

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

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M.G., widow of R.G., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
CUSTOMS & BORDER PROTECTION, )  
San Ysidro, CA, Employer )

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**Docket No. 16-0625  
Issued: December 9, 2016**

*Appearances:*

Daniel M. Goodkin, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 12, 2016 appellant, through counsel, filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs (OWCP) dated September 10 and December 11, 2015. Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant met her burden of proof to establish that the employee's death on December 18, 2012 was causally related to factors of his federal employment.

On appeal, counsel asserts that the record establishes that the employee encountered work-related stress and that a conflict in medical evidence has been created regarding whether stress contributed to his death.

## FACTUAL HISTORY

Appellant, widow of the deceased employee, filed a claim for death benefits (Form CA-5) on November 6, 2013.<sup>3</sup> She alleged that acute and chronic stress led to the employee's coronary artery disease, hypertension, and left ventricle hypertrophy. At the time of his death on December 18, 2012, the employee was a 47-year-old customs and border protection officer.

In support of her claim, appellant submitted the standard operating procedures for inbound enforcement at the San Ysidro port of entry, the employee's duty station. This described job duties of officers as: identifying and/or interdicting contraband related to terrorism and potential terrorists entering the United States; interdicting narcotics and other contraband; identifying and interdicting alien smugglers/traffickers and fraudulent documents; identifying and interdicting fugitives/persons of interest; and detection of agricultural products related to bioterrorism. This included inspecting vehicles and pedestrians, and responding to calls for assistance.

In a May 7, 2013 statement, N.C., a coworker, advised that she had worked with the employee since 2009. She described border officers' work and reported that beginning in 2012 the employee would tell her that he was getting stressed about the job. K.S., also a coworker, submitted a statement dated June 13, 2013. He indicated that he witnessed the employee making arrests, having to use force, and being in dangerous and stressful situations at work. K.S. stated that all officers were subject to forced overtime, concluding that the work environment and overtime situation caused undue stress on the employee and all officers at the employing establishment. In a June 18, 2013 statement, T.W., another coworker, described border officers' duties, noting that the employee was always in stressful situations, such as apprehending narcotics smugglers and responding to vehicle chases. He concluded that the long hours and danger were stressful.

An investigative report of the employee's death was completed by Lenore Aldridge an investigator with the Office of the Medical Examiner of the County of San Diego, California. She indicated that on the morning of December 18, 2012 the employee complained of chest pain and heartburn while at home, but proceeded to work and, while *en route*, at approximately 6:45 a.m., he lost control of his vehicle and collided with a guardrail. Sheriff's deputies, California Highway Patrol officers, and fire paramedics responded. The employee was transported to a

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<sup>3</sup> A copy of a certificate of marriage, issued by the State of California, indicated that appellant and the employee married on March 11, 2000.

hospital where his death was pronounced shortly upon arrival. No obvious injuries were noted. Ms. Aldridge described ante mortem and postmortem events.

An autopsy report was completed by Dr. Steven C. Campman, a Board-certified forensic pathologist and deputy medical examiner, on December 19, 2012. He noted a cause of death of atherosclerotic cardiovascular disease. The manner of death was listed as natural. Other conditions listed were pulmonary edema and congestion, with no evidence of fatal trauma. The death certificate indicated that the immediate cause of death was atherosclerotic cardiovascular disease.

In a September 11, 2012 report, Dr. Robert McDonald, Board-certified in family medicine, noted seeing the employee as a new patient with a history of asthma, acid reflux, tension headaches, and low back pain. He reported that the employee had a 34-pack-a-year smoking history and advised that migraine headaches were first diagnosed in 2002. Dr. McDonald described physical examination findings. Laboratory studies on January 11, 2010, September 20, 2011, and September 24, 2012 described elevated cholesterol and triglycerides. On December 5, 2012 Dr. McDonald reported seeing the employee for an annual examination. He diagnosed progressive elevated cholesterol and triglycerides.

