United States Department of Labor
Employees' Compensation Appeals Board

D.M., widower of T.M., Appellant	)	
and	)	
	)	**Docket No. 14-0460**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Salem, VA, Employer	)	**Issued: February 11, 2016**

Appearances:
Susan A. Waddell, Esq., for the appellant
Ashkea Herron McAllister, Esq., for the Director

Oral Argument January 7, 2015

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 23, 2013 appellant, through counsel, filed a timely appeal of a November 6, 2013 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that the employee's death was caused or contributed to by her federal employment.

FACTUAL HISTORY

On February 10, 2012, appellant filed a claim for compensation by widower[2] (Form CA-5) alleging that his wife, the employee, died on October 7, 2011 due to her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record includes a copy of appellant's marriage license.

He noted that the employee worked as a nurse for the employing establishment at its Medical Center in Salem, Virginia. On the reverse of the form, the employee's attending physician, Dr. Richard P. Konstance, a Board-certified cardiologist, noted that she suffered a suspected heart attack with increased metabolic acidosis due to a presumed bacterial infection. Her direct cause of death was Neisseria meningitidis group B bacteremia with disseminated intravascular coagulation. Dr. Konstance noted that the contributory causes of death were meningitis, septic shock, respiratory failure, and pulseless electrical activity (PEA) arrest. He reported that the employee's symptoms included fever, watery diarrhea and bloody emesis, lethargy, as well as profound metabolic acidosis and changes on her electrocardiogram (EKG). The death certificate listed meningitis as the immediate cause of death.

In a report dated March 1, 2012, Dr. Luthur A. Beazley, a Board-certified pediatrician, attributed the employee's death to meningococcemia. He noted that the employee worked as a nurse in an active clinic. He opined, "While meningococcus can be acquired by the general population, being a health care professional like [the employee] certainly increased ones risk. Her situation can be considered work related."

Dr. Lee Anne Steffe, a Board-certified pediatrician, completed a note on March 1, 2012 and opined that the employee was most likely exposed to the N. meningitidis bacteria at the employing establishment where she was employed as a nurse in the family practice clinic. Dr. Steffe referenced a medical publication noting that healthcare workers had a 25-times greater risk of contracting meningococcal disease than the general population. She concluded, "The incidence of this deadly disease is thankfully low, but I do believe that [the employee's] employment increased her risk of exposure."

In a letter dated November 14, 2012, OWCP requested additional factual evidence regarding the employee's exposure and medical evidence with an explanation as to whether the exposure resulted in the specific infection diagnosed.

Appellant submitted a narrative statement describing the events of October 6 and 7, 2011. He related that the employee reported for work on that date at 7:35 a.m. and seemed in normal good health and spirits. When he picked her up at 4:30 p.m., she was still in a good mood, showing no signs of illness. They then ate dinner at a local restaurant. The employee did not finish her meal, but did not say she was feeling ill. They then returned home and appellant went to bed at 10:30 p.m. On Friday, October 7, 2011 the employee awakened appellant at 2:10 a.m., noting that that she was freezing cold and could not get warm. Her temperature at that time was 100.7 degrees. At 2:50 a.m. the employee informed appellant that she was nauseous and vomited blood. Appellant drove the employee to the emergency room at New River Valley Medical Center in Radford, VA. After performing diagnostic tests, including an electrocardiogram (EKG), doctors advised that they could not find anything wrong, but were admitting her for observation. At 10:00 a.m., the employee's temperature had risen to 105.8 degrees and a second EKG revealed heart problems. The employee was diagnosed with a heart attack and was helicoptered to Carilion Roanoke Memorial Hospital, which was better equipped to handle her medical condition. At 12:00 p.m. she was found to be responsive. At approximately 1:30 p.m. the charge nurse informed appellant that the employee had not had a heart attack, but rather had an unknown type of virus or blood infection and they were working on the problem. Shortly thereafter, the employee's vital signs crashed and doctors were

ultimately unable to revive her. The employee died at approximately 4:00 p.m. When appellant was allowed back into the employee's hospital room, he noticed red pimples on her skin. He was told at the time that the doctors did not know what caused her death. Appellant requested an autopsy.

Appellant explained that the employee's work involved patients seizing on her and treating patients who lived in unsanitary conditions. He noted that he was required to take antibiotics after the employee's death due to the contagious nature of her condition. He further stated that that a "Lady in the North Carolina Operations center where they handled my wife's case said it [was] highly [likely] she acquired this virus at the Veterans Hospital in Salem, VA." Appellant further stated, "I understand the only way to find out if you have the disease is to do a spinal tap. I have been advised you can carry the disease and not know it. I cannot subject all the people that she came in contact with that week to a spinal tap to find the source."

