

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

P.L., widow of R.L., Appellant	)	
	)	
and	)	Docket No. 19-0492
	)	Issued: October 8, 2019
DEPARTMENT OF HOMELAND SECURITY,	)	
FEDERAL EMERGENCY MANAGEMENT	)	
AGENCY, Lacey, WA, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, 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  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 3, 2019 appellant, through counsel, filed a timely appeal from a November 2, 2018 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 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 has met her burden of proof to establish that the employee's death on May 5, 2012 was causally related to the accepted factor of his federal employment.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 30, 2013 appellant filed a claim for compensation by widow (Form CA-5) alleging that the May 5, 2012 death of the employee, a 55-year-old emergency management specialist (public assistance), was causally related to his federal employment. She asserted that work-related stress contributed to the employee's death.

A May 8, 2012 supervisor's report of employee's death (Form CA-6) indicated that the employee suffered a sudden cardiac event on May 5, 2012. An undated death certificate, signed by Deputy Coroner Kristina Vilsack, indicated a date of death as May 5, 2012 and listed the immediate cause of death as probable sudden cardiac event, with hypertensive cardiovascular disease as a consequential condition. Other contributing factors were reported as obesity and tobacco abuse.

An October 16, 2012 report, signed by the coroner, Gary Warnock, and the deputy coroner, Ms. Vilsack, indicated that the employee was a supervisory public assistance coordinator who had been on a work assignment in Lacey, Washington since March 2012. The report indicated that a supervisor reported that 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 report noted that a coworker had related 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, Missouri. The coroner indicated that in 2012 the employee had been seen by Dr. Steven Buie, Board-certified in family medicine, who noted that the employee was a candidate for premature cardiac-related death. In addition, the report indicated that Dr. Gina Fino, a Board-certified in forensic pathologist, had been consulted and that she agreed that 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. It additionally indicated that, "In consideration of statements from friends, coworkers, and family, increased work-related stress was also cited as a contributing factor." A certificate of death dated October 15, 2012 listed the cause of death as a probable sudden cardiac event hypertensive cardiovascular disease with other conditions contributing to death of COPD, tobacco abuse, obesity, and increased work-related stress.

In letters dated September 18, 2014, OWCP requested that appellant submit additional evidence regarding her claim. In a September 9, 2014 letter, appellant indicated that the employee had been in travel status 86 percent of the time since he began his federal employment with the

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<sup>3</sup> Docket No. 15-1340 (issued April 1, 2016).

employing establishment in 2010. She maintained that the pressure was “apparently too much for him” and that he had not felt comfortable with his last assignment, although he did not say anything to her.

In a note dated September 3, 2014, Dr. Buie wrote that the employee had been his patient for years before his death. He indicated that information from clinic visits corroborated a known history of job stress with frequent travel and long hours. Dr. Buie submitted a September 8, 2011 report of the employee’s annual physical examination. He indicated that the employee 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, increased job demands, and stress. Dr. Buie diagnosed sinusitis, polycythemia, bronchitis, allergic rhinitis, tremor, osteoarthritis, hypertension, gastroesophageal reflux disease, and COPD.

Appellant submitted an undated statement indicating that several factors had contributed to her husband’s death. She noted that, in May 2011, he worked in Missouri and supervised over 25 employees and had to work long hours, and that she could tell from his voice that he was stressed. Appellant related that at one point the employee told her that she did not realize how much stress he was under. She also indicated that the employee’s division was going to be restructured, he would have to reapply for his position, and that there were other staffing issues. As to the assignment in Lacey, appellant recounted that the employee indicated that he was not happy there and that the assignment was to end by Memorial Day 2012.

By decision dated February 20, 2015, OWCP denied the claim finding that the evidence submitted was insufficient to establish a compensable employment factor with respect to appellant’s allegations regarding the employee’s death.

On February 25, 2015 appellant, through counsel, requested a hearing before OWCP’s Branch of Hearings and Review. At the hearing, held on October 15, 2015, appellant testified that she did not know the specifics of the employee’s job duties when he died. She generally alleged that previous deployments due to weather emergencies were stressful. 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.

A telephone conference was held on April 12, 2016 between an OWCP claims examiner and a representative of the employing establishment who reported that she had no knowledge other than the employee’s travel schedule.

By decision dated April 14, 2016, OWCP denied modification, finding no accepted compensable employment factors.