On September 9, 2013 Dr. Thomas E. Diggs, II, a Board-certified internist, reviewed the employee's medical records, statements by coworkers, and the employee's job description. He indicated that these factors created a highly stressful work environment. Dr. Diggs further noted that the employee's medical history was remarkable for heavy tobacco usage, hypertension, and uncontrolled, high cholesterol which were serious risk factors for coronary artery disease, and they certainly contributed to the development of his severe and premature three-vessel coronary artery disease, noting that, if these problems were not addressed and treated, the incidence of acute myocardial injury was increased. Dr. Diggs continued that, conversely, treating these conditions slowed the progression of coronary artery disease and decreased the incidence of acute cardiac events. He related that emotional stress and anxiety, both acute and chronic, had been shown to cause coronary artery disease and exacerbate symptoms in patients who had preexisting coronary disease. Dr. Diggs described study findings and concluded that, while the employee had coronary artery disease, hypertension, and left ventricular hypertrophy, the acute and chronic stress from his employment contributed to the development of these problems and also led to their exacerbation, causing his death from a myocardial infarction. He attached a list of reference publications. Several publications were submitted that were not those referenced by Dr. Diggs.<sup>4</sup>

In letters dated November 22, 2013, OWCP asked appellant to submit any medical evidence to show that the employee was being treated for a stress-related condition such as anxiety, depression, or acute and chronic stress. The employing establishment was asked to

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<sup>4</sup> Appellant also submitted copies of awards and acknowledgements from the employing establishment, their children's birth certificates, and benefits the family received from the Department of Veterans Affairs, the Social Security Administration, life insurance, and appellant's retirement benefits following the employees' death.

describe the work environment, provide a position description, and to respond to specific questions regarding the employee's job duties and assignments.<sup>5</sup>

In May 2014, OWCP referred the case record to Dr. David Southren, Board-certified in internal medicine and cardiovascular disease, for a review to determine if the employee's job duties caused or contributed to the atherosclerotic cardiovascular disease that led to his death.

In a May 30, 2014 report, Dr. Southren noted his review of the record, including reports by Dr. Petersen and Dr. McDonald and Dr. Diggs' September 9, 2013 report, a description of the employee's job duties, and other statements. He advised that the employee's relevant medical history consisted of chronic hypertension, hyperlipidemia, and heavy cigarette use. Dr. Southren described the events surrounding the employee's death, noting the autopsy results. He advised that the record indicated that the job duties of border officers included the potential for long hours and risk of violence, and that the employee was frequently involved in situations that could lead to stressful situations, and that he was described as a hard working officer who took his job very seriously. Dr. Southren indicated that, despite this potentially high pressure environment, the employee did not report anger, hostility, anxiety, depression, or any other adverse psychological experience that could be associated with contribution to structural heart disease, although even in this circumstance, the cause and effect upon an individual could not be defined. He reported that the employee was a heavy smoker, had uncontrolled hyperlipidemia, and evidence of severe, underlying (unrecognized) coronary artery disease and did not report any symptoms to suggest job dissatisfaction, stress, anger, or hostility. Dr. Southren concluded that, as such, the employee's job duties did not seem to have contributed to his death. He also provided a list of references.

By decision dated September 10, 2015, OWCP denied the claim because the evidence of record failed to establish that the employee's death was caused by any employment factors.

On September 15, 2015 appellant, through counsel, requested reconsideration, based on a new legal argument. Counsel asserted that the statements from T.W., K.S., and N.C. supported that the employee sustained employment-related stress. He further maintained that the September 10, 2015 decision did not mention these witness statements.

Counsel forwarded additional evidence in October 2015. In a September 22, 2015 statement, P.S., another coworker, noted that she and the employee had numerous conversations about the stress of their jobs and tremendous pressure they were under. She described job duties

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<sup>5</sup> The questions were: (1) Was the employee asked to perform any special assignment or duties which could be perceived as especially stressful (*e.g.*, overtime, deadlines, quotas, travel, intense assignments, any conflict between appellant and coworkers or supervisors, etc.)? Please explain; (2) What accommodations had the employing establishment made to reduce stress for the employee (*e.g.*, reassignment, training, deadline adjustments, etc.); (3) Was the employee generally able to perform required duties in accordance with expectations? Were there any performance or conduct problems? Please describe; (4) Provide a copy of the employee's position description and physical requirements of the job. Explain how the actual duties varied from the official description. If his duties changed over time, please explain; (5) When did the employee begin working for your agency? Please submit the Form SF-50 or other documentation showing his enter on duty date and position information; (6) Did the employee provide any indication that he was experiencing stress, anxiety, depression, or other psychological condition caused by his federal employment?

and reported that he complained of numerous ailments including back pain and physical exhaustion and took ibuprofen as needed. In a September 25, 2015 statement, L.H., another coworker, also described working with the employee. He indicated that as custom officers they worked long shifts, and the employee had a long commute. L.H. commented that he and the employee had multiple conversations regarding the overtime requirement of the job and the physical and mental stress it placed on them with additional stress regarding producing results while on the team.

