

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

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C.H., widow of W.H., Appellant )

and )

DEPARTMENT OF THE NAVY, ALAMEDA )  
NAVAL AIR STATION, Alameda, CA, Employer )

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**Docket No. 17-0729  
Issued: August 3, 2017**

*Appearances:*

*Lauren Shine, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 14, 2017 appellant, through counsel, filed a timely appeal from an August 18, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the claim.<sup>3</sup>

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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.*

<sup>3</sup> The record provided the Board includes evidence received after OWCP issued its August 18, 2016 decision. The Board's review is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

## ISSUE

The issue is whether appellant met her burden of proof to establish that the employee's May 23, 2012 death was causally related to his Federal employment.

## FACTUAL HISTORY

On December 11, 1979 the employee, then a 39-year-old sheet metal worker, sustained injuries in a work-related fall. He was climbing into an aircraft window, felt a pop in his back, and landed on his right side. The employee stopped work on the date of injury and never returned. OWCP accepted the claim for cervical sprain, lumbar sprain, sacroiliac ligament sprain, lumbar radiculopathy, cervical intervertebral disc degeneration, lumbar intervertebral disc displacement without myelopathy, prolonged depressive reaction, and pain disorder related to psychological factors. The employee remained on the periodic compensation rolls until his death at age 71 on May 23, 2012.

OWCP learned of the employee's death on May 31, 2012 and, accordingly, terminated wage-loss compensation for temporary total disability. It also informed appellant of the availability of survivor benefits for eligible dependents where death resulted from either a job-related injury or a medical condition caused by hazardous exposure on the job. Appellant filed a claim for survivor benefits (Form CA-5) in April 2015.

The employee's June 21, 2012 death certificate identified respiratory failure as the immediate cause of death. The underlying causes of death included cervical spinal cord compression and end-stage renal disease.

The employee had been hospitalized on several occasions during the months and weeks preceding his May 23, 2012 death.

On March 19, 2012 Dr. Christopher J. Rosko, a Board-certified emergency medicine specialist, indicated that the employee was hospitalized with weakness, neck/back pain, urinary tract infection and left foot dry gangrene. The employee also developed hypoxemia with increasing nasogastric tube output. He was found to have a large sacral decubitus ulcer with gas and Fournier's gangrene.

In a March 20, 2012 report, Dr. William Donnellan, a hematology oncology fellow, provided a consultation regarding cervical amyloidosis. He noted that the employee had fallen at home on February 7, 2012 and had progressive neurological decline due to spinal cord injury.<sup>4</sup> Dr. Donnellan noted that the employee was essentially unable to move his left upper extremity and left lower extremity after that fall.

On March 25, 2012 Dr. Fawaz Habeeb, an internist, diagnosed C3-4 amyloid osteopathy-related spinal cord compression.

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<sup>4</sup> Appellant fell at home on or about February 7, 2012.

On May 21, 2012 Dr. Colleen Adkins, a Board-certified internist, noted the employee had C3-4 spinal cord compression due to dialysis-related amyloid, that he was status post Fournier's gangrene, and that the hospital course was complicated by respiratory failure likely secondary to progression of high spinal cord injury.

As noted, the employee died due to respiratory failure on May 23, 2012.

In a May 24, 2012 autopsy report, Dr. Silvio H. Litovsky, a pathologist, indicated that the employee was a 71-year-old male with a history of multiple medical problems. These included diabetes, hypertension, end-stage renal disease on hemodialysis since 2002, coronary artery disease status post coronary artery bypass grafting (2000), chronic obstructive pulmonary disease, and known C3-4 cervical spinal cord compression with focal myelopathy. Magnetic resonance imaging scan of spine showed degenerative changes a C3-4 with underlying hemodialysis-related arthropathy or neuropathic joint and stable severe canal narrowing with cord compression. Dr. Litovsky opined that the immediate cause of death was bilateral acute pneumonia. The underlying causes of death included end-stage renal disease and the employee's clinical history of hemodialysis associated with cervical spine arthropathy with spinal cord compression.

On May 6, 2015 OWCP informed its district medical adviser (DMA) of the employee's accepted conditions and requested that the medical evidence of record be reviewed to determine whether there was causal relationship between the employee's death and the accepted conditions.

In a May 11, 2015 report, Dr. Eric Puestow, a Board-certified internist and OWCP DMA, indicated that the employee had a history of diabetes, hypertension and arteriosclerosis in addition to his accepted work-related conditions. He indicated that the employee had end-stage kidney disease consequential to his diabetes and that he had been on maintenance dialysis since 2002. Also, since early 2012 the employee had been falling and had become nonambulatory.

