

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

C.B., widow of S.B., Appellant	)	
	)	
and	)	<b>Docket No. 19-1629</b>
	)	<b>Issued: April 7, 2020</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>WAINWRIGHT MEMORIAL MEDICAL</b>	)	
<b>CENTER, Walla Walla, WA, Employer</b>	)	
	)	

*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:  
ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On July 29, 2019 appellant, through counsel, filed a timely appeal from a May 24, 2019 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.<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 Board notes that counsel did not appeal from the April 2, 2019 OWCP hearing representative's decision, which affirmed the denial of appellant's recurrence of disability claim beginning June 26, 2018. Therefore, the Board has not exercised jurisdiction over that decision. *See* 20 C.F.R. § 501.3(c)(4).

## ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee's death on August 6, 2018 was causally related to his accepted employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On April 10, 2013 the employee, then a 45-year-old housekeeping aid supervisor, filed a traumatic injury claim (Form CA-1) alleging that on March 19, 2013 he injured his lower back when he lifted a desk while in the performance of duty. OWCP accepted his claim for left thoracic or lumbosacral neuritis. It subsequently expanded acceptance of appellant's claim to include postlaminectomy syndrome. OWCP paid wage-loss compensation on the supplemental rolls for intermittent periods of total disability beginning February 5, 2016.

The employee underwent several OWCP-approved back surgeries and was intermittently on and off work.<sup>5</sup> On October 27, 2016 he returned to part-time, limited duty for six hours per day. The employee returned to full-time light duty on November 28, 2016. He continued to receive medical treatment.

In a May 29, 2018 report, Dr. Craig Flinders, Board-certified in anesthesiology and pain medicine, noted that the employee was three months' status post endoscopic discectomy, but still complained of back pain. He diagnosed chronic residual complex back pain with history of multilevel decompression and fusion and fatigue.

On August 8, 2018 appellant notified OWCP that the employee had passed away on August 6, 2018. An August 13, 2018 death certificate, certified by Dr. Richard Greenwood, the medical examiner, listed the cause of death as myocardial infarction with elevated troponin level.

Appellant submitted a claim for continuance of compensation benefits (Form CA-12). In a narrative statement, she asserted that the employee's death was related to his accepted employment injury. Appellant explained that he suffered from serious sleep deprivation since his January 2016 surgery and she believed that the sleep deprivation contributed to his heart attack. She indicated that she was submitting medical documentation which showed that the employee suffered from poor sleep. Appellant submitted various news and medical journal articles about

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<sup>4</sup> Docket No. 19-0866 (issued September 17, 2019). By decision dated September 17, 2019, the Board set aside the February 20, 2019 OWCP decision, which denied appellant's request for reconsideration of the merits under 5 U.S.C. § 8128(a). The Board found that counsel provided a new legal argument relevant to the employee's schedule award claim.

<sup>5</sup> Appellant underwent L2-3 microdiscectomy with L3-4 laminectomy and decompression on October 28, 2014; anterior lumbar interbody and posterolateral arthrodesis at L1-2, L2-3, and L3-4, posterior spinal instrumentation at L1-S1, laminectomies at L1-L5 to S1 for compression on January 19, 2016; and hardware removal and revision with posterolateral fusion at L4-5, L5-S1 on August 22, 2016.

the correlation between poor sleep and insomnia and an increased risk of fatal heart attacks and strokes.

OWCP received various medical reports dated from July 11, 2016 to February 2, 2017 regarding the employee's treatment for chronic lower back pain, lumbar disc disease, lumbar radiculitis, sleep apnea, fatigue, and restless leg syndrome. It also received a February 7, 2013 and December 1, 2016 sleep study note and testing regarding the employee.

Appellant submitted reports dated July 3 and August 2, 2018 by Dr. Andrew Park, a Board-certified orthopedic surgeon. Dr. Park noted the employee's complaints of persistent low back pain, less left testicle pain, and left thigh numbness and pain. He indicated that the employee saw Dr. Flinders on June 26, 2018 for complaints of severe insomnia due to increased back muscle spasm. Dr. Park also noted that the employee's restless leg symptoms had worsened after surgery in 2016. He reported that a sleep study performed on December 1, 2016 showed a reduced sleep efficiency, including nearly two hours of wake after sleep onset. Dr. Park conducted an examination and diagnosed thoracolumbar radiculopathy, myofascial pain syndrome, restless leg syndrome, and lumbar radiculopathy.

