

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

P.G., claiming as widow of J.G., Appellant	)	
	)	
and	)	Docket No. 20-0815
	)	Issued: December 10, 2020
DEPARTMENT OF THE NAVY, NAVAL AIR	)	
WEAPONS STATIONS, China Lake, CA,	)	
Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 3, 2020 appellant filed a timely appeal from a November 8, 2019 merit decision and a February 12, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that the employee's death on July 14, 2018 was causally related to his accepted employment injury; and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the February 12, 2020 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.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **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 decisions and orders are incorporated herein by reference. The relevant facts are set forth below.

On February 15, 1984 the employee, then a 30-year-old fireman, filed a traumatic injury claim (Form CA-1) alleging that on January 14, 1984 he fell and injured his neck when pulling a fire hose while in the performance of duty. OWCP accepted his claim for a cervical strain, dislocation of lumbar vertebra, displacement of cervical intervertebral disc, herniated disc at C5-6 and later accepted a permanent aggravation of paranoid schizophrenia. It authorized a cervical laminectomy and a fusion, which was performed on February 17, 1984. The employee stopped work on January 17, 1984 and returned to light duty on May 6, 1984.

By decision dated May 13, 1991, OWCP reduced the employee's wage-loss compensation based on its finding that his actual earnings as an accounting technician fairly and reasonably represented his wage-earning capacity. On May 6, 1994 he stopped work completely and was hospitalized due to a psychiatric episode. The employee was granted disability retirement effective July 25, 1994. He later elected to receive wage-loss compensation benefits under FECA.

The record indicates that, in the years preceding his passing, the employee was not in active treatment for the orthopedic conditions, but was seen by a psychologist. In a May 7, 2013 report, Dr. Lawrence J. Coates, a psychologist, noted treating the employee since 1994 for schizophrenia as a result of a work-related injury. He reported that he continued to have significant periods of confusion, paranoia, and depression and required an attendant as he had signs of decompensation. In a report dated March 25, 2014, Dr. Coates noted providing continuing psychological care since the employee experienced a schizophrenic break in 1994 associated with a work-related condition. He opined that the employee was gravely disabled and required assistance with his activities of daily living as provided by his wife.

On July 18, 2018 appellant notified OWCP that the employee had passed away on July 14, 2018.

In a death certificate dated July 26, 2018, Dr. Kain Kumar, a Board-certified internist, noted the employee's immediate cause of death as cardiorespiratory failure. The underlying cause of the cardiorespiratory failure was listed as myocardial infarction and coronary artery disease. In a box marked "other significant conditions contributing to death, but not resulting in the underlying cause" was listed metastatic lung cancer.

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<sup>3</sup> Docket No. 15-0863 (issued August 12, 2015); Docket No. 15-0842 (issued April 16, 2015); Docket No. 14-1491 (issued September 25, 2014); Docket No. 13-1542 (issued March 12, 2014); Docket No. 12-1688 (issued February 13, 2013); Docket No. 11-366 (issued September 28, 2011); Docket No. 09-1947 (issued May 18, 2010); Docket No. 06-0201 (issued November 28, 2006).

In a letter dated August 27, 2019, 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's benefits.

On September 2, 2019 appellant filed a Form CA-5 requesting survivor's benefits. She noted the nature of injury, which caused the employee's death, was neck spinal fusion in 1984 and mental breakdown in 1994. The medical portion of the CA-5 form was not completed. Appellant submitted a marriage certificate dated February 5, 1973, funeral expenses dated July 16, 2018, and the employee's death certificate dated July 26, 2018.

OWCP received various medical reports from Dr. Coates dated June 3, 1994 through January 30, 2008, who noted treating the employee since 1994 for schizophrenia as a result of a work-related injury. It also received a June 3, 1994 report from Dr. Joseph Ezra, a Board-certified psychiatrist, who treated the employee for depression, delusion, and paranoia. Appellant submitted other evidence including a March 1, 1991 letter from the employee to his congressional representative, an OWCP memorandum dated November 17, 1994 regarding the employee's stress claim, and letters from the employee to OWCP dated August 12, 2010 and June 4, 2012, asserting that he was entitled to an attendant allowance and total disability for his accepted conditions dating back to 1994.