Appellant, through counsel, again requested a hearing on April 19, 2016. At the hearing, held on December 6, 2016, appellant testified that travel was stressful for her late-husband, although he was the type of person who 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 finding that the evidence of record failed to establish a compensable employment factor with respect to appellant’s allegations.

Appellant, through counsel, filed an appeal with the Board. By decision dated December 8, 2017, the Board set aside the February 9, 2017 decision and remanded the case to OWCP. The Board found that it was undisputed that the employee was on official travel assignment on May 5, 2012 and was, therefore, in the performance of duty at the time of his death. On remand OWCP was to further develop the claim to determine whether the employee's temporary-duty assignment caused or contributed to his death.<sup>4</sup>

On remand OWCP secured a position description which detailed the employee's duties as a public assistance specialist. It prepared a statement of accepted facts (SOAF) that included the position description. The SOAF indicated that the only accepted factor of employment was that the employee had been on official temporary duty in travel status since March 2012. It found that the additional factors alleged by appellant were not supported by a credible witness statement or other information to confirm that the employee was overwhelmed and/or stressed by his federal employment.

OWCP forwarded the SOAF and medical evidence to its district medical adviser (DMA) for review regarding the cause of the employee's death.

In a March 15, 2018 report, Dr. Amanda C. Trimpey, Board-certified in occupational medicine and serving as a DMA, noted her review of the SOAF and medical record. She advised that the employee's death certificate listed a sudden cardiac event as the immediate cause of death with longstanding (years of) hypertensive cardiovascular disease as an underlying cause. Dr. Trimpey opined that other significant contributing conditions for risk of myocardial infarction are obesity and tobacco use. She indicated that these causes of death were in line with the medical history contained in the employee's medical records which documented a long-standing history of smoking and hypertension which are known prominent risk factors for cardiac disease and events. Dr. Trimpey concluded that death due to a sudden cardiac event was consistent with the medical findings in this case, shown by medical evidence which documented the employee's known risk factors for cardiac disease.

On April 4, 2018 OWCP referred the medical record, a SOAF, a list of FECA definitions, and a set of questions to Dr. Alan Heldman, a Board-certified cardiologist and a second opinion physician, for review. Dr. Heldman was specifically asked if there was a causal relationship between the employee's death and the accepted employment factor, and what the contributory causes of death were, if any.

In an April 12, 2018 report, Dr. Heldman noted his review of the medical record and the SOAF. In answer to OWCP questions, he opined that there was no causal relationship between the employee's death and the accepted employment factor -- that the employee was on an official temporary work-duty assignment at the time of death. Dr. Heldman advised that, for the purposes of his review, the presence or absence of work-related stress would not influence a determination of whether there was a causal relationship between the employee's death and his employment because there were severe and ongoing medical conditions which were clearly and overwhelmingly associated with the development of cardiovascular diseases and which frequently presented with sudden death. He noted the employee's conditions of severe obesity, ongoing

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<sup>4</sup> *Id.*

cigarette smoking, and treated hypertension. Dr. Heldman reviewed medical literature which supported this opinion and advised that it could be concluded that the accepted work-related temporary work-duty assignment, even if stressful, had no causal relationship with the employee's death. Regarding contributory causes of death, he wrote that, given the lack of certainty about the cause of death which could have represented any number of acute or subacute disorders, it was not possible to determine with certainty what the contributory causes of death were. Dr. Heldman noted that the risk of acute cardiovascular events such as myocardial infarction, arrhythmias, stroke, or pulmonary embolism were all increased by several of the employee's known conditions of hypertension, cigarette smoking, and obesity, and that these conditions would be considered likely contributory causes. He indicated that, while it was possible that stress influenced his death, the information available did not support such a conclusion.

By decision dated April 18, 2018, OWCP denied the claim, finding that the medical evidence did not support that the employee's death was causally related to his federal employment.

On April 24, 2018 appellant through counsel, requested a hearing before an OWCP hearing representative. At the hearing, held on September 12, 2018, counsel indicated that there was an ongoing investigation by the Federal Bureau of Investigation that the appellant was troubled by, but he had no proof regarding the investigation. He referenced the amended death certificate which indicated that increased work-related stress was a contributing cause of the employee's death. Appellant testified that she thought the investigation involving her late-husband was with regard to worksheets.

By decision dated November 2, 2018, OWCP's hearing representative affirmed the April 18, 2018 decision.

