

injury on June 29, 2013. The employee's medical condition was listed as asthma. Appellant provided copies of his marriage license and documentation of funeral costs.²

By letter dated March 21, 2014, OWCP advised appellant that the evidence of record was insufficient to establish his survivor's claim. Appellant was advised as to the medical and factual evidence required and was afforded 30 days to provide this information. OWCP also requested that the employing establishment assist with obtaining the "supporting documentation necessary to facilitate this claim."

A July 9, 2013 death certificate listed the cause of death as pending. A July 19, 2013 supplementary medical certification listed the cause of death as asthma with acute exacerbation. Other significant conditions contributing to the death, but not resulting in the underlying cause, were listed as prolonged cardiorespiratory arrest with diffuse hypoxic injury, bilateral strokes, and myoclonic status epilepticus.

An April 21, 2014 CA-110 note detailed a telephone conversation between OWCP and the employing establishment regarding the death claim. The employing establishment noted that the employee was a mail processor who collapsed at work on June 29, 2013 and refused medical treatment at that time.

In progress notes dated July 18, 2012, Dr. Kathleen S. Grieser, a treating Board-certified internist, diagnosed asthma and screening for depression. She reported that the employee had reactions to the weather and a dusty work environment and that the employee had not been consistently using the prescribed medicine, Dulera.

In CA-110 notes dated December 4, 2014, an employing establishment safety specialist, noted that an investigation was performed and that a copy of the findings would be faxed to OWCP. The safety specialist stated that the employee had been found on the workroom floor following her complaints to a coworker that she did not have her inhaler and that she was having difficulty breathing. A supervisor called the emergency medical service (EMS). When EMS arrived the employee had no pulse, but was revived by EMS and taken to the hospital.

By decision dated December 4, 2014, OWCP denied appellant's claim for survivor benefits. It found that the record had not established that any of the conditions contributing to the employee's death were caused or aggravated by her employment duties as a mail processing clerk, or by the events of June 29, 2013.

In a letter dated December 9, 2014, appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which took place on June 9, 2015.

At the hearing appellant testified that the employee had an asthma condition prior to June 29, 2013. He testified that he had knowledge of the events that occurred at the employing establishment on June 29, 2013 because he also worked at the employing establishment. Appellant related that he heard from another coworker that the employee had been found lying on the workroom floor, a supervisor had been notified, and that the supervisor contacted the

² The marriage license indicated that appellant married the employee on March 17, 2012.

Medical Emergency Response Team. Next, he related that he was unaware if the employee had a pulse or not at the time of the incident, but did know that an attempt had been made to defibrillate the employee's heart. However, appellant testified that the defibrillator machine would not charge up so EMS was called. Next he testified that the employee was first taken to St. Vincent's Hospital, but was transferred to University Hospital as it was thought she suffered a major stroke and the latter hospital was better equipped to deal with stroke victims. Appellant testified that the employee went into a coma at University Hospital from which she never regained consciousness before dying on July 4, 2013.

By decision dated July 21, 2015, an OWCP hearing representative affirmed the denial of appellant's claim for survivor benefits.

LEGAL PRECEDENT

FECA³ provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition claimed is causally related to the employment injury.⁵

OWCP procedures provide that upon receipt of a new death claim, OWCP should ask the employing establishment to assist in compiling and to submit evidence required.⁶ The procedures further provide that OWCP should also ask the employing establishment to submit evidence regarding causal relationship.⁷

ANALYSIS

The Board finds that this case is not in posture for decision. Appellant, widower of the employee, filed a claim for death benefits on February 19, 2014. He asserted that the employee's death was a result of the nonfunctioning defibrillator machine at the employing establishment.

As noted above, OWCP procedures provide that, after a death claim is filed, it should obtain information from the employing establishment. The procedures instruct OWCP to assist in compiling and submitting evidence, including evidence regarding causal relationship.⁸ On March 21, 2014 OWCP requested that the employing establishment assist appellant with

³ *Supra* note 1.

⁴ *Id.* at § 8102(a).

⁵ 20 C.F.R. § 10.115 (e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Death Claims*, Chapter 2.700.4(c) (August 1994).

⁷ *Id.* at Chapter 2.700.5(f) (November 1996).

⁸ *Id.* at Chapters 2.700.4(c) and 2.700.5(f).

compiling the documentation necessary to facilitate the claim. In CA-110 notes, it noted discussions with the employing establishment regarding the circumstances of the employee's death, that an investigation was performed and that the findings would be faxed to OWCP. However, the record contains no investigative report regarding the June 29, 2013 incident involving the employee or the treatment performed by EMS at the employing establishment.

Although it is the claimant's burden to establish his claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁹ Once it has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. OWCP has an obligation to see that justice is done.¹⁰ As the employee has died and is no longer able to explain the events of June 29, 2013 it is especially critical that all available evidence be obtained.

For these reasons, the Board finds that the case must be remanded for further development. OWCP shall request that the employing establishment submit any and all personnel and medical records pertaining to appellant's claim in its possession.¹¹ After conducting such further development, OWCP shall issue a *de novo* decision.

CONCLUSION

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

⁹ See *N.S.*, 59 ECAB 422 (2008).

¹⁰ *A.A.*, 59 ECAB 726 (2008).

¹¹ See *T.M.*, Docket No. 14-1631 (issued December 2, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 21, 2015 is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: February 11, 2016
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