

ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee's death on February 21, 2016 was causally related to factors of his federal employment.

FACTUAL HISTORY

On February 9, 2016 the employee, then a 41-year-old special agent, filed an occupational disease claim (Form CA-2) alleging that he sustained stage 4 colon and liver cancer causally related to factors of his federal employment. He advised that hazardous living conditions, including exposure to aircraft exhaust and fuel vapor, during his two-year assignment in Afghanistan aggravated his colitis and caused his colon cancer. The employee stopped work on December 16, 2015.

Medical evidence provided included a December 11, 2008 report from Dr. Howard Lesser, a Board-certified internist, who related that the employee's "ulcerative colitis that was diagnosed several years ago appears to be clinically inactive." Dr. Lesser found that he was in good health and could perform assignments overseas. On January 22, 2012 he obtained a history of an exacerbation of ulcerative colitis since the employee's Afghanistan deployment. Dr. Lesser related that the recent evaluation showed "poorly controlled ulcerative colitis." He noted that the employee's liver enzymes were mildly elevated consistent with ulcerative colitis and recommended that he work with his gastroenterologist.

The employee was hospitalized from December 14 to 22, 2015 for severe pain in his abdomen. Dr. Christopher B. Ho, a Board-certified oncologist, noted his history of ulcerative colitis. He obtained diagnostic testing and diagnosed acute severe abdominal pain, ulcerative colitis, and masses and lesions that might indicate malignancy with liver metastasis.

On December 19, 2015 Dr. Seung-Yil T. Song, an oncologist, obtained a history of the employee being in good health until he began to have "diffuse, crampy abdominal pain with multiple loose bowel movements" in 2000. A colonoscopy revealed colitis without ulceration. Dr. Song noted that the employee's condition worsened after he served in Afghanistan. It was initially thought to have been environmental as he was in Afghanistan with different food and water. However, this problem has worsened and he has finally been placed on multiple medications. Dr. Song diagnosed ulcerative colitis and multiple hepatic lesions.

Dr. Reza Khoshini, a Board-certified gastroenterologist, provided a consultation report dated December 21, 2015. He noted that the employee had a "history of ulcerative colitis diagnosed around the year of 2009 [when he] was in service in Afghanistan and had developed rectal bleeding and diarrhea." Dr. Khoshini recommended a biopsy of the abdominal mass.

In a December 22, 2015 discharge summary, Dr. Rajesh Belani, a Board-certified oncologist, diagnosed ulcerative colitis, adenocarcinoma of the colon with liver metastases, and superficial venous thrombosis.

On January 23, 2016 the employee was hospitalized until his death on February 21, 2016.³

On February 8, 2016 Dr. Belani diagnosed stage IV terminal adenocarcinoma of the colon. He related, “The malignancy has occurred at this young age almost certainly due to the past history of ulcerative colitis.”

The employing establishment submitted letters from the employee’s supervisors describing his missions in Afghanistan and the living conditions. It also submitted reports concerning the poor air quality in Kabul, Afghanistan.

In an official superior’s report of employee’s death (Form CA-6) dated February 22, 2016, a supervisor, B.M., related that the employee sustained an injury from 2009 to 2011 and died on February 21, 2016. He advised that the employee “contracted colitis while employed with the [employing establishment]” and that the colitis worsened during his service in Afghanistan due to toxic exposure. B.M. noted that his oncologist attributed his liver and colon cancer to severe colitis.

A death certificate dated March 8, 2016 indicated that the employee died on February 21, 2016 due to a nontraumatic perforation of the intestine, ulcerative colitis, and stage IV adenocarcinoma of the colon.

Appellant submitted a claim for compensation by widow, widower, and/or children (Form CA-5) dated April 11, 2016.⁴ Dr. Belani completed the physician’s portion of the form on April 1, 2016. He noted that the employee “reported [a] history of mild colitis that worsened after deployment to Afghanistan.” Dr. Belani diagnosed colorectal cancer with liver metastasis. He attributed the cause of death to intra-abdominal sepsis, a bowel perforation, and colon cancer and listed contributing causes of death as a gastrointestinal perforation, liver metastasis, colon cancer, and ulcerative colitis. Dr. Belani checked a box marked “yes” that the death was due to the history of colitis worsening with deployment to Afghanistan, providing as a rationale that he was “diagnosed with colorectal cancer at [a] young age due to underlying severe ulcerative colitis.”

Appellant submitted a 2012 letter from a senator to the Secretary of Defense regarding concerns about the toxic air quality in Kabul and evidence from the Federal Government about air quality and pollutants in Kabul.

