

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

D.G., claiming as widow of W.G., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Memphis, TN, Employer)

**Docket No. 08-529
Issued: May 13, 2008**

Appearances:
Gregory D. Jordan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 15, 2007 merit decision denying her claim for survivor's benefits and the Office's September 14, 2007 nonmerit decision denying her reconsideration request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions;

and (2) whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The Office accepted that by July 1971 the employee, then a 48-year-old air traffic control specialist, sustained anxiety dissociative disease and chronic anxiety state due to his work duties.¹ The Office paid compensation for periods of work stoppage beginning in July 1971. The employee retired from the employing establishment on disability retirement in June 1972. In late 1984 the employee underwent heart bypass surgery but there is no indication that this surgery was necessitated by an employment-related condition.²

On July 25, 2005 the employee died and on August 20, 2005 appellant, his widow, filed a claim for survivor's benefits claiming that his death was related to his accepted employment conditions.³

Appellant submitted a certificate of death signed on July 25, 2005 by Dr. Lee N. Vieron, an attending Board-certified cardiologist, who listed the immediate cause of death as respiratory arrest due to congestive heart failure. Appellant submitted numerous reports, mostly dated between 1998 and 2005, discussing the employee's medical problems including congestive heart disease, diabetes and high blood pressure. None of the reports contained any significant discussion of a stress-related medical condition.

In an October 18, 2005 report, Dr. Vieron stated that the employee had been a patient of his for 30 years and had retired 30 years prior due to severe anxiety problems. He noted:

“This, over the years, caused numerous problems including hypertension, aggravated his diabetes, and his coronary artery disease. He continued to suffer from his anxiety neurosis and all its ramifications and expired recently secondary to congestive heart failure and pneumonia. These, no doubt, were aggravated by his chronic anxiety from many years ago.”

On January 17, 2006 Dr. Eric Puestow, a Board-certified internist serving as an Office medical adviser, concluded that there was no relationship between the accepted employment conditions and the employee's death. He stated, “Despite the medical source statement of October 18, 2005, there is no objective evidence to support the idea that the death due to congestive heart failure/respiratory arrest was consequential to an anxiety disorder.”

¹ The employee's claim was also accepted for temporary aggravation of Parkinsonism, but the medical records after the early 1970s only occasionally mention Parkinsonism or Parkinson's disease.

² The record reveals that the employee had developed diabetes and hypertension by the mid 1980s. These conditions have not been accepted as employment related.

³ It appears that at some point the employee elected to receive benefits from the Office rather than from the Office of Personnel Management. He received Office benefits up until the date of his death.

The Office referred the case file to Dr. Ajit B. Raisingghani, a Board-certified cardiologist, for an opinion regarding whether the employee's accepted employment conditions contributed to his death. On July 26, 2006 Dr. Raisingghani determined that the employee's accepted employment conditions did not contribute to his death. He discussed the treatment of appellant's various medical conditions and stated:

“[I]t appears that the claimant was initially disabled in the early 1970s, at which point he had no indications of [congestive artery disease]. It would be hard to attribute subsequent medical problems, especially events that happened what appear to have been 20 years down the road, to his initial job. Furthermore, in terms of the claimant's life expectancy, he had exceeded the average life span of an American and, therefore, it would be difficult to conclude that the claimant's initial job and diagnosis of anxiety played a role in his eventual demise at the age of 82. Although stress is one component of the medical problems he had, it would be difficult to establish that that was the primary reason why this patient developed all of the illnesses that he had or even aggravated after he stopped working. Therefore, I would conclude by saying I do not believe the claimant's initial diagnosis of anxiety disorder had a causal relationship or caused aggravation or caused his demise.”

In an August 21, 2006 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions. The Board found that the report of Dr. Vieron was of limited probative value because it did not provide medical rationale in support of its opinion on causal relationship.

On February 14, 2007 Dr. David H.S. Iansmith, an attending Board-certified cardiologist, stated that the employee had been a patient of his for a number of years and had been forced to retire in 1971 from his job as an air traffic controller due to increasing anxiety which made him unable to control flights. Dr. Iansmith stated:

“For one year prior to retirement, [the employee] was followed by the [Office, which was] fully aware of the extent of his symptoms. [The employee] was relieved of his control duties and was working in an office position.

“From the time of his retirement to his death, [the employee and his wife] received benefits appropriately. There was continuing difficulty in regulating [the employee's] medicines to help control his anxiety and, at this time, he began to exhibit some of the signs of coronary heart disease and cerebrovascular disease, which, of course, all worsened until his death.

“At this time, the retirement benefit stopped, and the expected survivor benefit was never instituted. [The employee] retired with an approved disability of acute anxiety, which was difficult to manage and sustained for the rest of his life.”⁴

⁴ Dr. Iansmith attached a medical journal article about the relationship between stress and cardiac disease.

Appellant requested a hearing before an Office hearing representative regarding her claim for survivor's benefits. At the February 20, 2007 hearing, she argued that the opinions of Dr. Vieron and Dr. Iansmith established her claim. Appellant submitted numerous medical reports, dated between 1973 and 1992, which detailed the treatment of the employee's medical problems. In a May 15, 2007 decision, the Office hearing representative affirmed the Office's August 21, 2006 decision.