### **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.<sup>5</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>6</sup> 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, he or she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, establishing 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.<sup>7</sup>

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<sup>5</sup> 5 U.S.C. § 8133 (compensation in case of death).

<sup>6</sup> *M.L. (S.L.)*, Docket No. 19-0020 (issued May 2, 2019); *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); see *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

<sup>7</sup> *J.P. (E.P.)*, Docket No. 18-1739 (issued May 3, 2019); see *L.R. (E.R.)*, 58 ECAB 369 (2007).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>8</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>9</sup> Where the claimed condition results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the condition comes within the coverage of FECA.<sup>10</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>11</sup>

In cases involving emotional or stress-related conditions, the Board has held that when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>12</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>13</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>14</sup> 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.<sup>15</sup>

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<sup>8</sup> 28 ECAB 125 (1976).

<sup>9</sup> See *T.G.*, Docket No. 19-0071 (issued May 28, 2019).

<sup>10</sup> *C.S. (K.S.)*, Docket No. 18-1733 (issued May 24, 2019).

<sup>11</sup> *Id.*

<sup>12</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> *J.P. (E.P.)*, Docket No. 18-1739 (issued May 3, 2019).

<sup>15</sup> *Id.*

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the employee's death on May 5, 2012 was causally related to the accepted factor of his federal employment.

Preliminarily the Board notes that it is unnecessary for it to consider the evidence that was previously considered in OWCP's February 9, 2017 decision as that evidence was previously considered in the Board's December 8, 2017 decision. In the prior appeal, the Board accepted that the employee's temporary duty in travel status since March 2012 was a compensable factor of employment. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>16</sup>

In statements and hearing testimony, appellant, the widow of the employee, alleged that the employee's death was caused by stress at work. She alluded to travel, previous deployments during weather emergencies, staffing issues, restructuring of the department, and a possible investigation. Appellant must however support her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>17</sup> The Board finds that the record of evidence contains no statements from coworkers or other evidence to support appellant's allegations. Therefore, these general allegations are not established as compensable factors of employment.<sup>18</sup>

Nonetheless, as the record establishes an employment factor, that the employee had been on temporary duty in travel status, the medical evidence must be addressed.

The Board initially notes that none of the death certificates was signed by a physician. These reports, therefore, lack probative value. Likewise, the October 16, 2012 coroner's report, signed by Mr. Warnock and Ms. Vilsack, lacks probative value. Although it references a report by Dr. Fino, her report is not found in the record before the Board. Medical opinions, in general, can only be given by a qualified physician.<sup>19</sup> Therefore, this documentation is of no probative value regarding causal relationship.

Although Dr. Buie noted a history of job stress in his September 8, 2011 report, he described no specific job duties as causing the stress. In his September 3, 2014 report, completed after the employee's death, Dr. Buie referenced a history of frequent travel and long hours. He did not comment regarding a cause of the employee's death in either of his reports. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's

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<sup>16</sup> See A.S., Docket No. 16-1100 (issued November 14, 2016).

<sup>17</sup> C.S., *supra* note 10.

<sup>18</sup> See Y.J., Docket No. 15-1137 (issued October 4, 2016).

<sup>19</sup> D.C., Docket No. 18-1358 (issued June 13, 2019).

condition is of no probative value on the issue of causal relationship.<sup>20</sup> These reports, therefore, are insufficient to establish appellant's claim.

Dr. Trimpey, the DMA, opined that the employee's long-standing history of cardiovascular disease with contributing causes of obesity and tobacco use were prominent risk factors for a cardiac event and concluded that the employee's death was consistent with his medical history.

Dr. Heldman, who reviewed the medical record including a SOAF with a position description, opined that there was not a causal relationship between the employee's death and the accepted employment factor. He advised that the presence or absence of work-related stress would not influence a determination of whether there was a causal relationship between the employee's death and his employment because he had severe and ongoing medical conditions which were clearly and overwhelmingly associated with the development of cardiovascular diseases and which frequently presented with sudden death. Dr. Heldman wrote that the risk of acute cardiovascular events such as myocardial infarction, arrhythmias, stroke, or pulmonary embolism were all increased by several of the employee's known conditions of hypertension, cigarette smoking, and obesity.

The Board finds that the medical evidence of record does not establish a causal relationship between the employee's death and the accepted factor of employment.

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 May 5, 2012 was causally related to the accepted factor of his federal employment.

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<sup>20</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).



**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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