Appellant submitted the employee's hospital records. A report from Dr. Konstance noted that he examined the employee at the Carilion Roanoke Memorial Hospital, on October 7, 2011 after the employee had presented to an outside emergency room complaining of fever, chills, and watery diarrhea followed by blood emesis. She was noted to be somewhat lethargic. After EKG changes, she was transported to Carilion Roanoke Memorial Hospital Cardiology Service for possible cardiac intervention. Upon arrival, she initially complained of abdominal pain and continued to be quite lethargic. Shortly after her arrival she had a temperature of 105 degrees and deteriorated fairly quickly, requiring intubation, and she subsequently developed pulseless electrical activity (PEA) arrest. He diagnosed an acute septic event localized to her abdominal compartment with profound metabolic acidosis with lactic acidosis and recurrent episodes of PEA arrest refractory to resuscitative efforts.

Dr. Robert E. Budin, a Board-certified pathologist, performed an autopsy. He listed the employee's cause of death as Neisseria meningitidis group B bacteremia with disseminated intravascular coagulation involving kidney, gastrointestinal tract, heart, and lungs with hemorrhage of the middle lobe of the right lung and bilateral adrenal glands.

Dr. William J. Kagey, a Board-certified pediatrician, completed a note dated December 27, 2012 and noted that the employee worked as a nurse in the family practice clinic at the employing establishment. He also noted that she died of meningococcemia on October 7, 2011. Dr. Kagey opined, "I have reviewed her medical record and my unequivocal opinion is that there is reasonable medical probability that the meningococcal disease was acquired as a work-related illness." He also noted that the medical literature confirmed that health care workers were at significantly greater risk of acquiring meningococcal disease.

On January 3, 2013 Dr. Steffe opined, "With reasonable medical probability, [the employee] was exposed to the N. [m]eningitidis bacteria at the [employing establishment] where she was employed as a nurse in the Family Practice clinic."

In an e-mail dated February 1, 2013, appellant's supervisor, Pam McAnally, stated that the employee worked in the surgical and urology outpatient specialty clinics. She stated that, "It is not possible to determine if the exposure was work related." Ms. McAnally noted that no other employees were infected. She further stated that she was unable to determine to whom the

employee was exposed, the dates of the exposure, or the length of time that the employee was exposed to the source of the infection. The employee worked Monday through Friday, September 26 to 30, 2011 and Monday through Thursday, October 3 to 6, 2011.

By decision dated March 7, 2013, OWCP denied appellant's claim finding that he had not established that the employee's exposure to meningitis occurred due to her federal employment. On March 11, 2013 appellant requested an oral hearing before an OWCP hearing representative.

Appellant and Dr. Kagey testified at the oral hearing held on August 5, 2013. Counsel argued that 10 to 15 percent of the general population might be silent carriers of the bacterial meningitis that killed the employee. Dr. Kagey stated that the employee contracted a bacterial infection of meningococcemia in the blood stream and meningococcal bacteria in the central nervous system in the spinal fluid. He stated that this bacteria was carried in a small percentage of the population and usually contracted through airborne exposure. Dr. Kagey stated that the disease could develop rapidly as in the employee's case with colonization in the bloodstream and then the central nervous system leading to vascular collapse from the bacterial infection. He stated that the incubation period was usually one to four days from the time of exposure. Dr. Kagey noted that as a nurse the employee was 25 times more likely to develop meningitis in a hospital setting than the general population.

Appellant testified during the hearing that he had not contracted meningitis, and that to his knowledge he was not a carrier. He further stated that he was not aware of anyone in the community with the disease. Appellant described the employee's onset of symptoms and noted the quick escalation of the disease resulting in her death only 14 hours after the initial onset of symptoms. He testified that the employee had not traveled or been exposed to crowds during the week before her symptoms developed. Appellant noted that, other than for the night of October 6, 2011, they had not eaten out previously that week, but stayed home and did not do much. Counsel stated that she would submit a copy of the one-page health department investigation, as well as articles from medical literature.

Following the oral hearing, counsel submitted excerpts from medical publications addressing health care workers and meningococcal disease. Dr. Kagey also noted that one of the articles states that health care workers were 25 percent more likely to be exposed to the bacteria, and the article contains a comment that health care workers without airway protection at the time of patient admission probably have an even greater risk.

By decision dated November 6, 2013, the OWCP hearing representative denied appellant's claim because there was no evidence in the record to support a finding that the employee contracted meningococcal meningitis at work or that she was exposed to the bacteria at work. He concluded, "Absent the submission of factual evidence establishing when, where and how the employee was exposed to the N. Meningitidis bacteria while in the performance of her federal duties, the evidence of record is found to be insufficient to establish that the employee's death was causally related to her federal employment."

