

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

C.A., widow of D.A., Appellant)	
)	
and)	Docket No. 16-1770
)	Issued: June 1, 2018
DEPARTMENT OF THE ARMY, Warren, MI,)	
Employer)	
)	

Appearances:
George Parks, Esq., for the appellant¹
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 1, 2016 appellant, through counsel, filed a timely appeal from a May 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On January 21, 2013 appellant, the employee's widow, filed a claim for survivor's benefits (Form CA-5), alleging that the employee's death on May 19, 2010 was causally related to factors of his federal employment. At the time of his death, the employee was a 54-year-old product assurance associate director. He was on official travel to Charleston, South Carolina, to attend meetings. After a meeting that ended at 9:00 a.m., the employee and two colleagues walked approximately one block to an employing establishment facility. Witness statements corroborated that, as the three coworkers stood at the front desk, the employee collapsed in cardiac arrest. Emergency medical personnel responded to the scene and attempted to resuscitate the employee. He was transported to the emergency department of a nearby hospital where he died at 9:42 a.m. Appellant alleged that the employee's frequent travel made it difficult for him to manage his underlying diabetes mellitus, chronic kidney disease, and hyperlipidemia, worsening and accelerating those conditions.

Dr. Steven Feingold, a physician Board-certified in emergency medicine, noted in a May 26, 2010 report that the employee was brought to the hospital by ambulance on May 19, 2010 without a heartbeat and could not be revived.

Appellant submitted the employee's June 1, 2010 death certificate, showing the causes of death were acute coronary insufficiency and hypertension with other significant conditions of diabetes mellitus, hyperlipidemia, and chronic kidney disease. She provided employing establishment travel documents demonstrating that he was in travel duty status at the time of his death.

In an undated letter received on March 26, 2013, the employing establishment controverted the claim, contending that appellant failed to submit sufficient medical evidence to establish causal relationship.

Dr. Demetrios Mermiges, an attending Board-certified internist, followed the employee from May 2007 through March 4, 2010 for diabetes, hypertension, and chronic kidney disease. He diagnosed a foot ulcer with cellulitis on September 10, 2008.³ In a March 28, 2013 report, Dr. Mermiges noted that the employee's diabetes was difficult to control and required multiple medications. The employee underwent partial amputation of the left foot due to "diabetic control issues and osteomyelitis." Dr. Mermiges opined that "[d]ue to the amount of traveling [the employee] did to meet his job requirements, he had difficulty staying on a regular diet, checking his sugar, and taking his insulin."

³ The employee was treated for the left foot infection in August 2008 by Dr. Sachi Gowda, a specialist in infectious disease. Dr. Gowda provided an August 25, 2008 report recommending intravenous antibiotics and a wound care regimen.

By decision dated August 7, 2013, OWCP denied the claim, finding that, while the employee's May 19, 2010 death occurred while he was in the performance of duty, it was caused by idiopathic medical conditions not attributable to any specific aspect of his employment. Therefore, the employee's death could not be granted coverage under FECA.

In an August 29, 2013 letter, appellant requested a telephonic hearing, held before an OWCP hearing representative on February 3, 2014. During the hearing, counsel argued that required travel made it impossible for the employee to manage his diabetic diet, exercise regimen, and medication. He submitted January 16 and December 13, 2013 reports from Dr. Mermiges, diagnosing insulin dependent diabetes, chronic renal failure form diabetic nephropathy, a 2004 cerebrovascular accident, hypertension, foot ulcer, hyperlipidemia, and type 2 renal tubular acidosis. Dr. Mermiges asserted that "issues related to poor diet, exercise, and follow up with his medical care because of his traveling and business responsibilities was directly related to his poor outcome and death in [Dr. Mermiges'] opinion."⁴

By decision dated March 25, 2014, OWCP's hearing representative affirmed OWCP's August 7, 2013 decision, finding that appellant had not established that the employee's death was causally related to factors of his federal employment.

Appellant, through counsel, requested reconsideration on March 11, 2015. She submitted a December 7, 2014 report from Dr. Vicky Savas, a Board-certified cardiologist and internist. Dr. Savas reviewed the factual and medical record. She noted that the employee had severe, poorly-controlled insulin-dependent diabetes, with severe retinopathy, nephropathy, and neuropathy. Dr. Savas asserted that, on May 19, 2010, he was asymptomatic prior to his collapse, indicating that walking one block caused exercise-induced ischemia, leading to a fatal cardiac arrhythmia, and sudden death. She noted that the employee's poorly controlled diabetes was "linked to severe coronary artery disease." Dr. Savas explained that frequent travel for work made it nearly impossible for him to follow a healthy diabetic diet, eat on a set schedule, exercise, and inject insulin four times a day at the correct times. As the employee could not maintain good blood sugar control, this "culminated in [the employee's] exercised-induced arrhythmia that led to his sudden-death event."

By decision dated May 21, 2015, OWCP denied appellant's request for reconsideration without conducting a merit review.

In a July 20, 2015 letter, received on July 29, 2015 appellant, through counsel, again requested reconsideration, contending that Dr. Savas' opinion was sufficient to establish causal relationship. Counsel submitted a second copy of her December 7, 2014 report.

On March 23, 2016 OWCP requested that an OWCP medical adviser review the medical record and a statement of accepted facts (SOAF) and opine whether Dr. Savas' report was sufficient to establish the employee's death was related to work factors. The SOAF noted that in

⁴ The employing establishment submitted comments to the hearing transcript on March 4, 2014, asserting that the employee died due to idiopathic conditions unrelated to his federal employment.

2009, the employee's "travel time for work was 29 percent and in 2010 his travel time for work was 31 percent; for a total of 30 percent travel time."