In a letter dated September 7, 2018, OWCP advised appellant of the type of medical evidence needed to establish that the employee's accepted employment injury contributed to his death. It provided her with a claim form for compensation by widow, widower, and/or children (Form CA-5) for requesting survivor benefits.

On September 17, 2018 appellant filed a Form CA-5 requesting survivor benefits. Dr. Flinders completed the medical portion of the CA-5 form on September 25, 2018. He reported that the contributory cause(s) of death were severe chronic pain/radiculopathy, severe hypogonadism, severe insomnia due to pain, and severe vitamin D deficiency. Dr. Flinders checked a box marked "yes" indicating that the employee's death was due to the injury. He reported: "It was in my opinion a contributing factor."

Appellant submitted a February 27, 2018 operative report by Dr. Flinders, which indicated that the employee underwent endoscopic discectomy, left T12-L1. Dr. Flinders noted a preoperative diagnosis of thoracolumbar radiculopathy with disc herniation at T12-L1. He also completed a March 15, 2018 postoperative note, which noted that the employee's back pain had improved. Dr. Flinders provided examination findings and diagnosed thoracolumbar radiculopathy and myofascial pain.

In an October 1, 2018 letter, OWCP informed Dr. Flinders that the employee's accepted conditions were postlaminectomy syndrome and left thoracic or lumbosacral neuritis or radiculitis. It requested that Dr. Flinders provide a narrative medical report with rationale explaining how these accepted conditions contributed to the additional factors that he identified as contributing to the employee's death.

By decision dated January 18, 2019, OWCP denied appellant's claim for survivor's benefits finding that the medical evidence of record was insufficient to establish a causal relationship between the employee's death and his March 19, 2013 employment injury.

On January 25, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

OWCP received a June 26, 2018 report by Dr. Flinders, who noted the employee's complaints of exacerbation of chronic back and groin pain. Dr. Flinders also noted that appellant had complained of fatigue and mental cloudiness. He conducted an examination on that date and diagnosed acute exacerbation of chronic back pain with radiculopathy, severe hypogonadism, and vitamin D deficiency.

Appellant also submitted a July 3, 2018 work capacity evaluation (Form OWCP-5c) by Dr. Park. Dr. Park noted the employee's accepted condition of postlaminectomy syndrome. He reported that, on that date, the employee had increased restless leg syndrome, increased low back pain, and was unable to sleep or work due to complication from surgery.

On April 23, 2019 a telephonic hearing was held. Counsel was present and asserted that Dr. Flinders had indicated in his initial note that there were multiple factors regarding the causation of the employee's death.

Following the hearing, OWCP received a May 14, 2019 letter by Dr. Flinders. Dr. Flinders opined that the employee's work-related postlaminectomy pain syndrome and thoracic and lumbosacral neuritis resulted in the need for ongoing opioid medication which led to the hypogonadism from which the employee suffered. He also noted that the employee was under a tremendous amount of stress due to the pain, which contributed to severe insomnia. Dr. Flinders concluded that these circumstances were "major contributing factors which ultimately contributed to [the employee's] heart disease and eventually resulted in his death."

By decision dated May 24, 2019, an OWCP hearing representative affirmed the January 18, 2019 decision.

### **LEGAL PRECEDENT**

The United States shall pay for compensation for the death of an employee resulting from personal injury sustained while in the performance of duty.<sup>6</sup> Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the employee's death was causally related to his federal employment.<sup>7</sup> This burden includes the necessity of furnishing medical opinion evidence, based upon a complete and accurate factual and medical background, showing causal relationship between the employee's death and an accepted employment injury or factors of his or her federal employment.<sup>8</sup>

The mere showing that an employee was receiving disability compensation at the time of death does not establish that the employee's death was causally related to his or her federal

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<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *L.W. (K.W.)*, Docket No. 19-0569 (issued August 16, 2019).

