY

On January 15, 1988 the employee, a 29-year-old electrician, fell to the floor from the top of an inspector's gallery, injuring his back, when pulling down a rope to close a door which had jammed. He filed a claim for benefits on January 28, 1988, which OWCP accepted for

[1] 5 U.S.C. § 8101 *et seq.*

contusions and abrasions of the left knee and hand; contusion of the right knee, bilateral knee dislocations, internal derangement of the left knee, osteoarthritis of the left leg, derangement of posterior horn medial meniscus, acute osteomylitis of the left leg, lumbar strain, and chronic pain syndrome. OWCP accepted periodic disability and paid appropriate compensation benefits.

OWCP authorized multiple surgical procedures for the employee's accepted left knee injury including a March 16, 1988 anterior cruciate ligament (ACL) reconstruction with partial medial and lateral menisectomy, an October 20, 1989 arthroscopy with removal of screws, an October 2, 1996 arthroscopy including excision of a portion of the ACL, a June 21, 2000 arthroscopy including joint debridement, a May 20, 2003 ACL reconstruction, a November 11, 2004 arthroscopy with partial synovectomy and debridement, a December 4, 2006 total knee replacement, and an October 25, 2011 revision of left total knee replacement.

By decision dated March 13, 1995, OWCP granted the employee a schedule award for a 42 percent permanent impairment of the left leg for the period October 20, 1990 to February 12, 1993, for a total of 120.96 weeks of compensation. By decision dated November 13, 2007, OWCP granted the employee a schedule award for a 50 percent permanent impairment of the left leg, less the 42 percent already awarded, for the period May 16 to October 24, 2007, for a total of 23.04 weeks of compensation.

OWCP continued to pay medical benefits and the employee continued to receive medical treatment and physical therapy for his left knee as well as his low back condition through the years.

Dr. Marcia J. Howton, Board-certified in pain medicine and anesthesiology, reported on March 7, 2011 that the employee had returned for follow up of his chronic pain condition. She related that his back pain was worsening, with pain radiating down his low back into the left lateral leg. Dr. Howton requested authorization for a magnetic resonance imaging (MRI) scan. The employee related anxiety of 9 on a 10 scale, and depression of 6 on a 10 scale. Dr. Howton concluded that the employee could continue to work, with no restrictions. On May 3, 2011 she related that the employee's back pain had improved, but that he now had left knee pain of 9 on a 10 scale. Dr. Howton noted that the employee's anxiety and depression were 7 on a 10 scale. She concluded that the employee was temporarily disabled due to possible infection of the left knee.

In a July 13, 2011 report, William G. Danton, Ph.D., a clinical psychologist, stated that the employee's chronic pain prevented him from doing the things that he loved and that he had lost interest in his favorite activities. He advised that his wife was sick of his depression. The employee related that approximately four years prior, he had "lost his mind" and was arrested for domestic violence and assault with a deadly weapon, that his wife had called 911, and that he was booked into jail for the night.

In reports dated July 25 and 28, 2011, received by OWCP on February 8, 2013, Dr. Ayse Yasar, Board-certified in family practice, stated that the employee had major depressive disorder, severe with recurrence, no psychotic features, chronic pain and hypertension, occupational problems, and relationship problems. He advised that he had been admitted to a hospital on July 25, 2011 after he expressed suicidal ideation and was released on July 28, 2011. Dr. Yasar

stated that the employee had been dealing with chronic pain for 23 years as a result of his work injury and that he began having suicidal ideation for the past two months, which was getting intense. He asserted that the employee was experiencing severe pain, was severely and chronically depressed, had chronic back, neck, and knee pain that resulted from the work-related accident, and was experiencing anger, irritability, and insomnia.

The record reflects that the employee was placed on the periodic rolls as of August 28, 2011 and received disability compensation benefits until his death.

The record substantiates that the employee underwent an authorized revision of the left total knee replacement on October 25, 2011, by Dr. Eric M. Boyden, a Board-certified orthopedic surgeon. During the surgery, a large cyst in the lateral femoral condyle was removed.

Dr. Howton reported on January 11, 2012 that the employee had returned for follow up of his chronic pain. He related right knee pain of 6 to 7 on a 10 scale and stabbing back pain. The employee also related depression at about 9 on a 10 scale.

