United States Department of Labor
Employees' Compensation Appeals Board

C.P., claiming as widower of H.P., Appellant	)	
and	)	**Docket No. 13-82**
	)	**Issued: April 18, 2013**
TENNESSEE VALLEY AUTHORITY, WESTERN AREA RADIOLOGICAL LABORATORY, Muscle Shoals, AL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 16, 2012 appellant, through her attorney, filed an appeal of a merit decision of the Office of Workers' Compensation Programs (OWCP) dated August 7, 2012. 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 has established that the employees' death was causally related to factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated April 13, 2011, the Board set aside OWCP's January 13, 2010 decision which denied appellant's claim for survivor

[1] 5 U.S.C. §§ 8101-8193.

benefits and remanded the case due to a conflict in medical evidence.[2] The Board found a conflict in medical opinion existed between Dr. J. Alan Barksdale, the examining Board-certified pathologist, and Dr. Mangesh Shukla, a Board-certified gastroenterologist, for appellant and Dr. Ann MacIntyre, a Board-certified infectious disease specialist and OWCP referral physician, on the issue of whether the employees' death was causally related to her federal employment. The facts and history as set forth in the Board's previous decision is hereby incorporated by reference.

The employee, a radiological chemist, died on November 19, 2005 at the age of 26. The death certificate listed the cause of death as acute hemorrhage laryngotracheolbronchitis due to or as a consequence of toxic shock syndrome and Waterhouse-Friderichsen syndrome. The November 19, 2005 final pathology report showed nonspecific inflammatory involvement with a very superficial infiltrate of lymphoid cells and rare plasma cells in the larmina propria. Appellant, the employee's husband, filed a claim for survivor's benefits (Form CA-5) on September 10, 2006 alleging that the employee was exposed to toxic fumes during the course of her employment and that this exposure caused or contributed to her death. He asserted that she handled a wide range of strong acids on a regular basis during the course of her work and that she had increasing problems over time with respiratory infections and sore throats. Appellant stated that the employee symptoms worsened when she was at work and improved when she was away from the laboratory.

Following the Board's April 13, 2011 decision, OWCP, by letters dated June 14 and October 26, 2011, referred the employee's case file and medical records, including an updated statement of accepted facts and list of questions, to Dr. Stephen Threlkeld, an infectious disease specialist, for an impartial medical examination.

In a January 17, 2012 medical report, Dr. Threlkeld detailed the factual and medical history upon his review of the medical records and provided his analysis. He noted that while there were two witnessed episodes of exposure to toxic fumes in her work area, no episodes were described within a year of the employee's death and any opinion based on exposure based on a chronic basis was a matter of speculation. He reviewed the employee's autopsy results and noted there was no lung parenchymal inflammation or mention of any nasal or oropharyngeal mucosal irritation, but gram-positive cocci were seen in the inflamed tracheal mucosa. Though more recent unreported fume exposure could have occurred, Dr. Threlkeld stated that he would have expected additional upper airway and distal airway irritation rather than a well demarcated area of inflammation in the trachea and bronchi. He noted that the employee had pneumonia in July 2005 and had recovered nicely with antibiotics. Dr. Threlkeld stated that she had complained of indigestion, epigastric pain, heartburn and diarrhea. He stated that the employee's symptoms were blunted by Nexium and that a computerized tomography (CT) scan of November 18, 2005 was negative. Dr. Threlkeld stated that when the November 18, 2005 surgery was performed, only small antral erosion was seen. He noted that the employee had denied symptoms of various conditions during a gastrointestinal examination on November 7, 2005 and that no prior immune system evaluation had been done, although chronic adrenal insufficiency appeared likely, which would make her vulnerable to systemic infection.

[2] Docket No. 10-1345 (issued April 13, 2011).

Dr. Threlkeld noted an indication of infection in September when she complained of nasal stuffiness and bronchitis. He concluded that the employee died from overwhelming infection with sepsis and resulting arrhythmia. Appellant's deterioration from tracheobronchitis to septicemia probably was made more rapid by underlying adrenal insufficiency. Dr. Threlkeld stated that there was no data to suggest clearly that the employee's work exposure contributed to her death. He advised that her medical history was complicated and there was no way to be sure that there was no recent workplace exposure to toxic fumes and the record contained no data consistent with recent workplace toxic fume exposure. Dr. Threlkeld explained for the reasons he noted, he would have expected additional findings on autopsy and history if such inhalation had played a significant role in her demise.

By decision dated February 24, 2012, OWCP denied appellant's claim for survivor benefits. It found that Dr. Threlkeld's report was entitled to special weight accorded an impartial medical specialist in establishing that the employee's death was not causally related to the established employment-related chemical exposure.

On March 14, 2012 appellant requested a telephone hearing before an OWCP hearing representative, which was held on June 8, 2012.