LEGAL PRECEDENT

The United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.[3]

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 or her federal employment. This burden includes the necessity of furnishing rationalized medical opinion evidence of a cause and effect relationship, based on a complete factual and medical background, showing causal relationship. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.[4]

Chapter 2.805.6 of OWCP's procedure manual provides:

> "*High-Risk Employment*. Certain kinds of employment routinely present situations which may lead to infection by contact with animals, human blood, bodily secretions, and other substances. Conditions such as HIV infection and hepatitis B more commonly represent a work hazard in health care facilities, correctional institutions, and drug treatment centers, among others, than in Federal workplaces as a whole. Likewise, claims for brucellosis, anthrax, and similar diseases will most often arise among veterinarians and others who regularly work with livestock.
>
> "Establishing causal relationship in these types of complex cases usually requires an in-depth discussion of causal relationship by an appropriate specialist (whether it is the claimant's physician or a second opinion specialist.) When writing to a specialist, the [claims examiner] should include a [statement of accepted facts] SOAF to provide a complete an accurate factual background for the specialist to render his/her opinion.[5]"

ANALYSIS

Appellant argues that the employee contracted meningococcal meningitis in the course of her employment as a nurse for the employing establishment, resulting in her death on October 7, 2011. OWCP denied appellant's claim for survivor benefits, finding that the evidence of record was insufficient to support a finding that the employee contracted meningococcal meningitis at work, or that she was exposed to the bacteria at work.

The Board finds that the employee's work as a nurse at the employing establishment routinely presented situations which may lead to infection by contact with human blood, bodily

[3] 5 U.S.C. § 8102(a); *see* 5 U.S.C. § 8133.

[4] *Lois E. Culver*, 53 ECAB 412 (2002).

[5] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.6 (January 2013).

secretions, and other substances. Appellant's employment is thus found to be high-risk employment.[6]

The question of whether an employment injury is causally related to work factors is generally established by medical evidence.[7] However, as noted, OWCP procedures contain specific provisions pertaining to high-risk employment. Chapter 2.805.6 of the procedure manual provides that "establishing causal relationship in these types of complex cases usually requires in-depth discussion by an appropriate medical specialist (whether it is the claimant's physician or a second opinion specialist)."[8]

In support of his claim, appellant submitted medical reports from Drs. Kagey, Beazley, and Steffe, who all opined that due to her work as a nurse, the employee was more likely to be exposed to meningococcal disease than the general population. However, all three of these physicians are pediatricians. They are not appropriate medical specialists on infectious diseases. Furthermore, they based their conclusions on generalized statements that nurses and other health care workers are more likely than the general public to be exposed to meningitis. Their brief reports do not contain the necessary "in-depth discussion of causal relationship by an appropriate specialist" to establish a causal relationship between the employee's diagnosed cause of death and her high-risk employment. Furthermore, an award of compensation in a survivor benefits claim may not be based on surmise, conjecture, or speculation, or on appellant's belief that the employee's death was caused, precipitated, or aggravated by [her] employment.[9] The Board has held that medical reports which are not based on an accurate history of injury, that are of general application, and do not address the specifics of a case are insufficient to establish a claim.[10]

The employee's supervisor, Ms. McAnally, stated that it was not possible to determine if appellant's exposure was work related and noted that no other employees were infected. She stated that she was unable to determine to whom the employee could have been exposed, the dates of any exposure, or the length of time that the employee could have been exposed to any source of infection. The record does not contain any suggestion that there were patients or coworkers at the employing establishment who were diagnosed with the meningitis that ultimately took the life of the employee nor that there was any source of transmission at work. The employing establishment did not acknowledge any exposure which could have caused the employee to have acquired the disease. Although it is appellant's burden to establish his claim, OWCP is not a disinterested arbiter, but rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[11] To properly adjudicate this claim premised on an employee engaged in high-risk employment, the procedures require that the

[6] *Id.*

[7] *Supra* note 4.

[8] *Supra* note 9.

[9] *Jimmy Zenny (Ingrid Hall Zenny)*, 54 ECAB 577, 579 (2003); *Juanita Terry*, 31 ECAB 433, 34 (1980).

[10] *C.S.*, Docket No. 14-1994 (issued January 21, 2015).

[11] *Judy C. Rogers*, 54 ECAB 693 (2003).

record include an in-depth discussion of any causal relationship by an appropriate specialist. As the only physicians who have reviewed this situation and offered an opinion on causal relationship are pediatricians, the Board finds OWCP should have referred the record to an appropriate infectious disease specialist.[12]

On remand OWCP should prepare a complete, accurate, and updated statement of accepted facts, noting specifically the events of October 6, 2011 leading up to her death on October 7, 2011, and refer the claim to an appropriate medical specialist for a reasoned opinion as to whether the employee's work as a nurse for the employing establishment caused or contributed to her death. Following such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT November 6, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this opinion of the Board.

Issued: February 11, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[12] *See N.S.*, Docket No. 07-1652 (issued March 19, 2008).