In a February 6, 2012 report, Dr. Yasar stated that he had been treating the employee for severe pain and worsened mood since June 2011. He advised that the employee had developed chronic pain which aggravated his depression and complicated the treatment of his depression. The employee required inpatient treatment for his severe depression in the summer of 2011. Dr. Yasar stated that the employee had not been able to work since May 2011 because of pain and worsened mood symptoms.

In a May 8, 2012 report, Blake Tearnan, Ph.D, a clinical psychologist, stated that the employee was experiencing left knee, left foot, and low back pain on a daily basis. The employee related that the pain was burning, sharp, shooting, constant, stabbing and excruciating. He rated it as a 6 to 7 on a scale of 1 to 10. Dr. Tearnan advised that the employee's pain had caused a number of problems in his life and had negatively affected his physical activity, ability to work, marital life, social life, mood, sleep, energy level, ability to carry out home responsibilities, and sex life. He stated that there was strong evidence that the employee's pain-related disability was aggravated by both environmental and social factors, including ongoing disability payments, dependency on the healthcare system, and possibly avoidance of work-related responsibilities. Dr. Tearnan advised that the employee experienced thoughts of hopelessness and frequent suicidal ideation.

Dr. Tearnan stated that the employee also experienced social isolation, significant marital strain, sleep disturbance, and little to no sexual relations. He related that his chronic negatively affected his physical activity, ability to work, marital life, social life, mood, energy level, and his ability to carry out home responsibilities. The employee's pain problem was manifested by a significant amount of avoidance and fear. Psychologically, he reported symptoms of generalized mood disturbance, including beliefs of hopelessness and suicidal ideation, social isolation, significant marital strain, sleep disturbance, and an absence of sexual relations. Dr. Tearnan stated that the employee reported a significant psychiatric history since his industrial accident, particularly in the past few years. He opined that the employee appeared to be a bitter and depressed man who felt hopeless and victimized by his pain and other problems in his life, including a very distressed marriage. Dr. Tearnan noted that the employee's wife was present

during the consultation and that there was obvious strain between the two of them, which they openly admitted. He related that their relationship had been dissatisfying for several months. Dr. Tearnan diagnosed major depression, dysthymic mood disturbance, pain disorder associated with medical and psychological factors, and unspecified personality traits/disturbance.

In a July 12, 2012 report, Dr. Tearnan stated that the employee and his wife had expressed concerns about the fact that charges had been filed against him approximately 20 years previously for domestic abuse. The employee asserted that no charges were filed against him, but that he had been arrested for abuse. He suggested that the medication he had been taking may have led to the marital problems and to his arrest. In addition, the employee's records noted that a possible avoidance of work-related responsibilities was a possible external incentive, but he adamantly denied that any of this was related to a desire to avoid work.

On August 2, 2012 appellant informed the employing establishment that the employee died on July 17, 2012.

On December 10, 2012 appellant, the employee's widow, filed a Form CA-5 claim for survivor benefits, alleging that her husband's death was causally related to employment factors, which indicated that the cause of death was a self-inflicted gunshot wound to the head, a suicide. She stated that her husband had never recovered from the psychological effects of his 1988 injury and the fact that he had been physically disabled for many years.

By letter dated January 7, 2013, OWCP advised appellant that it required additional medical evidence to establish that her husband's death was causally related to factors of his federal employment. It requested that she submit a medical report providing a history of the disease which caused or aggravated the employee's condition resulting in death, a diagnosis of the disease, and an opinion bearing on the relationship of disease and death to factors of his employment, including medical reasons for the opinion.

In a series of reports received on February 8, 2013, Dr. Danton indicated that he had treated the employee periodically from July 2011 to July 2012 for ongoing issues with chronic pain syndrome and depression. He indicated that appellant had been experiencing work avoidance issues primarily because of fear of failure given his ongoing pain problem, depression, and use of narcotic pain killers.