In a September 22, 2015 statement, appellant reported that when the employee would come home after work he would complain of headaches, foot, neck, upper and lower back pain, and exhaustion, and that when he joined the anti-terrorism contraband enforcement team his complaints increased. She described several incidents where the employee reported shots fired and active pursuits, and it would take him time to decompress from his shift. Appellant indicated that he was also fearful that someone would take revenge on his family and was considering transferring to a less stressful location.

In a merit decision dated December 11, 2015, OWCP denied modification of the September 10, 2015 decision. It noted review of all statements and found that, even if appellant had established that the employee experienced work-related stress, there was no unequivocal medical evidence to support that this caused his death.

### **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 duty.<sup>6</sup> An award of compensation in a survivor's claim may not be based on surmise, conjecture, or speculation or on appellant's belief that the employee's death was caused, precipitated, or aggravated by the employment.<sup>7</sup> Appellant has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his employment.<sup>8</sup> This burden includes the necessity of furnishing rationalized medical opinion evidence of a cause and effect relationship, 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.<sup>9</sup>

To establish her claim that the employee sustained stress in the performance of duty, which precipitated his death, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that his death was due to or

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<sup>6</sup> 5 U.S.C. § 8133(a).

<sup>7</sup> See *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

<sup>8</sup> *L.R. (E.R.)*, 58 ECAB 369 (2007).

<sup>9</sup> *Id.*

aggravated by an emotional reaction; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors were causally related to his death.<sup>10</sup>

The medical evidence required to establish causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the employee's death and the accepted conditions or employment factors identified by the employee.<sup>11</sup>

### ANALYSIS

On November 6, 2013 appellant, widow of the employee who died on December 18, 2012, filed a claim for survivor's benefits. She alleged that stressful factors of the employee's federal employment as a customs and border protection officer contributed to his death. The cause of death, listed on the autopsy report and death certificate, was atherosclerotic cardiovascular disease.

The Board finds this case is not in posture for decision. The Board accepts that the employee's job duties included stressful situations where he would be involved in identifying and interdicting contraband, narcotics, smugglers, traffickers, and fugitives, would inspect vehicles and pedestrians, and respond to calls for assistance. The Board, however, notes that the employing establishment did not respond to the November 22, 2013 letter in which OWCP requested further information regarding appellant's specific job duties. By that letter, OWCP asked the employing establishment to answer specific questions.<sup>12</sup> While the record contains a description of the employee's duties at the employing establishment, its procedures provide that, for development of factual evidence in claims, the employing establishment is required to complete the reports and statements needed and then submit the evidence to OWCP.<sup>13</sup> The procedures continue that, in certain types of claims, such as performance of duty and/or stress claims, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.<sup>14</sup> Likewise, the procedures provide that, if the employing establishment has factual evidence which is necessary to make a decision in the claim, the claims examiner should make a written request to the employing establishment and that the employing establishment should be advised that, if it fails to provide the requested information, a decision will be made on the basis of available evidence and that the claimant's statements, if sufficiently clear and

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<sup>10</sup> See *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>11</sup> *Donna L. Mims*, 53 ECAB 730 (2002).

<sup>12</sup> *Supra* note 5.

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7a(2) (June 2011).

<sup>14</sup> *Id.*

detailed, may be accepted on matters of which the claimant is knowledgeable.<sup>15</sup> The record before the Board does not contain a statement of any representative at the employing establishment in response to OWCP's inquiry.

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.<sup>16</sup> While a claimant has the responsibility to establish entitlement to compensation, it shares responsibility in the development of the evidence. OWCP has the obligation to see that justice is done.<sup>17</sup> In the case at hand, OWCP did not properly develop the claim as required by its procedures. As noted, the record before the Board does not include employing establishment responses to OWCP's November 22, 2013 inquiry. In fact, the only description of the employee's job duties at San Ysidro port of entry was submitted by appellant, his widow. Likewise, the many coworker statements were submitted by appellant or counsel and not by the employing establishment.

The case will be remanded for OWCP to obtain the information requested of the employing establishment in the November 22, 2013 letter. After this and such further development deemed necessary, OWCP shall issue a *de novo* decision.<sup>18</sup>

### **CONCLUSION**

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

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<sup>15</sup> *Id.* at Chapter 2.800.10.a (June 2011).

<sup>16</sup> *See Vanessa Young*, 55 ECAB 575 (2004).

<sup>17</sup> *See Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>18</sup> *See J.M.*, Docket No. 15-1843 (issued December 28, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11 and September 10, 2015 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: December 9, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board