United States Department of Labor
Employees' Compensation Appeals Board

J.W., claiming as widow of F.W., Appellant	)	
and	)	**Docket No. 12-778**
	)	**Issued: November 21, 2012**
DEPARTMENT OF THE AIR FORCE, OKLAHOMA CITY AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 14, 2012 appellant filed an appeal of an October 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for survivor's benefits. 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 appellant established that the employee's death on October 28, 2009 was causally related to factors of his federal employment.

On appeal, appellant's attorney contends that OWCP's decision is not supported in fact or law and argued that its reference to an unknown diagnosis of "artherosclerotic cardiovascular disease" as opposed to the correct autopsy diagnosis of "hypertensive atherosclerotic cardiovascular disease" in the August 16, 2010 decision is reversible error.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

The employee, a geologist, died on October 28, 2009 at the age of 66 while he was on special assignment in Bagram, Afghanistan. The death certificate listed the natural cause of death as atherosclerotic cardiovascular disease. Appellant, the employee's widow, filed a claim for survivor's benefits (Form CA-5) on January 18, 2010 alleging that a cardiac arrest caused the employee's death.

In a March 5, 2010 letter, OWCP notified appellant of the deficiencies of her claim and requested additional factual and medical information. It asked for details of previous cardiac symptoms and the employee's activities for the week prior to his death. OWCP afforded her 30 days to respond to its inquiries.

In a March 22, 2010 statement, appellant stated that the employee's heart attack was caused by being in a war zone and under extreme stress which aggravated any condition he may have had. She stated that he did not ever show symptoms of cardiac problems, never had a heart attack, bypass surgery or the like. The employee took medication for cholesterol and blood pressure, but did not believe that either presented itself as an at-risk situation. He monitored his blood pressure with a home monitor and it was normal when he was deployed to Afghanistan. The employee did not smoke, rarely drank alcohol and worked out every other day since college.

In a January 22, 2009 report, Dr. R.J. Langerman, Jr., an osteopath Board-certified in orthopedic surgery, noted that he had treated the employee for his knees and shoulders. He opined that the employee was capable of carrying at least 40 pounds and running at least 100 yards or more.

In an April 9, 2009 report, Dr. Jerome L. Anderson, a Board-certified cardiologist, advised that the employee had a normal stress test with stage IV exercise on a Bruce protocol which is 12 minutes of total exercise on a vigorous elevation. The employee nuclear heart scan was normal and his physical examination conducted on October 9, 2008 was normal. He continued on medication for cholesterol control.

In a June 19, 2009 report, Dr. Basel S. Hassoun, a Board-certified urologist, stated that the employee was diagnosed with benign hematuria in 2006. The employee was seen on January 6, 2009 for an annual examination and underwent a magnetic resonance imaging (MRI) scan of his kidneys, which was normal. A urine cytology test came back as normal, as well.

Appellant submitted a July 7, 2009 treadmill exercise tolerance report which revealed that the employee had no chest pain or arrhythmias.

In a July 8, 2009 report, Dr. Anderson stated that the employee was in good health and was treated for blood pressure with various medications. He underwent a stress test on July 7, 2009 where he had excellent exercise tolerance of 12 minutes and four stages of exercise and a normal electrocardiogram (EKG) from start to finish. The employee's blood pressure and heart rate rose rapidly, but he did not show any cardiovascular disease.

Appellant submitted e-mail correspondence with the employee, including a message dated October 22, 2009 in which he reported an earthquake. The employee indicated that his ankle had gotten much better and he was able to do some exercise without it swelling. On

October 26, 2009 he stated that he went to the gym in the morning and decided he had better run to keep warm.

In a March 17, 2010 statement, Wanda Brown, the employee's sister, stated that the employee was in excellent health at the time of his death. She stated that he was very religious about his exercise routine and a healthy diet.

On March 21, 2010 the employing establishment stated that the employee worked 10-hour days at a minimum as a project manager, overseeing several construction and design projects. The employee was exposed to one to two rocket attacks a week, the sound of automatic weapons and a number of minor earthquakes. He appeared to be in good health and was engaged in an exercise routine that involved frequent weight training.

By decision dated June 3, 2010, OWCP denied appellant's claim. It found that the medical evidence submitted did not establish that the employee's death was related to factors of his federal employment.

On June 9, 2010 appellant, through her attorney, requested reconsideration. In a June 8, 2010 report, Dr. Anderson opined that a high load of stress and environment could be directly related to any sudden cardiac death and induction of arrhythmias as a potential correlated set of circumstances. He noted that the employee's death could have different causes. Dr. Anderson reported that the autopsy pointed to a thickened heart or hypertensive heart disease and stated that the employee did die from hypertensive heart disease and the immediate cause was not specific. There was asymptomatic atherosclerotic cardiovascular disease with some narrowing of the coronary arteries, no acute myocardial infarction or any infarct zone on the heart. Dr. Anderson explained that when there was asymptomatic coronary narrowing and hypertensive heart disease with a thickened heart from blood pressure and age, there was a propensity for sudden arrhythmias. He concluded that the most likely immediate cause of the employee's death was a cardiac arrhythmia, which would most likely cause sudden cardiac death with result from an arrhythmia, such as ventricular tachycardia deteriorated into ventricular fibrillation where the heart does not pump correctly from the rapid irregular rhythm. A sudden arrhythmia would cause collapse and sudden death unless there was immediate resuscitation. Dr. Anderson opined that with the autopsy results, the past history of hypertension and the findings of a thickened heart it seemed to be the most likely cause and then there were the underlying atherosclerotic changes, which were asymptomatic. He noted that the employee had a stressful situation working in Afghanistan with regards to the workload, 10-hour workdays, rocket attacks, earthquakes and sounds of automatic weapons firing.