<sup>8</sup> *M.L.*, Docket No. 19-0020 (issued May 2, 2019); *L.R. (E.R.)*, 58 ECAB 369 (2007).

employment.<sup>9</sup> The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal relationship.<sup>10</sup> If the employment contributed to the employee's death, then causal relationship is established.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the employee's death on August 6, 2018 was causally related to his accepted March 19, 2013 employment injury.

OWCP accepted the employee's claim for left thoracic or lumbosacral neuritis and postlaminectomy syndrome. The death certificate dated August 13, 2018 listed the cause of death as myocardial infarction with elevated troponin level. Appellant filed a Form CA-5 alleging that the employee's employment-related injury caused or contributed to his death.

Dr. Flinders completed the medical portion of appellant's Form CA-5. In support of her claim, appellant submitted several of his medical reports in connection with treatment of the employee. Dr. Flinders listed the contributory causes of the employee's death as severe chronic pain/radiculopathy, severe hypogonadism, severe insomnia due to pain, and severe vitamin D deficiency. He checked a box marked "yes" indicating that the employee's death was due to the injury and noted that it was a contributing factor. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>12</sup> Therefore, the Form CA-5 physician's note is insufficient to establish appellant's claim.

In reports dated February 27 to June 26, 2018, Dr. Flinders noted continued treatment of the employee for chronic back pain. He diagnosed acute exacerbation of chronic back pain with radiculopathy, severe hypogonadism, and vitamin D deficiency. In a May 14, 2019 letter, Dr. Flinders opined that the employee's work-related postlaminectomy pain syndrome and thoracic and lumbosacral neuritis required ongoing opioid medication, which further resulted in the employee's hypogonadism. He also reported that the employee was under a tremendous amount of stress due to his pain, which contributed to severe insomnia. Dr. Flinders opined that these circumstances were "major contributing factors" that contributed to the employee's heart disease and subsequent death noting that the back condition caused other conditions which were factors in the death. He did not explain, however, how or why those conditions were due to the accepted condition in this claim or why they were sufficient to result in the employee's death. A medical report is of limited probative value on the issue of causal relationship if it contains a

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<sup>9</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

<sup>10</sup> *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

<sup>11</sup> *J.P. (E.P.)*, Docket No. 18-1739 (issued May 3, 2019).

<sup>12</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

conclusion regarding causal relationship which is unsupported by medical rationale.<sup>13</sup> These reports, therefore, are insufficient to establish appellant's claim.

The employee was also treated by Dr. Park. In reports dated July 3 and August 2, 2018, Dr. Park indicated that the employee had complained of severe insomnia due to increased muscle spasm and worsening restless leg symptoms after surgery in 2016. He provided examination findings and diagnosed thoracolumbar radiculopathy, myofascial pain syndrome, restless leg syndrome, and lumbar radiculopathy. In a July 3, 2018 OWCP-5c form, Dr. Park indicated that the employee was unable to sleep due to complications from surgery. He did not, however, offer an opinion regarding the cause of the employee's death. Without an opinion on the cause of the employee's death, these reports, therefore, are insufficient to meet appellant's burden of proof.<sup>14</sup>

Appellant also provided various periodical and medical journal articles which noted the correlation between poor sleep and heart attacks. However, materials from periodicals, journals, and magazines are of no probative value to support a claim for compensation under FECA.<sup>15</sup> Medical evidence must be in the form of rationalized opinion by a qualified physician based on a complete and accurate medical and factual history.<sup>16</sup>

On appeal counsel alleges that OWCP's decision was contrary to fact and law. As explained above, however, appellant has not submitted medical evidence containing a rationalized medical opinion that the employee's accepted conditions contributed to his August 6, 2018 death. Accordingly, she has not met her burden of proof to establish her claim.<sup>17</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 has not met her burden of proof to establish that the employee's death on August 6, 2018 was causally related to his accepted March 19, 2013 employment injury.

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<sup>13</sup> See *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>14</sup> See *W.C. (widow of R.C.)*, Docket No. 18-0531 (issued November 1, 2018); *J.P. (T.P.)*, Docket No. 17-0563 (issued June 20, 2018).

<sup>15</sup> *S.G.*, Docket No. 17-1054 (issued September 12, 2017).

<sup>16</sup> *Id.*; see also *John D. Baskette*, 30ECAB 761 (1979).

<sup>17</sup> *W.C. (R.C.)*, *supra* note 14.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2020  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board