

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

_____)	
J.P., claiming as widow of T.P., Appellant)	
)	
and)	Docket No. 17-0563
)	Issued: June 20, 2018
DEPARTMENT OF THE NAVY, NAVAL AIR)	
SYSTEMS COMMAND, Cherry Point, NC,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 17, 2017 appellant filed a timely appeal from a November 17, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met her burden of proof to establish that the employee's death on January 29, 2016 was causally related to the accepted February 20, 1980 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The employee, a mechanic/repairman, died on January 29, 2016 at the age of 72 while he was at home in bed. The death certificate listed the immediate cause of death as pneumonia. It further indicated “complications of back injury.” Appellant, the employee’s wife, filed a claim for survivor’s benefits (Form CA-5) on February 16, 2016 alleging that employment-related pneumonia and complications of back injury, due to being bedridden, caused the employee’s death.

The employee had previously filed a traumatic injury claim (Form CA-1) on March 12, 1980 alleging that he sustained a back injury on February 20, 1980 while reaching for a vat in a transmission shop. OWCP accepted that claim for herniated disc at L5-S1, other inflammatory spondylopathies, and other mononeuritis of lower limb. It authorized four back surgeries, which the employee underwent on March 19 and June 13, 1980, January 9, 1981, and April 7, 1986, and placed him on the periodic compensation rolls effective August 14, 1980. OWCP determined that the position of cashier II was suitable. By decision dated January 26, 1983, an OWCP hearing representative found that the cashier II position was not suitable work for the employee because it was located 40 miles from his home. By decision dated June 9, 1983, OWCP reversed the decision finding that the Board had previously held that a refusal of suitable employment 45 miles from a claimant’s house was not justified. The employee, however, remained off work largely since the date of injury.

In a February 29, 2016 letter, OWCP notified appellant of the deficiencies of her claim and requested additional factual and medical information, including details of previous symptoms and the employee’s activities for the week prior to his death. It afforded appellant 30 days to respond to its inquiries.

Appellant subsequently submitted two narrative statements reiterating her belief that the employee had died as a result of being bedridden due to his employment-related back conditions. She also submitted a February 29, 2000 report from Dr. Alonzo J. Davis, a Board-certified internist, who found that the employee had worsening back pain and discussed the use of a seat-lift chair. Dr. Davis diagnosed chronic back pain associated with failed surgical operations, old cerebrovascular accidents (CVAs) with seizures and recent falls, as well as anxiety. He reported that appellant had experienced several falls since his last visit, which seemed to be occasioned by back pain and weakness in the lower back.

On April 26, 2016 Dr. Taisha S. Williams, a physiatrist serving as an OWCP medical adviser, reviewed the medical evidence of record and concluded that the employee’s work injuries were not causally related to his death. She opined that she did not believe that the employee’s back injury was competent to produce his death. Dr. Williams opined that his bedridden status was more likely the result of generalized deconditioning status post femur fracture and repair, as well as persistent right lower extremity weakness and spasticity from a nonwork-related stroke he suffered in 1993.

OWCP referred the medical evidence of record to Dr. Edward Gregory Fisher, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether there was a causal relationship between the employee’s death and his employment-related conditions. In his May 19, 2016 report, Dr. Fisher found that the employee had a major CVA in 1993 with residual

right upper and lower extremity weakness and expressive aphasia. His stroke resulted in a marked right drop-foot deformity, which necessitated the use of a cane and right foot brace. Dr. Fisher further found that the employee had many falls secondary to his right extremity weakness and in August 2013 he broke his right femur with resultant intramedullary (IM) rod fixation. The employee became bedridden after his last surgery for the right femur fracture. Dr. Fisher concurred with Dr. Williams, finding no evidence of enhancing scar tissue or fibrosis and diagnostic studies with normal age-related degenerative findings. He concluded that the employee's work-related conditions were not causally related to the pneumonia resulting in his death on January 29, 2016, but rather from the residuals of his stroke and fractured femur due to a weakened right leg and coronary artery disease (CAD).

By decision dated May 26, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the employee's death was causally related to his February 20, 1980 employment injury.

On August 31, 2016 appellant requested reconsideration and argued that the employee's 1993 stroke was caused by his employment-related back conditions. She further indicated that the employee was not bedridden until 2015.

By decision dated November 17, 2016, OWCP denied modification of its prior decision.