By letter dated April 11, 2016, OWCP advised appellant of the type of medical evidence needed to establish that employment factors caused or contributed to the employee’s death.

In a statement dated April 12, 2016, D.B., a coworker, described the living conditions in Afghanistan and advised that he had frequent stomach problems. He noted that insecticides were

³ In a February 21, 2016 discharge summary, Dr. Dhwanishiva R. Vasani, a Board-certified internist, diagnosed ulcerative colitis, malignant neoplasm of the colon, and a nontraumatic perforated intestine. She noted that the employee died on February 21, 2016.

⁴ Appellant also submitted a copy of her marriage certificate.

often sprayed to control poisonous insects and that agents did not have personal protective equipment when investigating heroin laboratories or handling chemicals.

By decision dated June 17, 2016, OWCP denied appellant's claim for survivor's benefits as the weight of the evidence did not support that the employee's death was causally related to his employment. It determined that there was no specific evidence finding that his colon and liver cancer resulted from his federal employment.

On appeal appellant argues that the employee's colitis was mild and he did not need medication until his deployment to Afghanistan. She asserts that the stress and difficult living conditions aggravated his colitis such that he required strong medication. Appellant maintains that the colitis caused the employee's colon cancer and death.

LEGAL PRECEDENT

The United States shall pay compensation for the death of an employee resulting from personal injury sustained while in the performance of duty.⁵ An 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.⁶ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.⁷

ANALYSIS

The Board finds that appellant has submitted evidence supporting that the employee was exposed to hazardous air quality and pollutants during his tenure in Afghanistan. Medical reports also support that he had a history of colitis that worsened during his deployment. Appellant has not, however, submitted a medical report from a physician explaining, with sound medical reasoning, the relationship between the work factors to which the employee was exposed and his death. Such evidence is necessary to support appellant's claim for survivor's benefits.⁸

The employee died on February 21, 2016 and the death certificate completed on March 8, 2016 listed the cause of death as: nontraumatic perforation of the intestine, ulcerative colitis, and stage IV adenocarcinoma of the colon.

The employee was hospitalized from December 14 to 22, 2015. In a report dated December 19, 2015, Dr. Song indicated that the employee had a history of colitis that worsened during his time in Afghanistan and was initially believed to be due to environmental factors, but continued to worsen such that he eventually required medication. He diagnosed ulcerative colitis

⁵ 5 U.S.C. § 8102(a).

⁶ *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005).

⁷ *L.R. (E.R.)*, 58 ECAB 369 (2007); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁸ *See L.S. (G.S.)*, Docket No. 14-1046 (issued September 23, 2014).

and hepatic lesions. On December 21, 2015 Dr. Khoshini advised that, while at work in Afghanistan, the employee developed ulcerative colitis with rectal bleeding and diarrhea. On February 8, 2016 Dr. Belani diagnosed stage IV terminal colon adenocarcinoma and attributed the cancer to the employee's history of ulcerative colitis in view of his young age at the time of onset. The physicians, however, did not specifically address the cause of his ulcerative colitis or how it may have been aggravated by factors of the employee's federal employment. Thus their opinions are of diminished probative value.⁹

In an April 1, 2016 form report submitted as part of the survivor's benefits claim, Dr. Belani provided a history of the employee experiencing mild colitis that worsened after being deployed to Afghanistan. He diagnosed colorectal cancer with metastases to the liver and attributed the employee's death to intra-abdominal sepsis, a bowel perforation, and colon cancer with gastrointestinal perforation, liver metastasis, colon cancer, and ulcerative colitis as contributing causes. Dr. Belani checked a box marked "yes" that the death resulted from the history provided, finding that his colorectal cancer resulted from severe ulcerative colitis. He did not, however, adequately explain how the employee's work in Afghanistan aggravated his ulcerative colitis such that he developed colon cancer. The Board has held that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and work factors.¹⁰ Causal connection can only be made through the submission of rationalized medical evidence.¹¹ Dr. Belani, however, did not provide such rationale.

On appeal appellant contends that the employee's mild colitis significantly worsened while he was in Afghanistan due to the harsh living conditions and stress such that he required medication. She asserts that he sustained colon cancer causing his death from his colitis. The issue in this case, however, is medical in nature and can only be resolved by probative medical evidence from a physician.¹²

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employee's death on February 21, 2016 was causally related to factors of his federal employment.

⁹ See *K.W.*, 59 ECAB 271 (2007).

¹⁰ See *K.A. (S.A.)*, Docket No. 13-0274 (issued April 10, 2013).

¹¹ *Id.*

¹² See *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2017
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board