

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

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<b>D.Q., claiming as widow of J.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 13-2139</b>
	)	<b>Issued: March 13, 2014</b>
<b>DEPARTMENT OF THE NAVY, NAVAL COMMAND STATION, Ponce, PR, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 26, 2013 appellant, the employee's widow, filed a timely appeal from a July 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for survivor's benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether the employee's death was causally related to his accepted employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> On appeal, appellant submitted new medical evidence. The Board has no jurisdiction to review new evidence on appeal. *See* 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On October 22, 1975 the employee, then a 43-year-old electrician, filed a traumatic injury claim alleging that on October 20, 1975 he injured his right arm, hand and shoulder after being struck by a high voltage line. OWCP accepted the claim for first degree burns to the right arm, second degree burns to the back and major depressive disorder. It paid the employee compensation for total disability beginning October 1975.

The employee died on October 30, 2012. The death certificate provided the cause of death as a cerebrovascular accident (CVA), acute renal failure and hypertension. On December 13, 2012 appellant submitted a claim for death benefits.<sup>3</sup> She listed the cause of death as a CVA, acute renal failure and hypertension. In an accompanying attending physician's report dated December 3, 2012, Dr. Blas Anaya, an internist, related that he treated the employee for hypertension, diabetes mellitus and a CVA. He attributed the death to cardiorespiratory arrest as the result of renal failure. Dr. Anaya opined that pleural effusions and pulmonary congestion contributed to the employee's death and arose because he was bedridden. In response to the question of whether death occurred due to the described injury of electric shock, he checked "yes" that the employee's death was due to the work injury. Dr. Anaya related that the employee was healthy before his accident but subsequently experienced anxiety, depression and mental deterioration. He also failed to take his medication.

By letter dated April 22, 2013, OWCP requested that appellant submit a comprehensive report from the employee's attending physician addressing the causal relationship between his death and the accepted work injury. No report was received.

By decision dated July 30, 2013, OWCP denied appellant's claim after finding that the evidence was insufficient to establish that the employee died as a result of his employment injury.

On appeal appellant argues that the employee's health worsened after the electric shock he received at work.

## **LEGAL PRECEDENT**

The United States shall pay compensation for the death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> 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 or her federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.<sup>5</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.<sup>6</sup> The mere showing that an

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<sup>3</sup> Appellant submitted a copy of her marriage certificate.

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> See *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005).

<sup>6</sup> See *L.R. (E.R.)*, 58 ECAB 369 (2007); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

employee was receiving compensation for total disability at the time of death does not establish that the employee's death was causally related to his or her federal employment.<sup>7</sup>

### ANALYSIS

OWCP accepted that on October 20, 1975 the employee sustained first degree burns to the right arm, second degree burns to the back and major depressive disorder as a result of an electric shock. It paid him compensation for total disability.

After the employee's death on October 30, 2012, appellant, his widow, filed a claim for death benefits. She submitted a death certificate which listed the cause of death as a CVA, acute renal failure and hypertension.

In a December 3, 2012 attending physician's form report, Dr. Anaya indicated that he had treated the employee for hypertension, diabetes mellitus and a CVA. He asserted that death arose due to cardiorespiratory arrest due to renal failure. Dr. Anaya found that the employee sustained pleural effusions and pulmonary congestion because he was bedridden and that these conditions contributed to death. He checked "yes" that the employee's death was due to the work injury. Dr. Anaya asserted that he was healthy prior to his injury but afterwards sustained anxiety, depression and the deterioration of his mental faculties. His opinion, however, lacks sufficient rationale to explain how an electric shock in 1975 caused or contributed to the employee's death in 2012. While Dr. Anaya asserted that the employee's injury caused anxiety, depression and mental deterioration, he did not explain how this resulted in or contributed to the employee's death from renal failure and cardiorespiratory insufficiency. Without providing a factual and medical background and a clear explanation regarding how the employment-related conditions of burns to the back and right arm and major depressive disorder caused or contributed to the employee's death, his report is insufficient to meet appellant's burden of proof.<sup>8</sup>

On appeal appellant argues that the employee's health deteriorated after his electric shock injury. She has the burden, however, to submit rationalized medical evidence showing that the employee's death was causally related to his accepted employment injury.<sup>9</sup> Appellant has not submitted a medical report from a physician who provides an accurate history of the employee's work injury, addresses the cause of death on October 30, 2012 and explains with sound medical reasoning how the injury contributed to the death. Consequently, she has not met her burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>7</sup> See *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

<sup>8</sup> See *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

<sup>9</sup> *Jacqueline Brasch (Ronald Brasch)*, *supra* note 6.

**CONCLUSION**

The Board finds that appellant has not established that the employee's death was causally related to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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