In a development letter dated October 2, 2019, 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.

In response to OWCP's development letter, appellant submitted emergency medical treatment notes dated January 9 and 14, 1984 for a neck strain and cervical strain. OWCP received a Form CA-1 dated January 10, 1984 alleging exposure to toxic acid and fumes on January 9, 1984, while working as a firefighter and an accident/injury notification, dated January 14, 1984, diagnosing cervical strain.

In a letter dated October 11, 2019, appellant asserted that the employee's death was caused by his accepted neck injury on January 13, 1984 and an emotional breakdown in 1994.

By decision dated November 8, 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 accepted employment injuries. It indicated that none of the medical evidence submitted provided a rationalized medical opinion that related the cause of death to his work-related injuries.

OWCP received medical records from Palmdale Regional Medical Center dated June 16, 2018, where the employee was treated by Dr. Kumar for extensive metastatic lung disease to the spine. The employee reported chronic neck pain secondary to trauma. An admission record from the Ellison John Transitional Care Center dated July 7, 2018 diagnosed malignant neoplasm of bronchus or lung, muscle weakness, abnormality of gait and mobility, abnormal posture,

dysphagia, chronic obstructive pulmonary disease, pneumonia, anemia, acute embolism, and altered mental status.

On December 16, 2019 appellant requested reconsideration. She submitted various reports previously of record.<sup>4</sup>

In a letter dated January 31, 2020, the employing establishment asserted that appellant's request for reconsideration did not provide any relevant new evidence or legal argument proving causal relationship between the employee's accepted employment-related conditions of sprain of the neck, disclosed dislocation of lumbar vertebra, displacement of cervical intervertebral disc without myelopathy or paranoid schizophrenia, and the cause of his death.

By decision dated February 12, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

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>5</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>6</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>7</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 employment.<sup>8</sup> The Board has held that it is not necessary that there is a significant contribution of

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<sup>4</sup> In support of her request, she resubmitted various reports previously of record including a January 10, 1984 Form CA-1, a safety program office report dated January 14, 1984, a dispensary permit dated March 1, 1984, an April 15, 1994 form leaving hospital against medical advice, a May 12, 1994 medical report aid to families with dependent children, reports from Dr. Coates dated June 3, 1994 through March 25, 2014, a 1994 report from Dr. Ezra, an August 8, 1994 response from the employee to an OWCP questionnaire, a November 17, 1994 OWCP memorandum regarding appellant's stress claim, an OWCP conference memorandum dated January 17, 1995, a May 29, 2008 letter from OWCP approving attendant services for one year, a May 12, 2010 employing establishment memorandum, and a copy of a Board remand order dated September 28, 2011.

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *L.W. (K.W.)*, Docket No. 19-0569 (issued August 16, 2019).

<sup>7</sup> *M.L.*, Docket No. 19-0020 (issued May 2, 2019); *L.R. (E.R.)*, 58 ECAB 369 (2007).

<sup>8</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

employment factors to establish causal relationship.<sup>9</sup> If the employment contributed to the employee's death, then causal relationship is established.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish that the employee's death on July 14, 2018 was causally related to his accepted January 14, 1984 employment injury.

In support of her claim, appellant submitted several reports from Dr. Coates, dated June 3, 1994 through March 25, 2014, who treated the employee since 1994 for schizophrenia as a result of a work-related injury. Also submitted was a June 3, 1994 report from Dr. Ezra who treated the employee for depression, delusion, and paranoia. Likewise, emergency medical notes, dated January 9 and 14, 1984, note treatment for a neck strain and cervical strain. The medical documents provided by appellant predate the employee's death and they have no probative value because they do not 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>11</sup>

Dr. Kumar signed the employee's death certificate dated July 26, 2018. On the death certificate he listed the cause of death as cardiorespiratory failure, myocardial infarction, and coronary artery disease with other significant conditions contributing to death, but not resulting in the underlying cause of death, of metastatic lung cancer. However, Dr. Kumar did not provide a rationalized medical opinion relating the employee's death to his accepted employment injuries.<sup>12</sup> Therefore, the certificate is insufficient to establish the claim.