By decision dated August 16, 2010, OWCP denied the claim on the basis that the evidence failed to establish causal relationship.

On July 20, 2011 appellant, through her attorney, requested reconsideration.

An October 30, 2009 final autopsy report by Dr. AbuBakr A. Marzouk, a Board-certified pathologist, found hypertensive atherosclerotic cardiovascular disease to be the natural cause of death. The report noted that the employee had severe calcific coronary atherosclerosis, three vessel disease, 50 to 90 percent narrowing of the lumen and focal subocclusive platelet thrombus. The employee had multiple remote and healing myocardial infarctions (over a week

old), Frank's sign of ear lobules and pulmonary congestion and edema. Dr. Marzouk indicated that the autopsy examination revealed no evidence of trauma or foul play and toxicological studies were negative.

In a July 6, 2011 report, Dr. Anderson noted that he could not state with 100 percent medical certainty the immediate cause of the employee's death as he was not in attendance at the time. He reiterated that the stressful situation associated with high altitude and cold weather, along with the long hours, and the associated attack and threat of attacks, combined with underlying hypertensive heart disease, as determined by autopsy, would lead to an arrhythmia, such as ventricular tachycardia, deterioration, ventricular fibrillation and sudden death and without immediate resuscitation, death would be what would follow from a primary ventricular arrhythmia.

By decision dated October 25, 2011, OWCP affirmed the August 16, 2010 decision. It found that the medical evidence submitted was not sufficient to establish that the employee's death was causally related to factors of his federal employment. The autopsy report established that the cause of death was hypertensive atherosclerotic cardiovascular disease.

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 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 establishing 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 employment. As part of this burden, she 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 federal employment. Causal relationship is a medical issue and can be established only by medical evidence.[4]

The medical evidence required to establish causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the employee's death and the accepted conditions or employment factors identified by the employee.[5]

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

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

[4] *See Mary J. Briggs*, 37 ECAB 578 (1986); *Umberto Guzman*, 25 ECAB 362 (1974).

[5] *See Donna L. Mims*, 53 ECAB 730 (2002).

ANALYSIS

OWCP accepted the factors of the employee's employment, *i.e.*, exposure to rocket attacks, the sound of automatic weapons and earthquakes. On January 18, 2010 appellant filed a claim for survivor's benefits. She alleged that factors of the employee's federal employment, such as working 10-hour days in a war zone and being exposed to one to two rocket attacks per week, the sound of automatic weapons and a number of minor earthquakes, contributed to the cause of death listed on his autopsy report, hypertensive atherosclerotic cardiovascular disease. The Board finds that appellant did not submit sufficient medical evidence to establish her claim for survivor's benefits. Appellant did not submit rationalized medical evidence showing that factors of the employee's federal employment contributed to his death.[6]

In a July 8, 2009 report, Dr. Anderson indicated that the employee was in good health and did not show any cardiovascular disease. On June 8, 2010 he noted that the employee's death could have different causes, but concluded that given the autopsy findings, a stressful work environment in a war zone and the findings of a thickened heart, the most likely immediate cause of his death was a cardiac arrhythmia, which would most likely cause sudden cardiac death. On July 6, 2011 Dr. Anderson indicated that he could not state with 100 percent medical certainty about the immediate cause of the employee's death since he was not in attendance at the time, but reiterated his medical opinion. The Board has held that the fact that a condition manifests itself or worsens during a period of employment[7] or that work activities produce symptoms revelatory of an underlying condition[8] does not raise an inference of causal relationship between a claimed condition and employment factors. Although Dr. Anderson noted the general relationship between stress and cardiac conditions, he used equivocal language and failed to provide a rationalized medical opinion explaining how the implicated employment factors contributed to the employee's death.

On January 22, 2009 Dr. Langerman indicated that he had treated the employee for his knees and shoulders and opined that he was capable of carrying at least 40 pounds and running at least 100 yards or more. On June 19, 2009 Dr. Hassoun indicated that the employee was diagnosed with benign hematuria in 2006 and had a normal urine cytology and MRI scan of his kidneys. 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] Moreover, these reports did not address the threshold issue of whether the employee's death was employment related. As such, the Board finds that appellant did not meet her burden of proof with the submission of the reports by Drs. Langerman and Hassoun.

Appellant did not submit sufficient medical evidence to meet her burden of proof. Therefore, the Board finds that OWCP properly denied the claim for compensation.

[6] *See K.A.*, Docket No. 11-186 (issued November 1, 2011).

[7] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

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

On appeal, counsel argues that its reference to an unknown diagnosis of "artherosclerotic cardiovascular disease" as opposed to the correct autopsy diagnosis of "hypertensive atherosclerotic cardiovascular disease" in its August 16, 2010 decision is reversible error. By decision dated October 25, 2011, OWCP found that the autopsy report established that the cause of death was hypertensive atherosclerotic cardiovascular disease. The Board finds that the reference to an incorrect diagnosis in the decision dated August 16, 2010 is harmless error.

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 did not meet her burden of proof to establish that the employee's death on October 28, 2009 was causally related to factors of his federal employment. Thus, appellant has not established that she is entitled to receive survivor's benefits.

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board