

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

G.S., claiming as widow of R.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Sacramento, CA, Employer)

Docket No. 11-695
Issued: September 15, 2011

Appearances:
Tiffany P. Jordan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On January 26, 2011 appellant, through her representative, filed a timely appeal of a September 20, 2010 Office of Workers' Compensation Programs' (OWCP) decision. The Board docketed the appeal as No. 11-695. By its September 20, 2010 decision, an OWCP hearing representative affirmed the denial of an April 22, 2010 OWCP decision denying compensation for death benefits. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The Board has duly considered the matter and notes that in the case of *William A. Couch*,² the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. In the present case, OWCP received a July 22, 2009 "death summary" report from Dr. Jaswinder Grover, Board-certified in orthopedic surgery, who performed an anterior C3-7 fusion procedure on the employee on June 3, 2009. The surgery had been approved by OWCP to ameliorate the accepted conditions of herniated nucleus pulposus at C5-6 and C6-7 and cervical degenerative disc disease at C3-4 and C4-5. Dr. Grover's July 22, 2009 report summarized the circumstances surrounding the employee's June 3, 2009 surgery and postoperative death on June 4, 2009. He stated that the employee had been initially transferred to the hospital recovery

¹ 5 U.S.C. § 8101 *et seq.*

² 41 ECAB 548 (1990).

room in stable condition following surgery; shortly thereafter, however, after being transferred to the intensive care unit, he developed acute pulmonary distress and went into cardiopulmonary arrest. The employee died early the following morning and Dr. Grover returned to the hospital to review the situation.

In its April 22 and September 20, 2010 decisions, OWCP noted that the employee underwent OWCP-approved cervical fusion surgery on June 3, 2009. It stated that it had received a copy of the June 9, 2009 death certificate and autopsy reports dated June 15 and August 21, 2009 but that it had received no additional evidence. While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the reports from Dr. Grover dated June 3 and July 22, 2009 which pertained to his surgery and death were not reviewed, as OWCP specifically stated in its decisions that no additional evidence was received.

It appears that OWCP in its April 22 and September 20, 2010 decisions did not review the June 3 and July 22, 2009 reports from Dr. Grover, as no reference was made to this evidence in the decision. For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence of record. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on the merits.

IT IS HEREBY ORDERED THAT the September 20, 2010 decision of the Office of Workers' Compensation Programs is set aside; the case record is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: September 15, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board