United States Department of Labor
Employees' Compensation Appeals Board

S.M., daughter of M.M., Appellant	)	
and	)	**Docket No. 15-0817**
	)	**Issued: July 8, 2015**
DEPARTMENT OF THE AIR FORCE, MARCH AIR RESERVE BASE, CA, Employer	)	

Appearances:
Brett Blumstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 24, 2015 appellant, through counsel, filed a timely appeal from a December 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the employee's death was casually related to his federal employment.

FACTUAL HISTORY

On July 21, 2006 the employee, then a 45-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury in the performance of duty on

[1] 5 U.S.C. § 8101 *et seq.*

July 14, 2006. The employee indicated on the claim form that he missed a step while getting off a rescue truck. OWCP initially accepted the claim for a lumbar strain. The claim was subsequently accepted for a herniated L5-S1 disc with radiculopathy, and lumbosacral neuritis or radiculitis. The employee stopped working and received wage-loss compensation on the periodic rolls. He underwent lumbar surgeries on December 11, 2007 and December 16, 2008. By decision dated April 5, 2011, the employee received a schedule award for two percent permanent impairment to each leg.

The employee was referred for a second opinion examination by Dr. Ronald Lampert, a Board-certified orthopedic surgeon. In a report dated January 10, 2012, Dr. Lampert provided a history and results on examination. He reported the employee's daily medications were: Hydrocodone, Tramadol, Tizanidine, Orphenadrine citrate, and Zolpidem Tartrate. Dr. Lampert stated that he did not believe additional surgery was warranted and recommended a functional capacity evaluation. The record contains a report dated April 10, 2012 from Dr. Thomas Haider, an orthopedic surgeon, indicating that a urine sample was taken as part of a medication management evaluation. Dr. Haider reported the prescribed medications were: Norco (Hydrocodone), Zolpidem (Ambien), and Zanaflex.

OWCP found there was a conflict in medical evidence and referred the employee to Dr. Jeffrey Levine, a Board-certified orthopedic surgeon. In a report dated May 31, 2012, Dr. Levine provided a history and results on examination. As to medications, he reported the same medications as Dr. Lampert. According to Dr. Levine, there was a psychologic overlay with respect to the employee's symptoms and he recommended a psychiatric evaluation.

The record indicates that the employee was hospitalized on January 1, 2013. The employee was treated on January 3, 2013 by Dr. Kern Chaudhry, a Board-certified internist. Dr. Chaudhry reported that the employee was confused and unable to answer any questions. He diagnosed a psychotic disorder and prescribed Ativan for anxiety. Dr. Jyothi Punnam, a Board-certified internist, indicated that the employee was discharged from the hospital on January 13, 2013. The diagnoses included diffuse periventricular white matter changes of unclear etiology, presumed toxic metabolic versus anoxic encephalopathy, and substance abuse. In a report dated March 9, 2013, Dr. Scott Kirby, an osteopath, stated that the employee had chronic back pain and his medications included Aricept, aspirin, Namenda, Provigil, and Zocor. He stated that the employee would be given prescriptions for Valium, Phenergan, and Percocet. In a report dated April 24, 2013, Dr. Dennis Cramer, an osteopath, indicated that the employee reported severe pain radiating into both legs.[2] He reported that the employee could not sleep despite taking multiple over the counter medications, muscle relaxants, and narcotics. The employee wanted to have back surgery.

The employee was seen on May 7, 2013 by Dr. Haider, who reported results on examination. Dr. Haider stated that the employee needed a lumbar decompression and fusion surgery at L4-5 and would be seen after a magnetic resonance imaging (MRI) scan was performed. A toxicology report dated May 17, 2013 indicated negative results for methadone, opiates, benzodiazepines,[3] and barbiturates. The employee underwent a lumbar MRI scan on

[2] The report was cosigned by Dr. Haider.

[3] According to the report, benzodiazepines included Temazepam, Nordiazepam, and Oxazepam.

June 27, 2013. By letter dated July 19, 2013, OWCP advised the employee that a second opinion examination by a psychiatrist would be scheduled.

The record indicates that the employee died at his home on July 31, 2013. On October 29, 2013 appellant filed a CA-5 claim for compensation by widow, widower, and/or children.[4]

In a certificate of death and accompanying report dated August 3, 2013, Dr. Vladimir Shvarts, a Board-certified pathologist, reported that the cause of the employee's death was "combined drug toxicity." He stated the employee's blood contained methadone, .533 mg/L, and was positive for Diazepam, Nordiazepam, Temazepam, Oxazepam, and Orphenadrine. According to Dr. Shvarts, the employee suffered from hypertensive heart disease and he noted a history of toxic metabolic encephalopathy.