In a February 4, 2013 report, Dr. Danton stated that due to his 1988 injury the employee badly injured his left knee, which required multiple surgeries, including knee replacement surgery in 2006 and 2011. He opined that he was never able to accept the physical limitations imposed by his injury, which resulted in chronic depression and eventually suicide. Dr. Danton stated that, according to DSM-IV-R, the essential feature of pain disorder is pain that is the predominant focus of the clinical presentation and is of sufficient severity to warrant clinical attention. This causes significant distress or impairment in social, occupational, or other important areas of functioning. With regard to the employee's mental and physical condition prior to the suicide, Dr. Danton related that he was unable to derive pleasure from his marital or social activities and was despondent over the failure of his second left knee replacement surgery and the realization that the employee was never going to be pain free. The employee was frustrated that his physical condition and concomitant pain could not be successfully

ameliorated. Dr. Danton advised that he was also frustrated by anhedonia, insomnia, and physical inertia. He stated that these stressors were associated with his primary diagnosis.

Dr. Danton opined that the employee's January 1988 work injury resulted in severe knee and back pain, as well as physical disability, that he was never able to accept. He asserted that his fear that the pain would consume him resulted in a number of avoidant behaviors. Dr. Danton stated that, ultimately, the employee's pain and resulting mood disturbance impacted his marriage, social behavior, and ability to experience pleasure. This led to a feeling of being trapped. The employee had believed that pain medications were necessary to merely function but precluded his ability to return to work.

In a decision dated February 13, 2013, OWCP denied the survivor benefits claim, finding that the evidence of record did not establish that the employee's death was caused by the January 15, 1988 employment injury.

By letter dated February 13, 2013, appellant's counsel requested an oral hearing, which was held on June 10, 2013.

In a report dated June 19, 2013, Dr. Danton stated that the employee's consensus diagnosis and his treatment diagnosis was pain disorder associated with both psychological factors and a chronic, industrially-related condition. He reiterated his previous findings and conclusions regarding the development of his suicidal ideation and stated: "It is my opinion within a reasonable degree of medical certainty that had [the employee] not suffered the debilitating work injuries he would not have taken his own life. It is my opinion that his death was directly related to his on the job injuries."

By decision dated September 11, 2013, an OWCP hearing representative affirmed the February 13, 2013 decision.

On March 3, 2014 appellant requested reconsideration. In support of this request, she submitted another report from Dr. Danton. In a January 30, 2014 report, Dr. Danton essentially reiterated his previous findings and conclusions. He asserted that the employee had pain disorder associated with both psychological factors and a general medical condition. Dr. Danton stated that the employee's January 15, 1988 work injury resulted in severe knee and back pain as well as physical disability that he was never able to accept. Dr. Danton stated that the employee's pain and resulting mood disturbance ultimately affected his marriage, social behavior, and ability to experience pleasure. He asserted that within a reasonable degree of medical certainty, his marital discord, alienation from family, his dysfunctional reaction to his cousin's death, and his financial security issues were the result of his condition and were not independently caused by his suicide. Dr. Danton concluded that, within a reasonable degree of medical certainty, had he not suffered his debilitating work injuries he would not have taken his own life. He opined that the employee's death was directly related to his accepted condition, the result of on-the-job injuries.

By decision dated August 15, 2014, OWCP denied modification of the September 11, 2013 decision.

LEGAL PRECEDENT

Appellant has the burden of establishing by a preponderance of the reliable, probative, and substantial evidence the existence of a causal relationship between the employee's death by suicide and factors of his federal employment.[2] The suicide itself must arise out of the employee's assigned duties to such an extent as to be regarded as arising out of and in the course of employment.[3]

In determining whether an employee's suicide is causally related to factors of his employment, OWCP has adopted the "chain of causation" test.[4] OWCP's procedure manual explains that all suicide claims are not precluded by 5 U.S.C. § 8102(a)(2)[5] and states: "[C]ompensation can be paid if the job-related injury (or disease) and its consequences directly resulted in the employee's domination by a disturbance of the mind and loss of normal judgment which, in an unbroken chain, resulted in suicide."[6]

The emphasis is on a showing of genuine brain derangement or psychosis, as distinguished from mere melancholy, discouragement, or other sane condition such as depression.[7]

Under the chain of causation test, OWCP procedure manual states: "If the injury and its consequences directly resulted in a mental disturbance, or physical condition which produced a compulsion to commit suicide, and disabled the employee from exercising sound discretion or judgment so as to control that compulsion, then the test is satisfied and the suicide is compensable."[8]

The procedure manual adds that, for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken.[9]

---

[2] *Rosita Mahana (Wayne Mahana)*, 53 ECAB 503 (2002).

