

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

M.V., claiming as widow of L.V., Appellant)

and)

TENNESSEE VALLEY AUTHORITY,)
BROWNS FERRY NUCLEAR PLANT,)
Decatur, AL, Employer)

**Docket No. 06-1358
Issued: February 2, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 31, 2006 appellant filed a timely appeal from the May 12, 2006 merit decision of the Office of Workers' Compensation Programs denying appellant's claim for death benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether the employee's death was causally related to his December 3, 1968 employment injury to his right knee.

FACTUAL HISTORY

On December 3, 1968 the employee, then a 31-year-old carpenter welder, sustained an injury to his right knee while in the performance of duty. The Office accepted his claim for tear of the medial cartilage of the right knee and synovitis of the right knee and appropriate medical and compensation benefits were paid.

On January 9, 2005 appellant filed a claim for death benefits. The claim included a form completed by someone at Decatur Oncology, whose signature is illegible, indicating that the employee died from prostate cancer and that contributing causes were tumor progression and resistance to therapy. It was further stated that the cause of prostate cancer was unknown. Appellant also submitted a death certificate indicating that the employee died on November 18, 2005. The cause of death listed on the death certificate was prostate cancer, stage 4.

By decision dated May 12, 2006, the Office denied appellant's claim as she did not establish that the employment injury caused or contributed to the employee's death.

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.¹

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 or her 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. The mere showing that an employee was receiving compensation for total disability at the time of death does not establish that the employee's death was causally related to his or her federal employment.²

ANALYSIS

Appellant submitted no rationalized medical evidence relating the employee's death on November 18, 2005 to his December 3, 1968 right knee injury. The death certificate and the medical note on the claim form clearly indicate that appellant's death was caused by prostate cancer. In order to be entitled to death benefits, appellant must submit medical evidence from a physician addressing how the employee's death was causally related to his or her federal employment.³ As appellant did not submit any evidence linking her husband's death to his work injury, the Office properly denied her claim for death benefits. Appellant's allegations regarding financial hardship and the incorrect assumption that compensation benefits would continue after his death are not relevant to the issue at hand.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employee's death on November 18, 2005 was causally related to his employment injury of December 3, 1968.

¹ 5 U.S.C. § 8102(a); *see id.* at § 8133 (compensation in case of death).

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

³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2006 is affirmed.

Issued: February 2, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board