

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

---

**P.J., widow of S.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Nashville, TN, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 15-686  
Issued: June 15, 2015**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On February 9, 2015 appellant, through counsel, filed a timely appeal from a November 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

**ISSUE**

The issue is whether the employee's death on May 21, 2013 was causally related to his federal employment.

**FACTUAL HISTORY**

On January 29, 2008 the employee, then a 55-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 26, 2008 he was reaching into the

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

backseat of his vehicle to retrieve mail, turned to his left and pushed with his right foot to extend into the backseat, and injured his right knee in the process. On February 22, 2008 OWCP accepted the claim for sprain of right knee, medial collateral ligament. On March 4, 2008 it expanded the claim to include right knee tear of posterior horn meniscus. By decision dated March 25, 2010, OWCP again expanded the claim to include infection and inflammatory reaction due to internal joint prosthesis, right. By decision dated May 19, 2010, it expanded the claim to include right knee edema and lower right leg localized primary osteoarthritis.

The employee underwent a right knee arthroscopy on February 29 and June 13, 2008. On April 29, 2009 he underwent medial and patellofemoral compartmental arthroplasty. Due to continued pain and a staph infection, the employee underwent another right knee arthroscopy and arthrotomy on May 29, 2009. On January 25, 2010 he underwent resection arthroplasty of the right knee with placement of a temporary articulating spacer due to a right knee arthroplasty infection. On May 3, 2010 the employee underwent revision of right knee total arthroplasty due to failed right total knee arthroplasty with secondary infection. The surgeries were approved by OWCP.

On November 23, 2010 the employee returned to work part time/light duty. On January 27, 2011 Dr. J. Craig Morrison, a Board-certified orthopedic surgeon, listed permanent restrictions on an OWCP5c functional capacity evaluation form and placed the employee at maximum medical improvement (MMI). The employee was advised on August 23, 2012 of the employing establishment's inability to accommodate his work restrictions. He continued to receive wage-loss compensation.

In a May 6, 2013 report, Dr. Steven R. Dickerson, a Board-certified anesthesiologist, reported that the employee complained of severe coughing for approximately two weeks and knee pain. He provided a history of the employee's right knee injury noting the multiple surgeries and subsequent infections. Upon physical examination, Dr. Dickerson diagnosed knee pain, back pain, radicular pain, chronic pain syndrome, effusion of joint lower leg, and opioid dependence. He ordered a magnetic resonance imaging (MRI) scan of the right knee and recommended that the employee seek medical attention regarding possible pleurisy/upper respiratory infection.

The employee died on May 21, 2013. At the time of his death, he was receiving wage-loss compensation on the periodic rolls. The death certificate completed on May 29, 2013 listed the immediate cause of death as pneumonia with an approximate two-week interval to the onset of death.

On July 15, 2013 appellant, through counsel, filed a claim for compensation by widower (Form CA-5) alleging that the employee's death was causally related to the employment injury. On the form, she reported the cause of death as pneumonia due to inactivity from his right knee injury. In support of her claim, appellant submitted a certificate of marriage and death certificate.

Appellant also submitted a May 22, 2012 medical report from Dr. Peter Kroll, a Board-certified anesthesiologist, who reported that the employee presented for lumbar sympathetic block (LSB) injections of the right knee.

By letter dated September 24, 2013, OWCP informed appellant that additional evidence was needed to support her claim and provided her 30 days to submit the requested information.

In support of her claim, appellant submitted a May 2, 2012 report from Dr. Kroll who conducted a lower extremity nerve conduction study and diagnosed lumbosacral radiculopathy.

By decision dated January 22, 2014, OWCP denied the claim for compensation finding that the medical evidence did not establish that the employee's death was due to factors of his federal employment.

On February 4, 2014 appellant, through counsel, requested an oral hearing before the Branch of Hearings and Review.

At the August 18, 2014 hearing, counsel reported that he was attempting to obtain a medical report which explained how pneumonia was related to the employee's claim but was having difficulty dealing with the administrator of the case. He requested 30 days to submit the information. Counsel was informed that the record would be held open for 75 to 100 days. No evidence was submitted following the hearing.

By decision dated November 4, 2014, the Branch of Hearings and Review affirmed the January 22, 2014 decision finding that the medical evidence did not establish that the employee's death was caused by factors of his federal employment.

### **LEGAL PRECEDENT**

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> 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.<sup>3</sup> This burden includes the necessity of furnishing rationalized medical opinion evidence demonstrating a causal relationship.<sup>4</sup> The physician's opinion must be based on a complete factual and medical background, must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the relationship between the employee's death and his previous employment.<sup>5</sup>

If death results from an injury sustained in the performance of duty, FECA provides a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with a schedule.<sup>6</sup>

---

<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Gertrude T. Zakrajsek (Frank S. Zakrajsek)*, 47 ECAB 770 (1996); *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

<sup>4</sup> *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

<sup>5</sup> *L.R.*, 58 ECAB 369, 375 (2007); *see also L.B.*, Docket No. 12-699 (issued August 1, 2012).