[3] *Id.*

[4] *Id.*

[5] Section 8102(a)(2) of FECA (5 U.S.C. § 8102(a)(2)), precludes payment of compensation for disability or death sustained in the performance of duty where the injury or death is caused by the employee's intention to bring about the injury or death of himself, herself, or another. *Id.*

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (September 1995).

[7] Larson, *The Law of Workers' Compensation* § 38.01.

[8] *Supra* note 6 at Chapter 2.804.15b(2).

[9] *Id.* at Chapter 2.804.15(b)(3) (March 1994).

The Board has approved the majority view as expressed in Larson's treatise on workers' compensation:

> "If the sole motivation controlling the will of the employee who decides to commit suicide is the pain and despair caused by the injury and if the will itself is deranged and disordered by these consequences of the injury, then it seems wrong to say that this exercise of will is 'independent' or that it breaks the chain of causation. Rather, it seems to be in the direct line of causation."[10]

In his treatise, Larson expresses the rule in a simpler manner: "Suicide under the majority rule is compensable if the injury produces mental derangement and the mental derangement produces suicide."[11]

ANALYSIS

Appellant has attributed the employee's death on July 17, 2012 to depression caused by chronic pain resulting from his January 15, 1988 employment injury. In *Carolyn King Palermo and Travis Palermo (Dwayne Palermo)*,[12] the Board noted that, for compensability to arise from an employee's suicide under FECA, a direct causal chain must be established with the accepted employment injury. The proximate cause of the employee's death must be established in an employment injury which, in a natural and continuous sequence unbroken by any new or independent causes, produced the employee's death and without which the death would not have occurred. For the employment injury to merely contribute to the mental disorder and the suicide is not sufficient; the compensable factors must be a direct cause without which the suicide would not have occurred.[13] In *Palermo*, it was contended that OWCP had erroneously found that the compensable factors of employment must be the sole motivation for the suicide. The Board explained that the medical evidence of record must establish that compensable factors of employment not only contributed to the mental disorder and the suicide, but that the compensable factors were the direct cause, without which the suicide would not have occurred.

It is not enough to show that the employee suffered depression from the employment injury, rather the evidence must establish genuine dementia or psychosis. The Board has explained that the mental derangement must impair the employee's normal, rational judgment.[14]

Applying this standard in the present case, the Board finds that the evidence is insufficient to establish that the employee's suicide on July 17, 2012 was the direct result of his accepted January 15, 1988 employment injury.

---

[10] *Supra* note 7.

[11] *Id.* at 36.00; *see also Carolyn King Palermo and Travis Palermo (Dwayne Palermo)*, 42 ECAB 435 (1991).

[12] 45 ECAB 308 (1994)

[13] *Id.* at 313.

[14] *Id.*; *see also Melina Minter (Shane C. Minter)*, Docket No. 05-655 (issued June, 19, 2006).

The record contains several reports documenting the employee's condition in the approximately one-year period leading up to his July 17, 2012 suicide. Dr. Yasar advised that the employee had been suffering with chronic pain for 23 years as a result of his work injury and had been hospitalized from July 25 to 28, 2011 after he expressed suicidal ideation. He diagnosed severe, recurrent, major depressive disorder, and noted that the employee was experiencing chronic pain, hypertension, occupational problems, and relationship problems. Dr. Yasar asserted that the employee was experiencing severe pain, was severely and chronically depressed, had chronic back, neck, knee pain that resulted from a work-related accident, and was experiencing anger, irritability, and insomnia. He opined that the employee had not been able to work since May 2011 because of pain and worsened mood symptoms.