Appellant also submitted various evidence including a March 1, 1991 letter from the employee to his congressional representative, an OWCP memorandum dated November 17, 1994, letters from the employee to OWCP dated August 12, 2010 and June 4, 2012, a Form CA-1 dated January 10, 1984, and an accident/injury notification, dated January 14, 1984, diagnosing cervical strain. However, this evidence is of no probative value to support a claim for compensation under FECA as it is not medical evidence, which is necessary to establish the claim.<sup>13</sup> Appellant must submit medical evidence in the form of rationalized opinion by a qualified physician based on a complete and accurate medical and factual history.<sup>14</sup>

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<sup>9</sup> *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

<sup>10</sup> *J.P. (E.P.)*, Docket No. 18-1739 (issued May 3, 2019).

<sup>11</sup> See *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); *J.P. (T.P.)*, Docket No. 17-0563 (issued June 20, 2018).

<sup>12</sup> See *J.P. (T.P.)*, *id.*

<sup>13</sup> *S.G.*, Docket No. 17-1054 (issued September 12, 2017).

<sup>14</sup> *Id.*; see also *John D. Baskette*, 30 ECAB 761 (1979).

As appellant has failed to submit medical evidence containing a rationalized medical opinion that the employee's accepted conditions contributed to his July 14, 2018 death, she has not met her burden of proof.

On appeal appellant alleges that OWCP improperly denied her claim for survivor's benefits. As explained above, however, appellant has not submitted medical evidence containing a rationalized medical opinion that the employee's accepted conditions contributed to his July 14, 2018 death. Accordingly, the Board finds that she has not met her burden of proof to establish her claim.<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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>16</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>17</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>18</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>19</sup> If the request is timely, but fails to meet at least one of the

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<sup>15</sup> See *W.C. (R.C.)*, *supra* note 11; Docket No. 18-0531 (issued November 1, 2018); *J.P. (T.P.)*, *supra* note 11.

<sup>16</sup> 5 U.S.C. § 8128(a); see *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>17</sup> 20 C.F.R. § 10.606(b)(3); see also *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.; B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>18</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>19</sup> *Id.* at § 10.608(a); see also *Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>20</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed a timely request for reconsideration on December 16, 2019. She did not show in her request for reconsideration that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered by OWCP. Consequently, the Board finds that she was not entitled to a review of the merits based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>21</sup>

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered. Appellant resubmitted evidence previously of record and reviewed. The Board has held that evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>22</sup> As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>23</sup>

Appellant also submitted medical records from Dr. Kumar dated June 16, 2018 who treated the employee for extensive metastatic lung disease. Similarly, she submitted an admission record dated July 7, 2018, which diagnosed malignant neoplasm of bronchus or lung, muscle weakness, abnormality of gait and mobility, abnormal posture, dysphagia, chronic obstructive pulmonary disease, pneumonia, anemia, acute embolism and altered mental status. However, the underlying issue on reconsideration was whether appellant had met her burden of proof to establish that the employee's death was causally related to his accepted employment conditions. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>24</sup> Dr. Kumar 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>25</sup>

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<sup>20</sup> *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

<sup>21</sup> *D.B.*, Docket No. 19-1963 (issued July 1, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>22</sup> *See H.A.*, Docket No. 18-1253 (issued April 23, 2020); *Richard Yadron*, 57 ECAB 207 (2005).

<sup>23</sup> 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>24</sup> *B.O.*, Docket No. 20-0156 (issued May 13, 2020); *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

<sup>25</sup> *See W.C. (R.C.)*, *supra* note 11; *J.P. (T.P.)*, *supra* note 11.

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>26</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that the employee's death on July 14, 2018 was causally related to his accepted January 14, 1984 employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 12, 2020 and November 8, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 10, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>26</sup> *D.G.*, Docket No. 19-1348 (issued December 2, 2019).