In an April 22, 2016 report, Dr. Amanda Trimpey, an OWCP medical adviser Board-certified in occupational medicine, reviewed the record and SOAF. She opined that although "it is unfortunate" that the employee chose not to keep his medical appointments, "it is impossible to say whether or not keeping those specific appointments had any direct impact on [the employee's] death." Dr. Trimpey determined that the employee's loss of consciousness on the day of his death "did not appear to be due to an acute lack of blood sugar control, but instead due to an acute coronary event." She concluded that, based on her review of his job description, there did not appear to be any work exposures that would have led to acute coronary insufficiency, the cause of death which was listed on the death certificate. Rather, the employee's sudden death was due to his underlying medical conditions of hypertension, diabetes, hyperlipidemia, and chronic kidney disease.

By decision dated May 19, 2016, OWCP denied modification of its prior decision, finding that Dr. Savas' report was insufficient to establish causal relationship between the employee's death and factors of his federal employment. It accorded the weight of the medical evidence to Dr. Trimpey, an OWCP medical adviser.

LEGAL PRECEDENT

The United States shall pay compensation for the death of an employee resulting from personal injury sustained while in the performance of his duty.⁵ If death results from an injury sustained in the performance of duty, the United States shall pay monthly compensation equal to a percentage of the monthly pay of the deceased employee.⁶

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 demonstrating causal relationship.⁷ The physician's opinion must be based on a complete factual and medical background, must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the relationship between the employee's death and his employment.⁸

⁵ 5 U.S.C. § 8102(a).

⁶ *See id.* at § 8133(a) (compensation in case of death).

⁷ *Timothy Forsyth (James Forsyth)*, 41 ECAB 467 (1990); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989).

⁸ *L.R.*, 58 ECAB 369, 375 (2007).

ANALYSIS

Appellant claimed survivor's benefits on January 21, 2013, asserting that the employee's death on May 19, 2010 while in an official travel status was caused by factors of his federal employment. The Board finds that the evidence of record is insufficient to establish the claim.

Appellant provided reports from Dr. Mermiges, the attending Board-certified internist, who treated the employee from May 2007 through March 4, 2010 for insulin-dependent diabetes mellitus, chronic kidney disease, hypertension, and hyperlipidemia. Dr. Mermiges opined on January 16, March 28, and December 13, 2013 that the employee's frequent travel for work made it difficult for him to comply with his diet, exercise, and medication regimen, accelerating his underlying conditions and hastening his death. The Board finds that his opinion that appellant's job-related travel rendered him unable to maintain his physical health is speculative and not based on objective evidence. Furthermore, Dr. Mermiges did not provide sufficient medical rationale to establish causal relationship between the employee's death and factors of his federal employment. Absent such rationale, his report is insufficient to meet appellant's burden of proof.⁹

Appellant also provided a December 7, 2014 narrative report from Dr. Savas, a Board-certified cardiologist and internist. Dr. Savas reviewed the record, and opined that due to the employee's chronic, severe diabetes, hypertension, kidney disease, and severe coronary artery disease, walking one block on May 19, 2010 was sufficient to cause an exercise-induced arrhythmia and sudden death. The medical evidence of record, including the employee's death certificate, supports that the cause of death was due to his underlying medical conditions of hypertension, diabetes, hyperlipidemia, and chronic kidney disease. Furthermore, Dr. Savas did not explain how or why the employee's death was caused by his federal employment duties. Without providing a factual and medical background and a clear explanation regarding how the employment caused or contributed to the employee's death, his report is insufficient to meet appellant's burden of proof.¹⁰ A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹¹ As such, Dr. Savas' reports lack the specificity and detail needed to establish appellant's claim.

OWCP undertook additional development of the medical evidence and referred the record to Dr. Trimpey, an OWCP medical adviser, for review. The Board finds that she provided a well-rationalized medical opinion on causation. In her April 22, 2016 report, Dr. Trimpey opined that the employee's death was related to an acute coronary event due to idiopathic conditions and not related to the employee's employment. She explained that although "it is unfortunate" that the employee chose not to keep appointments for his medical care, "it is impossible to say whether or not keeping those specific appointments had any direct impact on his death." Dr. Trimpey determined that the employee's loss of consciousness on the day of his death "did not appear to be due to an acute lack of blood sugar control, but instead due to an acute coronary event." She concluded that, based on her review of the employee's job description, there did not appear to be

⁹ See *C.H. (W.H.)*, Docket No. 17-0729 (issued August 3, 2017).

¹⁰ See *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹¹ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

any work exposures that would have led to acute coronary insufficiency, which was the cause of death listed on his death certificate. Rather, Dr. Trimpey found that his sudden death was due to his underlying medical conditions of hypertension, diabetes, hyperlipidemia, and chronic kidney disease. The Board finds that Dr. Trimpey's report provided an unequivocal opinion that the employee's federal employment did not cause or accelerate his death. The report was well-rationalized and based on a complete factual and medical background. The Board accordingly finds that the opinion of Dr. Trimpey represents the weight of the medical evidence.

On appeal, counsel contends that Dr. Savas' report was sufficient to meet appellant's burden of proof that the employee died from exercise-induced ischemia due to walking one block from the meeting to the employing establishment facility. He argues that Dr. Trimpey was not qualified to render an opinion in the case, as she was neither an internist nor a cardiologist. As explained above, the Board finds that appellant has not provided medical evidence sufficient to establish the claim.

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 appellant has not met her burden of proof to establish that the employee's federal employment duties caused or contributed to his death.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2016 is affirmed.¹²

Issued: June 1, 2018
Washington, DC

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

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

¹² Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.