

ISSUE

The issue is whether the employee's death on May 5, 2012 was in the performance of duty causally related to his federal employment.

FACTUAL HISTORY

On January 9, 2014 appellant filed a claim for compensation by widow (Form CA-5) alleging that the death of the employee, a public assistance counselor, then 55 years old, on May 5, 2012 was causally related to his federal employment. On the form she asserted that work-related stress contributed to the employee's death. The death certificate, signed by Deputy Coroner Kristina Vilsack, listed cause of death as probable sudden cardiac event, and hypertensive cardiovascular disease. Other contributing factors were reported as obesity and tobacco abuse.

An October 6, 2012 report, signed by the coroner, Gary Warnock, and deputy coroner, indicated that the employee was a supervisory public assistance coordinator who had been on a work assignment in Lacey, Washington since March 2012. According to the report, a supervisor reported the employee was not feeling well on May 2, 2012, took sick leave on May 3, 2012, and reported for work on May 4, 2012, but was still not feeling well. The coroner's report noted that a coworker had reported that the employee appeared to be under an abnormally high amount of stress while in Lacey, and was troubled about a possible subpoena related to a previous project in St. Louis, MO. The coroner indicated that the employee had been seen by Dr. Steven Bule, a family practitioner, in March 2012, and Dr. Bule noted that the employee was a candidate for premature cardiac-related death. In addition, the report indicated that, a forensic pathologist, Dr. Gina Fino, had been consulted. Dr. Fino agreed the most likely cause of death was a cardiac event due to underlying hypertensive cardiovascular disease. The coroner's report concluded that other contributing causes of death were chronic obstructive pulmonary disease (COPD), tobacco abuse, and obesity. Additionally, "In consideration of statements from friends, coworkers, and family, increased work-related stress was also cited as a contributing factor."

By letter dated September 18, 2014, OWCP requested that appellant submit additional evidence with respect to her claim. In a note received on September 26, 2014, appellant wrote that the employee was in travel status 86 percent of the time since he began his federal employment with the employing establishment in 2010. According to her, the pressure was apparently too much for her spouse, and she contended that he did not feel comfortable with his last assignment, although he did not say anything to her.

In a note dated September 3, 2014, Dr. Bule wrote that the employee was a patient for years before his death. He asserted that information from clinic visits corroborated a known history of job stress with frequent travel and long hours. Dr. Bule submitted a September 8, 2011 report of an annual physical for the employee. He indicated that appellant was 54 years old, smoked one pack of cigarettes per day, had intermittent breathlessness, hypertension and degenerative arthritis pain, intermittent with weight fluctuation, with inactivity, with increased job demands, and stress. Dr. Bule diagnosed sinusitis, polycythemia, bronchitis, allergic rhinitis, tremor, osteoarthritis, hypertension, gastroesophageal reflux disease (GERD), and COPD.

Appellant submitted an undated statement indicating that she felt that there were several issues contributing to her husband's, the employee's, death. She wrote that, in May 2011, the employee worked in Missouri and supervised over 25 employees and had to work long hours, and she could hear from his voice that he was stressed. At one point the employee told appellant that she did not realize how much stress he was under. Appellant also indicated that there was going to be a restructuring of his division and he would have to reapply for his position. As to the assignment in Lacey, she wrote that the employee indicated that he was not happy there, but stated that the assignment would end by Memorial Day 2012.

By decision dated February 20, 2015, OWCP denied the claim for compensation. It found that the evidence was insufficient to establish any compensable work factors with respect to appellant's allegations.

On February 25, 2015 appellant, through counsel, requested a hearing before an OWCP hearing representative. A hearing was held on October 15, 2015. By decision dated December 28, 2015, the hearing representative remanded the case for further development. She directed OWCP to secure additional information regarding the alleged factors of employment.

The record contains a memorandum of conference dated April 12, 2016, with an OWCP claims examiner and a representative of the employing establishment. The employing establishment provided a record of the employee's travel.

In a decision dated April 14, 2016, OWCP reviewed the merits and denied modification. It found that, while the evidence did show that the employee had frequent and prolonged travel as part of his duties, there was no evidence that this contributed to his death. In addition, OWCP found that there was no supporting evidence with respect to allegations that staff was not well trained, that a supervisor requested transfer of some of the staff, or that monitoring staff was stressful to appellant. It concluded that there were no accepted compensable work factors.

Counsel again requested a hearing before an OWCP hearing representative on April 19, 2016. A hearing was held on December 6, 2016. Appellant again indicated that travel was stressful for her husband, although he did not talk about it as he did not want to worry her.

By decision dated February 9, 2017, the hearing representative affirmed the April 14, 2016 OWCP decision. He found that the evidence failed to establish a compensable work factor with respect to the allegations.

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.³ Where an employee is on temporary-duty assignment away from his federal employment, he or she is

³ *Id.* at § 8133(a).

covered by FECA 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.⁴

The fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of employment.⁵ The medical evidence must establish a causal relationship between the condition and factors of employment.⁶

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.⁷ Appellant has the burden of proof to establish 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 or her employment.⁷ 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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ 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 diagnosed condition and the specific employment factors identified by the employee.⁹

ANALYSIS

In the present case, appellant filed a Form CA-5 claim alleging that the death of her spouse on May 5, 2012 was causally related to his federal employment. The employee was a supervisory public assistance counselor, who had been on a temporary-duty work assignment since March 2012. Appellant contends that stress from his federal employment while he was on his temporary-duty assignment contributed to his death.

The Board finds that, in the present case, it is undisputed that the employee was on an official travel assignment on May 5, 2012.¹⁰ Under FECA, an employee on travel status or a temporary-duty assignment or special mission for his employing establishment is in the performance of duty and therefore under the protection of FECA 24 hours a day with respect to

⁴ *D.R.*, Docket No. 16-1395 (issued February 2, 2017).

⁵ *Id.*

⁶ *Samuel P. Isenberger*, Docket No. 06-0864 (issued June 23, 2006).

⁷ *R.G., claiming as widow of O.G.*, Docket No. 17-0916 (issued September 6, 2017).

⁸ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁰ *Barbara Johnsen, (James C. Johnsen)*, 54 ECAB 839 (2003).

any injury that results from activities essential or incidental to his special duties.¹¹ The medical evidence must establish causal relationship between the condition and any employment factors.¹²

The Board finds that the case is not in posture for decision as to whether the temporary-duty assignment caused or contributed to the employee's death.

This case will therefore be remanded to OWCP for such further development of the evidence as necessary, to be followed by a *de novo* decision addressing whether the employee's death was causally related to his travel status.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 9, 2017 is set aside and this case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: December 8, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *Ann P. Drennan*, 47 ECAB 750 (1996); *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996); *William K. O Connor*, 4 ECAB 21 (1950).

¹² *Jennifer L. Sharp*, 48 ECAB 209 (1996).