<sup>6</sup> *Id.* at 8133.

An award of compensation may not be based on surmise, conjecture, or speculation.<sup>7</sup> The mere showing that an employee was receiving compensation at the time of his death does not establish that his death was causally related to conditions resulting from the employment.<sup>8</sup> The Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>9</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>10</sup> does not raise an inference of causal relationship between a claimed condition and employment factors.

### ANALYSIS

On January 29, 2008 the employee injured his right knee when turning to reach for mail in the backseat of his vehicle. OWCP accepted the claim for sprain of right knee medial collateral ligament, right knee tear of posterior horn meniscus, infection and inflammatory reaction due to internal joint prosthesis right, right knee edema, and lower right leg localized primary osteoarthritis. At the time of his death, he was receiving wage-loss compensation on the periodic rolls. After his death on May 21, 2013, the employee's widow filed a claim for survivor's benefits.<sup>11</sup> Appellant alleged that the employee was inactive due to his work-related injuries which contributed to the cause of death listed on his death certificate, pneumonia.

The Board finds that appellant did not submit sufficient medical evidence to establish her claim for survivor's benefits. Appellant did not submit rationalized medical evidence showing that the accepted employment injuries contributed to the employee's death.

The employee died on May 21, 2013 and the death certificate completed on May 29, 2013 listed the immediate cause of death as pneumonia. In support of her claim, appellant submitted medical reports dated May 2 and 22, 2012 from Dr. Kroll who conducted a nerve conduction study of the lower extremities, diagnosed lumbosacral radiculopathy, and provided LSB injections. Dr. Kroll's reports are insufficient to establish appellant's claim. The reports were produced approximately one year prior to appellant's death on May 21, 2013 and are of insufficient probative value regarding the question of whether his accepted employment injuries contributed to his death.<sup>12</sup> Moreover, Dr. Kroll failed to note any diagnoses of pneumonia to relate the employee's death to his work injuries. Thus, his reports lack probative value.<sup>13</sup>

---

<sup>7</sup> *Myrl Nix (Earl Nix)*, 15 ECAB 125, 126 (1963).

<sup>8</sup> *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

<sup>9</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>10</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>11</sup> Pursuant to Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation to Widow/Widower*, Chapter 2.700(7) (August 1994) appellant provided documentation to verify that she was an eligible beneficiary under 5 U.S.C. § 8110 of FECA.

<sup>12</sup> *F.O. (A.O.)*, Docket No. 10-2315 (issued August 1, 2011).

<sup>13</sup> *E.T.*, Docket No. 14-861 (issued July 14, 2014).

The only other medical evidence received was a May 6, 2013 medical report from Dr. Dickerson, who reported that the employee complained of severe coughing for approximately two weeks as well as knee pain. Dr. Dickerson provided a history of the employee's right knee injury noting the multiple surgeries and subsequent infections of the knee. Upon physical examination, he diagnosed knee pain, back pain, radicular pain, chronic pain syndrome, effusion of joint lower leg, and opioid dependence. Dr. Dickerson recommended the employee seek medical attention regarding possible pleurisy/upper respiratory infection.

While Dr. Dickerson noted possible pleurisy/upper respiratory infection, he did not provide a firm medical diagnosis and recommended that the employee seek other medical attention related to his severe cough. The Board notes that the death certificate related the immediate cause of death to pneumonia. This condition has not been accepted by OWCP as employment related and thus, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relationship.<sup>14</sup> Dr. Dickerson did not provide a diagnosis of pneumonia, nor did he provide any opinion that the employee's upper respiratory condition was due to factors of his federal employment prior to his death.<sup>15</sup> The Board finds, therefore, that Dr. Dickerson's report fails to establish that the employee's death was caused by his work-related injuries.<sup>16</sup>

The Board notes that, other than the May 29, 2013 death certificate, the record does not contain any medical evidence produced after the employee's May 21, 2013 death which discusses the cause of his death.<sup>17</sup> Appellant failed to submit medical evidence containing a rationalized medical opinion that the employee's accepted conditions contributed to his death on May 21, 2013. Therefore, OWCP properly denied her claim for survivor's benefits.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### CONCLUSION

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

---

<sup>14</sup> *E.C.*, Docket No. 10-1554 (issued April 1, 2011).

<sup>15</sup> *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>16</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>17</sup> *L.T.*, Docket No. 12-406 (issued June 21, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board