

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNAGALE GREGG claiming as widow of EUGENE A. GREGG and U.S. INFORMATION AGENCY, INTERNATIONAL BROADCASTING BUREAU, Washington, D.C.

*Docket No. 03-1379; Submitted on the Record;
Issued September 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the employee's death on May 2, 1999 was causally related to his federal employment.

On September 16, 2002 appellant filed a claim for compensation by widow, widower and/or children (Form CA-5) alleging that the employee's death was causally related to factors of his federal employment. The record reflects that appellant's husband, born August 25, 1920, worked as a press machine operator before he retired from federal employment on an unspecified date after approximately 30 years of service. The record does not reflect that the Office of Workers' Compensation Programs accepted an occupational disease claim at any time during the employee's federal tenure. The employee died on May 2, 1999, at the age of 78.

In support of her claim for benefits, appellant submitted medical documentation, including two medical reports by Dr. David K. Choi, an attending physician. In a report dated January 1989, he indicated that the employee was suffering from chronic obstructive disease¹ Dr. Choi, in an updated report dated July 16, 2002, indicated that he initially saw the employee in April 1980 and later treated him for emphysema in 1999. He stated that the end stage of obstructive pulmonary disease is what caused the employee's death. Appellant also submitted a hospice discharge summary from May 1 to 2, 1999. The summary noted that the employee had a principal diagnosis of arterial occlusion of the right lower extremity and a secondary diagnosis of end stage chronic obstructive pulmonary disease. The discharge summary further reported that the employee was brought into the acute care unit for terminal care and treated for pain. He died prior to an evaluation within the first nine hours of admission. Appellant also submitted a certified copy of her husband's death certificate, in which Dr. J. Waldman, an attending physician, indicated chronic obstructive pulmonary disease as the cause of death on May 2, 1999, with right leg arterial thrombosis as a significant contributing factor.

¹ The record reflects that the Office indicated January 25, 1989 as a date of injury.

In letters dated September 20, 2002, the Office advised appellant and the employing establishment that additional evidence was needed in order to establish the claim. The Office advised appellant that it was her responsibility to furnish evidence of the relationship between the employees' disease and death and his federal employment. The Office requested that appellant provide a comprehensive medical report from the employee's treating physician, which described his symptoms, results of examinations and tests, diagnosis, the treatment provided, the effect of the treatment and the doctor's opinion with medical reasons on the cause of the condition. The Office specified that if the employee's physician felt that exposure or incidents in his federal employment contributed to his condition, an explanation of how such exposure contributed should be provided. No further evidence; however, was submitted.

By decision dated October 25, 2002, the Office denied the claim on the grounds that the medical evidence did not establish that the employee's death was causally related to his federal employment.

The Board finds that appellant has not established that the employee's death on May 2, 1999 was causally related to his federal employment.

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 employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a complete factual and medical background.² The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.³ The mere showing that an employee was receiving compensation for total disability at the time of his death does not establish that his death was causally related to his employment.⁴

The record reflects that the employee was treated by Dr. Choi, beginning in April 1980 and was diagnosed with chronic obstructive disease on or about January 25, 1989. The Board notes, however, that the record does not indicate that the Office accepted this condition as being causally related to employment factors. The Board notes that it is unclear from the record when the employee retired from federal employment; however, appellant asserted that he performed 30 years of service. The record reflects that the employee was treated for emphysema and chronic obstructive pulmonary disease through its end stage until he expired on May 2, 1999.

The death certificate completed by Dr. Waldman, an attending physician, on May 5, 1999 indicated that the immediate cause of death was chronic obstructive pulmonary disease. The other significant condition contributing to death was reported as right leg arterial thrombosis. Dr. Waldman did not provide any further explanation addressing how the employee's death was caused or contributed to by his federal employment. Other than the discharge summary from hospice care, the death certificate and Dr. Choi's July 16, 2002 report, appellant has not

² *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

³ *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

⁴ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

submitted any evidence which discussed the cause of her husband's death. Therefore, the Board finds that appellant has not met her burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated October 25, 2002 is affirmed.

Dated, Washington, DC
September 9, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member