

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

**J.W., T.W. & R.E., claiming as dependent
children of T.W., Appellants**

and

**DEPARTMENT OF THE ARMY, ARMY
DEPOT, Anniston, AL, Employer**

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**Docket No. 11-597
Issued: December 9, 2011**

Appearances:

*Charles H. Rice, Esq., for the appellants
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2010 appellants¹ filed a timely appeal from a May 28, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the employee's death on July 3, 2007 was causally related to the accepted June 30, 2007 work incident.

¹ The claim was filed on behalf of appellants by Melisha W. White, the personal representative of the employee's estate and the biological mother of two of the appellants. She specified in the Form CA-5 that she was married to the employee from March 23, 1992 to September 20, 2004 and was no longer living with him at the time of his death. Ms. White retained Charles H. Rice as counsel.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 10, 2009 appellants, the minor children of the deceased employee, filed a claim for survivor benefits alleging that the employee, then a 33-year-old heavy mobile equipment repairer, struck his head at the jobsite on June 30, 2007 and died on July 3, 2007. They submitted a July 3, 2007 death certificate indicating the cause of death of a subdural hematoma.³

In a preoperative report dated July 2, 2007, Dr. James G. White III, a Board-certified neurological surgeon, related that the employee was transferred to the emergency department with acute right subdural hematoma after losing consciousness and falling to the floor that morning. His prothrombin time was three times above normal. According to the employee's wife, he hit his head at work a few days earlier and later complained of a headache. On July 1, 2007 the employee had gone fishing and consumed beer with his brother-in-law. On examination, Dr. White noted that the employee was intubated, comatose and flaccid to painful stimulus. He also observed fixed pupils and corneal reflexes bilaterally, but no overt evidence of recent head trauma. Dr. White reviewed the employee's history of injury and pointed out that he had been on anticoagulation therapy since undergoing heart valve surgery as a child.

Dr. White performed a right frontotemporoparietal craniotomy with evacuation for acute right subdural hematoma on July 2, 2007. Following the procedure, the employee exhibited severe brain dysfunction. An electroencephalogram (EEG) conducted by Dr. Olga Bogdanova, a Board-certified neurologist, was severely abnormal. The employee was pronounced dead on July 3, 2007.

OWCP informed appellants in a February 17, 2009 letter that additional evidence was needed to establish their claim. It gave them 30 days to submit a physician's medical report explaining how the June 30, 2007 work incident caused the employee's death.

The employing establishment's compensation investigator conducted interviews and obtained sworn statements from March 3 to 5, 2009. Coworkers Brenda Lloyd and Trina Morris recalled that the employee worked overtime on June 30 and July 1, 2007, but did not witness a traumatic incident. Supervisors Michael Mangham, Jr. and Wilburn Sparks reiterated that he did not report an industrial accident.

The employing establishment controverted appellants' claim in a March 9, 2009 letter, asserting there was insufficient evidence to establish the claim.

In a March 11, 2009 sworn statement, Daniel W. Sprayberry, a coworker, related that he and the employee were working overtime on June 30, 2007 when the latter knocked his head against the hatch of an M9 Armored Combat Earthmover. The injury did not seem severe because he neither complained about nor reported the incident. Mr. Sprayberry specified that the employee had been consuming caffeinated energy drinks and taking weight loss medication and Chantix for smoking cessation.

³ The certificate also showed that the employee remarried.

By decision dated March 30, 2009, OWCP denied appellants' claim, finding that the medical evidence did not establish that the accepted June 30, 2007 work incident caused the employee's death.

Appellants' counsel requested reconsideration on October 13, 2009 and submitted additional medical evidence. A July 2, 2007 computerized tomography (CT) scan report from Dr. Timothy B. Tabor, a diagnostic radiologist, revealed prominent subdural and subarachnoid hemorrhages.⁴

In a July 3, 2007 report, Dr. Bogdanova recapped that the employee was found unconscious and transported to the hospital on the morning of July 2, 2007. After he underwent a craniotomy to treat acute right subdural hematoma, he showed clinical signs of brain herniation, including a Cushing reflex. The employee did not respond to sterna rub or oculocephalic, oculovestibular, nasal tickle, corneal or gag reflex testing. In addition, he did not spontaneously respire when taken off life support for two minutes. Dr. Bogdanova assessed brain death and noted that the employee "had a history of minor head trauma at work without any significant complications at that time." He noted that the employee had been asymptomatic before July 2, 2007 and had gone fishing with his brother-in-law. Dr. Bogdanova added that the employee underwent heart valve replacement as a child and was thereafter placed on Coumadin therapy.