Dr. Danton stated in his 2011 and 2012 reports, issued prior to the employee's suicide, that the employee had ongoing issues with chronic pain syndrome and depression. He opined that the employee had been experiencing work avoidance issues, primarily because of a fear of failure which stemmed from his ongoing pain problem, depression and use of narcotic pain killers. Dr. Danton asserted that the employee's chronic pain prevented him from doing the things that he loved and had lost interest in his favorite activities. He noted that the employee was arrested for domestic violence and assault with a deadly weapon and was jailed for the night. Dr. Tearnan stated in his May 8, 2012 report that the employee was experiencing severe, constant left knee, left foot, and low back pain. He asserted that this had caused a number of problems in his life and had adversely affected his physical activity, ability to work, marital life, social life, mood, sleep, energy level, ability to carry out home responsibilities, and sex life. Dr. Tearnan asserted that the employee's pain-related disability was aggravated by both environmental and social factors; these included ongoing disability payments, dependency on the healthcare system, and possibly avoidance of work-related responsibilities. He stated that the employee experienced thoughts of hopelessness and frequent suicidal ideation. Dr. Tearnan stated that his pain problem was manifested by a significant amount of avoidance and fear. The employee had symptoms of generalized mood disturbance which included beliefs of hopelessness and suicidal ideation, social isolation, significant marital strain, and sleep disturbance. Dr. Tearnan indicated that the employee had a substantial psychiatric history since his 1988 work injury, particularly in the past few years. He diagnosed major depression, dysthymic mood disturbance, pain disorder associated with medical and psychological factors, and unspecified personality traits/disturbance.

Following the employee's suicide, Dr. Danton submitted reports dated February 4 and June 19, 2013 and January 30, 2014. In his February 4, 2013 report, Dr. Danton stated that, due to his 1988 injury, the employee badly injured his left knee, which required multiple surgeries, including knee replacement surgery in 2006 and 2011. He opined that he was never able to accept the physical limitations imposed by his injury, which resulted in chronic depression and eventually suicide. With regard to the employee's mental and physical condition prior to the suicide, Dr. Danton reiterated that he was unable to derive pleasure from his marital or social activities and was despondent over the failure of his second left knee replacement surgery, and the realization that his condition was essentially incurable and that he was never going to be pain free. He opined that the employee's January 1988 work injury resulted in severe knee and back pain as well as physical. Dr. Danton advised that, ultimately, the employee's pain and resulting mood disturbance impacted his marriage, social behavior, and ability to experience pleasure; this led to a feeling of being trapped. He opined in his June 19, 2013 report that had the employee

not sustained the debilitating work injuries he would not have taken his own life and that his death was directly related to his on-the-job injuries.

While Drs. Tearnan, Yasar, and Danton provided reports which generally supported appellant's claim, these physicians did not provide sufficient medical opinions to establish that the employee's death by suicide on July 17, 2012 was a natural or continuous sequence of the January 15, 1988 injury, unbroken by any independent causes or to establish that the employment injury was the motivation for his suicide. These physicians did not explain the process by which the 1988 work injury directly led to the employee's July 2012 suicide.

The medical evidence of record does support a finding that the employee suffered chronic pain from his accepted conditions and that he was depressed. The evidence of record, however, is not sufficient to establish that appellant sustained derangement or psychosis from his accepted injury. None of the reports contain medical rationale that the employee's work injury prevented him from exercising sound judgment such that he could not control his impulses.

Dr. Tearnan indicated that the employee had expressed beliefs of hopelessness and suicidal ideation and had a substantial psychiatric history since his 1988 work injury, but noted that these issues had been particularly extant in the past few years. In addition, the evidence supports that such other factors contributed to his major depression and that the 1988 employment injury was not the sole motivation in the suicide. Dr. Tearnan advised that the employee's depression was aggravated by other, nonwork-related problems in his life, which included a very distressed and strained marital situation. Dr. Danton opined that, had the employee not suffered his debilitating work injuries he would not have taken his own life, and that his death was directly related to his work-related condition. These physicians however did not explain the psychological process by which the 1988 work injury directly led to the employee's July 2012 suicide or provide probative, rationalized medical opinion that the employment injury was the motivation for his suicide. The Board therefore concludes that the medical evidence of record does not establish that the employee could no longer exercise sound judgment to control his impulses. Rather the evidence establishes that the employee suffered from depression and no longer wanted to live.

The Board therefore affirms OWCP's August 15, 2014 decision denying modification of OWCP's February 13, 2013 decision.

CONCLUSION

Appellant has failed to establish a direct causal relationship between the employee's accepted 1988 injury and his death on July 17, 2012. Therefore, the Board finds that she has failed to establish her claim for survivor benefits.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 19, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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