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 duty.² An award of compensation in a survivor's claim may not be based on surmise, conjecture, or speculation or an appellant's belief that the employee's death was caused, precipitated, or aggravated by the employment.³ Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his or her federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his or her federal employment. Causal relationship is a medical issue and can be established only by medical evidence.⁴

The mere showing that an employee was receiving compensation for total disability at the time of his or her death does not establish that the employee's death was causally related to the previous employment.⁵ The Board has held that it is not necessary that there is a significant

² 5 U.S.C. § 8133 (compensation in case of death).

³ See *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

⁴ See *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁵ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

contribution of employment factors to establish causal relationship.⁶ If the employment contributed to the employee's death, then causal relationship is established.⁷

ANALYSIS

OWCP accepted that the employee sustained a herniated disc at L5-S1, other inflammatory spondylopathies, and other mononeuritis of lower limb at work on February 20, 1980. The employee died at home on January 29, 2016. On February 16, 2016 appellant, the employee's widow, filed a claim for survivor's benefits. She alleged that pneumonia and complications of his prior accepted back injury, due to being bedridden, caused the employee's death. Appellant further alleged that the employee's stroke in 1993 was caused by his employment-related back conditions. The Board finds that appellant has not submitted sufficient medical evidence to establish her claim for survivor's benefits as she has not submitted rationalized medical evidence establishing that factors of the employee's federal employment contributed to his death.⁸

On April 26, 2016 an OWCP medical adviser, Dr. Williams, reviewed the medical evidence of record and found that it was insufficient to establish that the employee's accepted back conditions caused him to be bedridden. She opined that his bedridden status was more likely the result of generalized deconditioning status post femur fracture and repair, as well as persistent right lower extremity weakness and spasticity from a nonwork-related stroke he suffered in 1993.

OWCP properly referred the medical evidence of record to Dr. Fisher for a second opinion evaluation and, in his May 19, 2016 report, he found that the employee had a major CVA in 1993 with residual right upper and lower extremity weakness and expressive aphasia. The employee's stroke had resulted in a right drop-foot deformity, which caused many falls and in August 2013 he broke his right femur with resultant IM rod fixation; he became bedridden after his last surgery for the right femur fracture. Dr. Fisher concurred with Dr. Williams, finding no evidence of enhancing scar tissue or fibrosis and diagnostic studies with normal age-related degeneration. He concluded that the employee's work-related conditions were not causally related to the pneumonia resulting in his death on January 29, 2016, but rather from the residuals of his stroke and fractured femur. Dr. Fisher opined that the employee's stroke was a result of CAD.

In support of her claim, appellant submitted a February 29, 2000 report from Dr. Davis who found that the employee had worsening back pain and diagnosed chronic back pain associated with failed surgical operations, old CVAs with seizures, recent falls, and anxiety. He reported that the employee had experienced several falls since his last visit, which seemed to be occasioned by back pain and weakness in the lower back. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Dr. Davis failed to provide a rationalized medical opinion explaining how the accepted conditions of herniated disc at L5-S1, other inflammatory

⁶ See *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

⁷ *Id.*

⁸ See *K.A.*, Docket No. 11-0186 (issued November 1, 2011).

⁹ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

spondylopathies, and other mononeuritis of lower limb contributed to the employee's death.¹⁰ As such, the Board finds that appellant did not meet her burden of proof with the submission of the report from Dr. Davis.

The Board finds that the death certificate related the immediate cause of death to pneumonia. This condition has not been accepted by OWCP as employment related and thus, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relationship.¹¹ Dr. Davis did not provide a diagnosis of pneumonia, nor did he provide any opinion that the employee had an upper respiratory condition prior to his death.¹² The Board finds, therefore, that Dr. Davis' report fails to establish that the employee's death was caused by his work-related injuries.¹³

The Board notes that, other than the death certificate, appellant has not provided any medical evidence produced after the employee's January 29, 2016 death, which discusses the cause of his death.¹⁴ Appellant failed to submit medical evidence containing a rationalized medical opinion that the employee's accepted conditions contributed to his death on January 29, 2016. Therefore, appellant has not met her burden of proof.

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 death on January 29, 2016 was causally related to his accepted February 20, 1980 employment injury.

¹⁰ See *P.J. (S.J.)*, Docket No. 15-0686 (issued July 15, 2015).

¹¹ See *E.C.*, Docket No. 10-1554 (issued April 1, 2011).

¹² See *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹³ See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁴ See *L.T.*, Docket No. 12-0406 (issued June 21, 2012).

ORDER

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

Issued: June 20, 2018
Washington, DC

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

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

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