In a May 25, 2012 report, Dr. Shukla noted that he had seen the employee beginning July 10, 2002 through November 18, 2005. He stated that she had initially been seen for heartburn, epigastric pain and nausea. Dr. Shukla noted that the employee had declined a colonoscopy and gastroscopy in 2002, but underwent the procedures on November 18, 2005. He termed the procedure uneventful. Dr. Shukla noted that a CT scan of the abdomen was normal and that the employee had developed respiratory failure and expired on November 19, 2005. He stated that her pain receptors could not distinguish between esophageal and tracheal pain and acid blockers therefore did not help her symptoms, which had worsened since 2002. Dr. Shukla stated that this further supported Dr. Barksdale's opinion that the employee's erosive laryngotracheobronchitis was chronic in nature. He stated that exposure to sulfuric acid fumes causes permanent damage to the trachea and airways and also causes laryngotracheobronchitis. Dr. Shukla noted that the material safety data sheets (MSDS) state that the effects of exposure may be delayed. He concluded that since the employee's body could not distinguish between esophageal and tracheal pain, her work exposure contributed to laryngotracheobronchitis and her death.

By decision dated August 7, 2012, OWCP's hearing representative affirmed the February 24, 2012 decision. He found that Dr. Shukla's May 25, 2012 report was not sufficient to outweigh Dr. Threlkeld's impartial medical opinion.

LEGAL PRECEDENT

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

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

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]

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[6] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.[7]

ANALYSIS

The Board previously found a conflict in medical opinion existed between the reports of Drs. Barksdale and Shukla for appellant and Dr. MacIntyre for OWCP and remanded the case for referral of the case file to an impartial medical specialist and to issue a *de novo* decision. On remand, OWCP referred appellant to Dr. Threlkeld for an impartial medical evaluation.

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. Threlkeld. In a January 17, 2012 report, Dr. Threlkeld reviewed the medical evidence and a statement of accepted facts. He noted that OWCP had accepted two episodes of exposure to toxic fumes but no episodes were described within a year of her death. Dr. Threlkeld reviewed the employee's autopsy results and medical history and noted what findings were missing if the employee had had exposure based on a chronic basis. He concluded that the employee died from overwhelming infection with sepsis and resulting arrhythmia. Appellant's deterioration from tracheobronchitis to septicemia probably was made more rapid by underlying adrenal insufficiency. He stated that there was no data to suggest clearly that the employee's work exposure contributed to her death. Appellant noted that while her medical history was

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

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

[6] 5 U.S.C. § 8123(a). *See also Raymond A. Fondots*, 53 ECAB 637 (2002).

[7] *B.P.*, Docket No. 08-1457 (issued February 2, 2009); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

complicated and there was no way to be sure that there was no recent workplace exposure to toxic fumes, he would have expected additional findings on autopsy and history if such inhalation of workplace exposure on a chronic basis had played a significant role in her demise. He did not indicate any basis on which to attribute the employee's death to workplace exposures.

As noted, a reasoned opinion from a referee examiner is entitled to special weight.[8] The Board finds that Dr. Threlkeld provided a well-rationalized opinion based on a complete background, an extensive and thorough review of the accepted facts and the medical record, including autopsy findings. Dr. Threlkeld's opinion that the employee did not sustain a medical condition causally related to her accepted work-related exposure to toxic fumes is entitled to special weight and represents the weight of the evidence.[9]

OWCP received a May 25, 2012 report from Dr. Shukla, who opined that the employee's work exposure contributed to laryngotracheobronchitis and her death. Dr. Shukla stated that the employee pain receptors could not distinguish between esophageal and tracheal pain and the acid blockers did not help her symptoms, which had worsened since 2002. He stated that this supported that the employee's erosive laryngotracheobronchitis was chronic in nature. While Dr. Shukla provided a new reason to explain the cause of the employee's burning chest pain, he appears to rely on an opinion from Dr. Barksdale and did not detail the medical processes on which this opinion was based. Dr. Shukla's opinion also is premised on a finding that she had chronic erosive laryngotracheobronchitis. Dr. Threlkeld clearly stated it was a matter of speculation that any exposure to toxic fumes on a chronic basis could have been related to the employee's death as there were only two witnessed episodes of exposure to toxic fumes in her work area and no episodes were described within a year of her death. Dr. Shukla, along with Dr. Barksdale, was also on one side of the conflict that Dr. Threlkeld resolved. The Board finds that the additional report from Dr. Shukla is insufficient to overcome the weight accorded Dr. Threlkeld as the impartial medical examiner or to create a new conflict.[10]

For these reasons, appellant did not show that the employee's death on November 19, 2005 was causally related to the established work-related events and OWCP properly denied the claim for survivor's benefits.

On appeal, counsel contended, without explanation, that OWCP's decision was contrary to fact and law. For reasons stated above, the Board finds that appellant did not submit sufficient evidence establishing that the employee sustained an injury causally related to the accepted work-related chemical exposure.

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.

[8] *Id.*

[9] *Id*.

[10] *See Jaja K Asaramo*, 55 ECAB 200, 205 (2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally, insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that the employee's death on November 19, 2005 was causally related to the established work-related events.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 7, 2011 is affirmed.

Issued: April 18, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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