Appellant requested reconsideration of her claim in June 2007 and submitted numerous medical reports, dated between 1973 and 1998, which detailed the treatment of the employee's medical conditions. The reports mostly concerned the treatment of the employee's neurological problems by Dr. Richard H. Gold, an attending Board-certified orthopedic surgeon. In a June 19, 2007 report, Dr. Gold stated that he treated the employee for stress and severe tremors from 1971 to 1995. None of the reports provided any indication that a stress-related condition contributed to his death. In a September 14, 2007 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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.⁵ This burden includes the necessity of providing rationalized medical evidence showing causal relationship between the accepted employment condition and the employee's death.⁶ To be considered rationalized medical evidence, the opinion of the physician must be based on a complete and accurate factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by adequate medical discussion explaining the causal relationship between employment factors and the employee's death.⁷

ANALYSIS -- ISSUE 1

The Office accepted that by July 1971 the employee, then a 48-year-old air traffic control specialist, sustained anxiety dissociative disease and chronic anxiety state due to his work duties.⁸ The Office paid compensation for periods of work stoppage beginning in July 1971 and the employee retired from the employing establishment on disability retirement in June 1972. On July 25, 2005 the employee died and on August 20, 2005 appellant, his widow, filed a claim for survivor's benefits claiming that his death was related to his accepted employment

⁵ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

⁶ *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁸ The employee's claim was also accepted for temporary aggravation of Parkinsonism, but the medical records after the early 1970s only occasionally mention Parkinsonism or Parkinson's disease.

conditions.⁹ The death certificate listed the immediate cause of death as respiratory arrest due to congestive heart failure.

The Board finds that appellant did not submit sufficient medical evidence to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions.

Appellant submitted an October 18, 2005 report in which Dr. Vieron, an attending Board-certified cardiologist, stated that the employee retired 30 years prior due to "severe anxiety problems" and concluded that these problems caused hypertension and aggravated his diabetes and coronary artery disease. Dr. Vieron stated, "[h]e continued to suffer from his anxiety neurosis and all its ramifications and expired recently secondary to congestive heart failure and pneumonia. These, no doubt, were aggravated by his chronic anxiety from many years ago."

Dr. Vieron's opinion that an anxiety condition contributed to his death is of limited probative value because it is not supported by adequate medical rationale. He did not provide any description of the particular medical conditions which had been accepted by the Office. Dr. Vieron did not provide any discussion of the employee's treatment for his anxiety-related condition during the more than 30 years between his work stoppage in 1972 and his death in 2005. Therefore, his opinion is not based on a complete medical history. Dr. Vieron failed to provide any discussion of the medical process of how stress could have contributed to the coronary artery disease that ultimately caused the employee's death in 2005. Such rationalized medical discussion is particularly necessary in the present case in that, prior to the first development of the employee's heart condition in the mid 1980s, the employee had not been exposed to stressful employment factors since the early 1970s. Moreover, Dr. Vieron provided no discussion of nonwork factors which might have explained the heart condition that lead to the employee's death.

On February 14, 2007 Dr. Iansmith, an attending Board-certified cardiologist, stated that from the time of his retirement until his death, the employee received benefits and had continuing difficulty in controlling his anxiety. His report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.¹⁰ Dr. Iansmith did not provide a clear opinion that he felt that the employee's accepted employment conditions contributed to his death in 2005. Appellant also submitted numerous clinical reports discussing the employee's medical problems including congestive heart disease, diabetes and high blood pressure. None of the reports contained any opinion that the employee's accepted conditions contributed to his death.¹¹

⁹ The employee received Office benefits up until the date of his death.

¹⁰ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

¹¹ The record contains a medical journal article about the relationship between stress and cardiac disease. However, the Board has held that medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

Moreover, the record contains medical evidence which shows that the employee's accepted employment conditions did not contribute to his death. On July 26, 2006 Dr. Raisinghani, a Board-certified cardiologist who served as an Office referral physician, indicated that it would be difficult to attribute the medical problems leading to the employee's death, which developed some time after his retirement, to the employment-related anxiety condition he sustained so many years prior. He concluded that his employment-related conditions did not contribute to his death.

An award of compensation may not be based on surmise, conjecture or speculation.¹² The mere showing that an employee was receiving compensation at the time of his death does not establish that his death was causally related to conditions resulting from the employment.¹³ Appellant has not submitted rationalized medical evidence establishing that the employee's death was related to employment factors and, therefore, the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁴ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.¹⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁷ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁸

ANALYSIS -- ISSUE 2

In support of her June 2007 reconsideration request, appellant submitted numerous medical reports, dated between 1973 and 1998, which detailed the treatment of the employee's medical conditions. The reports mostly concerned the treatment of the employee's neurological problems by Dr. Gold, an attending Board-certified orthopedic surgeon. The submission of these

¹² *Myrl Nix (Earl Nix)*, 15 ECAB 125, 126 (1963).

¹³ *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

¹⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 10.606(b)(2).

¹⁶ 20 C.F.R. § 10.607(a).

¹⁷ 20 C.F.R. § 10.608(b).

¹⁸ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

reports would not require reopening appellant's claim for further review of the merits because the submitted evidence is not relevant to the main issue of this case, *i.e.*, whether appellant submitted sufficient medical evidence to show that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions. None of the submitted reports provided any indication that an accepted stress-related condition contributed to the employee's death on July 25, 2005.¹⁹

Appellant has not established that the Office improperly denied her request for further review of the merits of its May 15, 2007 decision under section 8128(a) of the Act, because the evidence she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the employee's death on July 25, 2005 was causally related to his accepted emotional conditions. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 14 and May 15, 2007 decisions are affirmed.

Issued: May 13, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁹ In a June 19, 2007 report, Dr. Gold stated that he treated the employee for stress and severe tremors from 1971 to 1995. He provided no opinion regarding the cause of the employee's death in 2005.