

FACTUAL HISTORY

On March 7, 2014 appellant filed a claim for survivor benefits. She alleged that work-related asbestosis contributed to her husband's death on June 23, 2012. Appellant's husband was retired from the employing establishment at the time of his death.² A portion of the form was completed by Dr. Joselito O. Vicente³ who indicated that the direct cause of death was acute myocardial infarction. The contributory causes of death were listed as asbestosis, morbid obesity, and "pulmonary embolism is also considered." Dr. Vicente stated that precipitating factors such as restricted lung disease secondary to asbestosis and obesity could be "attributed to the cause of death of the patient."

Appellant submitted a June 26, 2012 certificate of death in which Dr. Cynthia H. Mendoza⁴ indicated that the causes of death were cardiopulmonary arrest, acute myocardial infarction, cardiovascular disease and diabetes mellitus.⁵ Appellant also submitted other documents, including examination reports and progress notes beginning in 1980, laboratory findings, Department of Veterans Affairs outpatient service documents, and a funeral bill.

By letter dated March 11, 2014, OWCP advised appellant that survivor benefits might be payable to eligible dependents if the death resulted from a "Civilian Federal" job-related injury or medical condition caused by hazardous exposure on the job. It stated:

"The information submitted indicates [the deceased] was in the military and retired from the Department of the Navy. There is no indication he was a civilian employee working in the [F]ederal [G]overnment. Was your husband employed as a civilian in the [F]ederal [G]overnment? Provide the name and address of the civilian office where he was last employed."

In a letter April 7, 2014, appellant stated that almost all of her husband's records had been lost and stated:

"I wish to inform your good office that I cannot provide the record of my last husband employer in Saudi Arabia, Dammam. I am enclosing his medical report or record where he was hospitalized for illness."⁶

² Appellant's husband was 72-years-old at the time of his death. Whether the deceased formerly worked in a civilian capacity for the employing establishment or was on active military service remains unclear from the face of the survivor's benefits claim form. Other documents submitted by appellant suggest that he formerly was on active military service, including an October 17, 2011 e-mail in which appellant's husband stated that he was a "veteran and retired U.S. Navy personnel."

³ Dr. Vicente's medical specialty is unclear from the evidence of record.

⁴ Dr. Mendoza's medical specialty is unclear from the evidence of record.

⁵ The certificate of death listed appellant as being married to the deceased at the time of death on June 23, 2012.

⁶ Appellant attached medical records produced by a physician based in Saudi Arabia.

In a June 10, 2014 decision, OWCP denied appellant's claim for survivor benefits as she had failed to establish that her late husband was an "employee" within the meaning of FECA.

LEGAL PRECEDENT

FECA provides that the United States "shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty."⁷ A claimant seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that he or she or a decedent, as in the present case, was an "employee" within the meaning of FECA.⁸

For purposes of determining entitlement to compensation benefits under FECA, an "employee" is defined, in relevant part, as:

"(A) a civil officer or employee in any branch of the [g]overnment of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

"(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual..."⁹

ANALYSIS

On March 7, 2014 appellant filed a claim for survivor benefits. She alleged that work-related asbestosis contributed to her husband's death on June 23, 2012. Appellant indicated that her husband was retired from the employing establishment at the time of his death.

The Board finds that OWCP properly denied appellant's claim for survivor benefits as she had not established that her late husband was an "employee" within the meaning of FECA. Appellant did not establish that her late husband was a "civil officer or employee in any branch of the [g]overnment of the United States, including an officer or employee of an instrumentality wholly owned by the United States."¹⁰ Rather, it appears from the record that he was serving in the military service. Appellant was provided an opportunity to provide clarifying documentation that her husband was such a "civil officer or employee" but she failed to do so.

Moreover, there is no indication that appellant's husband was an "employee" under section 8101(1)(B) of FECA, one who rendered personal service to the United States similar to

⁷ 5 U.S.C. § 8102(a).

⁸ *Nettie Jackson (Lee F. Jackson)*, 53 ECAB 223 (2001).

⁹ 5 U.S.C. § 8101(1).

¹⁰ *See supra* note 9.

the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorized the acceptance or use of the service, or authorized payment of travel or other expenses of the individual.¹¹

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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish entitlement to survivor benefits.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2015
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

¹¹ *Id.*