Dr. Puestow summarized the employee's last hospital course, noting that he was admitted to the hospital with cervical myelopathy caused by spinal cord compression due to hemodialysis-related arthropathy. He also noted that the death certificate and the autopsy report indicated that the immediate cause of death was pneumonia with the underlying cause of death was diabetic kidney failure, which resulted in hemodialysis-related cervical spine arthropathy with spinal cord compression. Dr. Puestow indicated that while the employee had cervical degenerative disc disease as an accepted condition this was not related to the spinal cord compression that ultimately caused the employee's death. Thus, he opined that there was no causal relationship between the employee's death and the accepted employment-related conditions.

By decision dated October 28, 2015, OWCP denied appellant's claim for survivor benefits because the weight of the medical evidence did not support that the employee's death was causally related to his employment.

Appellant timely requested a hearing before an OWCP hearing representative, which was held on July 11, 2016. She stated that she felt the employee's death was work related because a spinal injury was noted on both the death certificate and the autopsy report. Counsel argued that

the accepted work injuries had contributed to the employee's death as his spine had decompressed to the point where he was paralyzed and wheelchair bound.

By decision dated August 18, 2016, the hearing representative affirmed OWCP's June 19, 2013 decision.

### **LEGAL PRECEDENT**

FECA<sup>5</sup> 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>6</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 or her employment.<sup>7</sup> This burden includes the necessity of furnishing rationalized medical opinion evidence demonstrating a causal relationship.<sup>8</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 or her previous employment.<sup>9</sup>

The mere showing that an employee was receiving compensation for total disability at the time of his or her death does not establish that the employee's death was causally related to the previous employment.<sup>10</sup> The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal relationship.<sup>11</sup> If the employment contributed to the employee's death, then causal relationship is established.<sup>12</sup>

### **ANALYSIS**

The Board finds that appellant has not established that the employee's accepted work-related conditions either caused or contributed to his May 23, 2012 death due to respiratory failure. The employee's accepted conditions included cervical sprain, lumbar sprain, sacroiliac ligament sprain, lumbar radiculopathy, cervical intervertebral disc degeneration, lumbar intervertebral disc displacement without myelopathy, prolonged depressive reaction, and pain disorder related to psychological factors. Appellant believed that her husband's death was employment related because the June 21, 2012 death certificate listed cervical spinal cord compression as an underlying cause of death.

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> 5 U.S.C. §§ 8102(a) and 8133.

<sup>7</sup> *L.R.*, 58 ECAB 369, 375 (2007).

<sup>8</sup> *Id.*

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

<sup>10</sup> *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

<sup>11</sup> *See T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

<sup>12</sup> *Id.*

Dr. Adkins, who completed the death certificate, identified cervical spinal cord compression and end-stage renal disease as the underlying causes of death. However, she offered no medical rationale as to how the spinal cord compression was work related or how an accepted employment-related condition caused or contributed to the employee's death.<sup>13</sup>

OWCP had its DMA, Dr. Puestow, review the medical evidence of record to determine whether the decedent's death was work related. Dr. Puestow noted that the employee's last admission to the hospital was due to a cervical myelopathy caused by spinal cord compression due to hemodialysis-related arthroplasty. He also noted that the death certificate and the autopsy report indicated that the immediate cause of death was pneumonia with the underlying cause of death of diabetic kidney failure which resulted in hemodialysis-related cervical spine arthropathy with spinal cord compression. Dr. Puestow indicated that, while the employee had cervical degenerative disc disease as an accepted condition, this was not related to the spinal cord compression that ultimately caused the employee's death. Thus, he opined that there was no causal relationship between the employee's death and his employment-related condition(s).

Dr. Litovsky opined in his autopsy report that the immediate cause of death was bilateral acute pneumonia. The underlying causes of death included end-stage renal disease and the employee's clinical history of hemodialysis associated with cervical spine arthroplasty with spinal cord compression.

The Board notes that there is no disagreement between the autopsy findings and the medical adviser's opinion that the employee's cervical cord compression was a consequence of hemodialysis. Thus, the Board finds that appellant failed to establish that the accepted employment-related conditions were a contributing cause of the employee's death.<sup>14</sup>

As no further relevant and probative medical evidence was submitted, appellant has failed to meet her burden of proof to establish her right to survivor's benefits.<sup>15</sup>

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 that the employee's death was causally related to his federal employment.

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<sup>13</sup> See *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991); *Christine T. McAtee (Charles M. McAtee)*, 36 ECAB 390 (1984).

<sup>14</sup> See *F.V. (R.V.)*, Docket No. 15-0717 (issued July 8, 2015); see also *D.L. (R.L.)*, Docket No. 11-1993 (issued July 13, 2012); *Roger W. Griffith*, 51 ECAB 491 (2000); *Glenn C. Chasteen*, 42 ECAB 493 (1991); *Arnold Gustafson*, 41 ECAB 131 (1989); *Beth P. Chaput*, 37 ECAB 158 (1985).

<sup>15</sup> See *Marian Tobin (John J. Tobin)*, Docket No. 95-2201 (issued November 24, 1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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