OWCP requested that an OWCP medical adviser review the medical evidence. In a report dated March 27, 2014, the medical adviser, Dr. Ellen Pichey, noted that the medical reports did not clearly state a list of medications. She noted there was no mention of the employee taking methadone or being referred to a narcotic dependency clinic. Dr. Pichey noted that the toxicology screen dated May 17, 2013 was negative for methadone, benzodiazepines, and opiates. She reported that according to OWCP's affiliated computer services (ACS) the paid prescriptions in the three months prior to the employee's death were: Diazepam (muscle relaxant/anti-anxiety), Carisoprodol (brand name soma, a muscle relaxant), Orphenadrine (muscle relaxant), and Vicodin. According to Dr. Pichey, the combination of methadone with benzodiazepines was "a potential factor," but there were many unknowns in the case.

On October 28, 2014 appellant submitted an October 25, 2014 report from Dr. Aliyar Parvin, a Board-certified family practitioner. Dr. Parvin reported that he had reviewed the medical records and the autopsy report. He opined that the employee's death was "likely the result of overmedication by his physicians, based on several observations." Dr. Parvin noted the substances in the employee's blood were medications, not illicit drugs. He further noted that at the time of the employee's death "he was on Methadone, Hydrocodone, Diazepam, Tramadol, and Temazepam, which not only have the capacity to depress ones mental status and level of consciousness individually, but when combined can further the risk by increasing this effect and in fact causing cardiorespiratory arrest."

OWCP again referred the evidence to an OWCP medical adviser for review. In a report dated November 22, 2014, an OWCP medical adviser, Dr. James Grossman, reviewed the medical record. Dr. Grossman noted that the employee had several medications in his blood at the time of death, but "information that can establish cause and effect is missing." He stated that while the employee may have been taking medications related to his employment injury, the information in the medical evidence did not establish a link between his death and the work injury.

[4] The form also listed two other children. Appellant's date of birth was October 27, 1996. A CA-5 dated August 11, 2014 listed only appellant as the claimant.

By decision dated December 18, 2014, OWCP denied the claim for benefits. It found the weight of the medical evidence was represented by Dr. Grossman and did not establish the employee's death was casually related to federal employment.

LEGAL PRECEDENT

Pursuant to 5 U.S.C. § 8133, a widow, widower, or child may claim that the employee's death was casually related to federal employment.[5] 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 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.[6] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.[7] 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.[8] The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal relationship.[9] If the employment contributed to the employee's death, then causal relationship is established.[10]

FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.[11] The implementing regulations state that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[12]

ANALYSIS

In the present case appellant, a minor child of the employee, filed a claim for benefits alleging that her father's (the employee) death was causally related to his federal employment. It is her contention that medications the employee was taking for his accepted back conditions

[5] *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Death Claims*, Chapter 2.700.8 (February 2013).

[6] *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

[7] *Kathy Marshall (Dennis Marshal)*, 45 ECAB 827 (1994).

[8] *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

[9] *See T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

[10] *Id.*

[11] 5 U.S.C. § 8123.

[12] 20 C.F.R. § 10.321.

caused or contributed to his death. The Board finds there are conflicting opinions and this is a medical issue that must be resolved by a referee physician.

According to Dr. Shvarts, the cause of death on July 31, 2013 was "combined drug toxicity." His August 3, 2013 report notes the presence of a number of drugs in the employee's blood and urine. The record indicates that the employee had an accepted employment-related back condition and was taking pain medication. The medical adviser, Dr. Pichey, noted that the employee had prescriptions in the three months prior to death for Orphenadrine and Diazepam, two substances noted by Dr. Shvarts as present at the time of death. Dr. Levine had noted in his May 31, 2012 report that the employee was taking Orphenadrine.

Dr. Parvin provided an opinion that the medications for the employment-related back condition played a predominant factor in the employee's death. He noted a number of drugs found in the employee and opined that such drugs in combination can contribute to cardiorespiratory arrest. On the other hand, OWCP medical adviser Dr. Grossman found the evidence was insufficient to establish a causal relationship with the employment injury. He found the evidence of record did not establish that medications taken for the employment injury contributed to the employee's death.

The Board finds that a conflict exists under 5 U.S.C. § 8123(a) and the case will be remanded to OWCP to resolve the conflict. The issue is whether any prescribed medications taken by the employee for an employment-related condition contributed to his death. As noted above, any contribution from employment to the employee's death is sufficient to establish causal relationship. The selected referee physician should be provided with a proper background, a statement of accepted facts of the claim, and all relevant medical evidence with respect to this specific medical issue. After such further development as is deemed necessary, OWCP should issue a merit decision.

CONCLUSION

The Board finds that there is an unresolved conflict in the medical evidence and the case is remanded for further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 18, 2014 is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: July 8, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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