In an October 5, 2009 report, Dr. White detailed that he found a contusion during the employee's craniotomy from which this subdural hematoma likely originated.⁵ After reviewing the medical file, he opined that the June 30, 2007 injury, in tandem with Coumadin therapy, caused the employee's death. While the employee only sustained a minor blow to the head on June 30, 2007, his ability to coagulate was severely compromised as demonstrated by a July 2, 2007 prothrombin time evaluation.⁶ These combined factors contributed to slow cranial bleeding, which resulted in the employee's subdural hematoma and eventual death.

On December 11, 2009 OWCP denied modification of the March 30, 2009 decision.

Appellants' counsel requested reconsideration on February 23, 2010 and submitted a February 15, 2010 report from Dr. White who emphasized that the employee did not exhibit any physical evidence of head trauma after he collapsed on July 2, 2007 and concluded "with reasonable medical certainty" that the combination of anticoagulation therapy and the accepted June 30, 2007 work event led to the subdural⁷ hematoma that ultimately caused his death.⁸

⁴ The case record also contains a series of chest x-rays dated July 2 and 3, 2007 from Drs. Tabor and Homer A. Spencer, a Board-certified diagnostic radiologist, which indicated pulmonary edema and contusion, acute respiratory distress syndrome, atelectasis, pneumonitis and pleural effusions.

⁵ Dr. White also restated the contents of his July 2, 2007 preoperative report.

⁶ This evaluation is included in the case record.

⁷ See *E.R.*, 58 ECAB 369 (2007).

⁸ Dr. White provided essentially the same rationale that was in his October 5, 2009 report.

On May 28, 2010 OWCP denied modification of the December 11, 2009 decision.

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 or her duty.⁹ In particular, section 8133 of FECA provides that a child of an employee whose death resulted from a work-related injury may receive survivor benefits if the child is younger than 18 years of age or, if older, is incapable of self-support.¹⁰

The claimant has the burden of proving by the weight of 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 rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.¹¹

The Board has previously explained that any contribution of employment factors is sufficient to establish the element of causal relationship.

ANALYSIS

The Board finds that the case is not in posture for decision.

An employee who claims benefits under FECA has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or work factors. As part of this burden, the employee must present rationalized medical opinion evidence based on a complete and accurate factual and medical background. However, it is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While an employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.¹²

The case record supports that the employee was working overtime on June 30, 2007 when he knocked his head against the hatch of an M9 Armored Combat Earthmover. He died on July 3, 2007 due to a subdural hematoma. However, OWCP denied appellants' claim for survivor benefits on the basis that the medical evidence did not sufficiently establish that the accepted June 30, 2007 work incident caused the employee's death.

⁹ See 5 U.S.C. §§ 8102(a), 8133(a); *L.R. (E.R.)*, 58 ECAB 369 (2007).

¹⁰ See *James H. Woods*, 39 ECAB 499 (1988).

¹¹ *L.R. (E.R.)*, *supra* note 9; *Lois E. Culver*, 53 ECAB 412 (2002).

¹² *William J. Cantrell*, 34 ECAB 1233 (1983); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

The Board finds that the medical evidence consisting of Drs. Bogdanova, Spencer, Tabor and White's reports for the period July 2, 2007 to February 15, 2010 was not sufficiently rationalized to meet appellants' burden of proof as none of these documents offered a sound pathophysiological explanation of how the accepted June 30, 2007 work incident caused the employee's death on July 3, 2007.¹³ Nonetheless, Dr. White's October 5, 2009 and February 15, 2010 reports warrant further development by OWCP. In particular, he obtained a thorough history of the injury, reviewed the medical file, conducted a physical examination, and rendered an opinion that was consistent with the clinical findings.¹⁴ Dr. White explained that, while the employee only sustained a minor blow to the head on June 30, 2007, his ability to coagulate had been severely compromised as demonstrated by a July 2, 2007 prothrombin time evaluation, and that these combined factors contributed to slow cranial bleeding, which resulted in subdural hematoma and eventual death. He has therefore offered an opinion that the employee's employment factor contributed to his death.

On remand OWCP should prepare a statement of accepted facts and develop the medical evidence by referring the employee's file to an appropriate Board-certified specialist for a rationalized medical opinion regarding whether the June 30, 2007 work incident caused his death. After conducting such further development as it may find necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

¹³ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹⁴ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 9, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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