

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

M.L., Appellant (widow of S.L.))	
)	
and)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	Docket No. 19-0020
CUSTOMS & BORDER PROTECTION,)	Issued: May 2, 2019
San Diego, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 3, 2018 appellant, through counsel, filed a timely appeal from an April 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ 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.

² 5 U.S.C. § 8101 et seq.

³ The Board notes that, following the April 13, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee's death on February 22, 2016 was causally related to his accepted November 24, 2015 employment injury.

FACTUAL HISTORY

On December 9, 2015 the employee, then a 41-year-old customs and border protection K-9 officer, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2015 he sustained a right knee injury when his knee buckled while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that the employee stopped work on November 25, 2015 and returned to work that same day after receiving medical treatment.

By decision dated January 8, 2016, OWCP accepted the employee's claim for unspecified subluxation of right patella. On February 5, 2016 it authorized surgery on the employee's right knee.

In a report dated February 10, 2016, Dr. Rodney Henderson, a Board-certified orthopedic surgeon, related that he had performed surgery on employee's right knee and noted postoperative diagnoses of right knee patellar dislocation, lateral meniscus tear, and chondromalacia.

In a report dated February 21, 2016, Dr. Matthew Dickson, Board-certified in emergency medicine, diagnosed cardiac arrest, cause unspecified.

The employee died on February 22, 2016. In a report dated February 22, 2016, Dr. Dickson indicated a clinical impression of cardiopulmonary arrest.

In a death certificate dated February 24, 2016, Dr. Victor Alvarez, a Board-certified anatomic and clinical pathologist, noted the employee's immediate cause of death as pulmonary embolism. In a box marked other significant conditions contributing to the death, but not resulting in the underlying cause were listed as recent knee surgery, obesity, and high cholesterol.

In an autopsy report dated February 29, 2016, Dr. Alvarez indicated that the employee's cause of death was natural. The employee's anatomical diagnoses were listed as: (1) status post recent knee surgery; (2) pulmonary embolism; and (3) severe coronary arteriosclerosis.

On September 13, 2016 appellant, the employee's widow, filed a claim for survivor's benefits (Form CA-5). She resubmitted a copy of the death certificate as well as the autopsy report. Appellant also submitted a copy of her marriage license, and dependents' birth certificates along with her claim.

In a development letter dated October 31, 2016, OWCP informed appellant of the deficiencies of her survivor benefits claim and requested additional factual and medical information. It specifically requested that she submit a comprehensive medical report that gave a qualified physician's opinion, with medical reasons, on the direct cause of the employee's death. Appellant did not submit additional evidence.

By decision dated April 13, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the employee's death was causally related to his November 24, 2015 employment injury.

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 duty.⁴ 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.⁵ 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 federal employment. As part of this burden, she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his federal employment. Causal relationship is a medical issue and can be established only by medical evidence.⁶

The mere showing that an employee was receiving compensation for total disability at the time of his death does not establish that the employee's death was causally related to the previous employment.⁷ The Board has held that it is not necessary that there be a significant contribution of employment factors to establish causal relationship.⁸ If the employment contributed to the employee's death, then causal relationship is established.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the employee's death on February 22, 2016 was causally related to his accepted November 24, 2015 employment injury.

OWCP accepted subluxation of right patella caused by a November 24, 2015 employment injury. On February 10, 2016 the employee underwent authorized right knee surgery. He died on February 22, 2016 of a pulmonary embolism. Appellant has not submitted evidence establishing that the cause of death was due to circumstances surrounding the employee's accepted November 24, 2015 employment injury or surgery necessitated by the injury.

The medical evidence of record regarding the employee's death include reports dated February 21 and 22, 2016 from Dr. Dickson. Dr. Dickson provided a history regarding the

⁴ 5 U.S.C. § 8133 (compensation in case of death).

⁵ *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); see *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

⁶ See *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁷ *W.C. (R.C.)*, *supra* note 5; *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

⁸ See *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

⁹ *Id.*

employee's medical treatment during the cardiac arrest event, but offered no opinion regarding the cause of death. Lacking an opinion regarding the cause of the employee's death, these reports are insufficient to meet appellant's burden of proof.¹⁰

Dr. Alvarez signed the employee's death certificate dated February 24, 2016 and the autopsy report dated February 29, 2016. He related the employee's history of medical treatment and cause of death. On the death certificate Dr. Alvarez noted pulmonary embolism as the immediate cause of death, and recent knee surgery, obesity, and high cholesterol in a box marked other significant conditions contributing to death, but not resulting in the underlying cause of death. However, he did not provide a rationalized medical opinion relating the employee's death to his accepted employment injury.¹¹ The Board has previously explained that if the death certificate lists the accepted employment conditions as "other significant conditions contributing to death," there must be an accompanying medical opinion that clarifies how these conditions caused or contributed to the employee's death.¹² The death certificate is therefore of insufficient probative value to establish causal relationship as it does not contain medical rationale. Similarly, the autopsy report noted that the employee's anatomic diagnoses including his recent knee surgery, but offered no clarifying opinion as to how the employee's knee surgery contributed to his death.¹³ Lacking this clarification, the autopsy report is also insufficient to establish causal relationship. In a claim for death benefits under FECA, the claimant for benefits has the burden of proof to establish the necessary elements of her claim. The claimant must prove by the weight of the reliable, probative, and substantial evidence the existence of a causal relationship between an employee's death and the accepted employment injury.¹⁴

As appellant has failed to submit medical evidence containing a rationalized medical opinion that the employee's accepted conditions contributed to his February 22, 2016 death, she has not met her burden of proof.¹⁵

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 has not met her burden of proof to establish that the employee's death on February 22, 2016 was causally related to his accepted November 24, 2015 employment injury.

¹⁰ See *J.P. (T.P.)*, Docket No. 17-0563 (issued June 20, 2018).

¹¹ *Id.*

¹² See *Glenda Mae Robbins, (David Robbins)*, Docket No. 00-0492 (issued February 15, 2001).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *W.C. (R.C.)*, *supra* note 5; See *T.D.*, Docket No. 14-0262 (issued April 28, 2014).

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2019
Washington, DC

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

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

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